



**PROJECT AGREEMENT
(EXECUTION VERSION)**

**THE CITY OF WINNIPEG
SOUTHWEST RAPID TRANSITWAY (STAGE 2)
AND PEMBINA HIGHWAY UNDERPASS**

TABLE OF CONTENTS

SECTION A INTERPRETATION	7
A1. Section References	7
A2. Schedules	7
A3. Order of Precedence	9
A4. Project Co's Knowledge	10
A5. Restated Schedules	10
A6. Conflict of Documents	10
SECTION B COMMERCIAL CLOSE AND FINANCIAL CLOSE	11
B1. Effective Date	11
B2. Financial Close Letter of Credit	11
B3. Financial Close	11
B4. Financial Close Deliverables	12
SECTION C DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN.....	13
C1. Project Financing	13
C2. Design and Build	14
C3. Operations, Maintenance and Rehabilitation	14
C4. Handback	14
C5. Assumption of Risk	14
C6. Responsibility for Costs	14
C7. Project Co Responsibilities	14
C8. Key Individuals	15
C9. Human Resources	17
C10. City's Authority	17
SECTION D FINANCING MATTERS AND PERFORMANCE SECURITY.....	18
D1. Project Financing	18
D2. Lenders' Direct Agreement	18
D3. Minimum Requirements for Performance Security	18
D4. Construction Contract Performance Security	19
SECTION E ACCESS TO THE LANDS AND CONDITION OF THE LANDS	19
E1. Access and Use	19
E2. No Access Fee	20
E3. Status of the Lands	20
E4. Condition of the Lands	20
E5. Permitted Use	22
E6. Liens and Claims	22

E7.	Ownership of Lands and Infrastructure	23
E8.	Uninterrupted Access and Use	23
E9.	Access and Use Rights to Cease	24
E10.	Additional Lands	24
E11.	Stadium Access Works	25
E12.	Cash Allowance	26
SECTION F DESIGN AND BUILD OF THE NEW INFRASTRUCTURE		28
F1.	Project Co's Obligations	28
F2.	Technical Requirements	28
F3.	Project Co's Responsibility to Carry Out Technical Requirements	28
F4.	Project Co's Designs, Plans and Design and Construction Schedule	29
F5.	Project Co's Responsibility for Project	29
F6.	Construction Within the Lands Boundaries	29
F7.	Detailed Designs	29
F8.	Stop Work Order	30
F9.	Construction Delays	30
F10.	Independent Certifier	31
F11.	Work by City Contractors or City's Own Forces	32
F12.	Construction Impact on Residents and Community	33
F13.	City Assistance with Permits and Approvals and Utility Arrangements	34
F14.	Security, Safety and Emergencies	35
F15.	Warranty for Maintenance-Exempt Work	36
F16.	Stadium Access Works	37
F17.	Utility Work	38
F18.	Existing Infrastructure	39
F19.	Integration of Public Art	40
F20.	Safety Certification	40
F21.	Commissioning Plan	40
F22.	Manitoba Hydro Interface	40
F23.	CN Rail Interface	41
SECTION G COMPLETION OF THE NEW INFRASTRUCTURE		42
G1.	Anticipated Substantial Completion	42
G2.	Certification of Substantial Completion	42
G3.	Final Completion	43
G4.	Deficiencies Holdback	43
G5.	Disputes Regarding the Achievement of Substantial Completion	44

SECTION H OPERATIONS, MAINTENANCE AND REHABILITATION.....	45
H1. Commencement of OMR Services	45
H2. OMR Requirements.....	45
H3. Compliance with Applicable Law	45
H4. Access and Performance of OMR Services.....	45
H5. Utility Rates During OMR Period	45
SECTION I MODIFICATIONS AND CHANGE ORDERS.....	46
I1. Modification of Project, New Infrastructure or Technical Requirements	46
I2. Determination of Costs of Change Orders.....	47
SECTION J HANDBACK UPON EXPIRY	47
J1. Handback Requirements.....	47
SECTION K PAYMENT	47
K1. Substantial Completion Payment.....	47
K2. Monthly Payments.....	47
K3. Payment Adjustments	47
K4. Payment Commencement.....	48
K5. Invoicing and Payment Arrangements.....	48
K6. Electronic Invoicing	50
K7. Disputes	50
K8. Timing and Method of Payments	50
K9. Audit.....	51
K10. Late Completion	52
K11. Set-off	52
K12. Interest on Overdue Payments.....	52
K13. Taxes	53
K14. Changes in Recoverability of Tax Credits.....	53
K15. Information and Assistance Provided by Project Co	54
K16. Withholding Taxes.....	54
K17. Project Co Indemnities - Taxes	54
SECTION L INDEXING, PERFORMANCE MONITORING AND DEDUCTIONS	55
L1. Indexing of OMR Payment	55
L2. Monitoring of Performance	55
L3. Deduction Thresholds	56
L4. Warning Notices.....	56
L5. Monitoring Notices	56
L6. Replacement of Non-Performing OMR Provider	58

SECTION M INSURANCE, DAMAGE AND DESTRUCTION	59
M1. Insurance Requirements	59
M2. Evidence of Insurance	59
M3. City May Insure	60
M4. Uninsurability	60
M5. Benchmarking of Insurance Costs	61
M6. Repair of Damage – Prior to Substantial Completion	62
M7. Repair of Damage – OMR Period	63
SECTION N FORCE MAJEURE	64
N1. Force Majeure During Construction Period	64
N2. Force Majeure During OMR Period	65
N3. Procedure on Force Majeure Event	66
N4. Termination for Force Majeure Event	66
SECTION O RELIEF EVENTS	67
O1. Relief Events	67
O2. Relief Event During Construction Period	69
O3. Relief Event During OMR Period	70
O4. General Provisions Relating to Relief Events	71
O5. Mitigation	71
SECTION P REPRESENTATIONS AND WARRANTIES	72
P1. Project Co's Representations and Warranties	72
P2. The City's Representations and Warranties	74
SECTION Q REPORTING, INSPECTION AND TESTING	74
Q1. Reporting Requirements	74
Q2. Records	75
Q3. Access, Inspection and Testing	76
SECTION R INDEMNITIES AND LIMITATION OF LIABILITY	76
R1. Project Co's Indemnity	76
R2. City's Indemnity	77
R3. Calculation of and Limitation on Claims	77
R4. Exclusivity of Specified Remedies	79
R5. Conduct of Indemnified Claims	79
SECTION S DEFAULT AND TERMINATION	81
S1. City's Step-in Rights	81
S2. Termination Events	82
S3. Lenders' Agreement	84

S4.	Termination by City	84
S5.	Termination by Project Co	85
S6.	Termination Upon Force Majeure	85
S7.	Consequences of Termination.....	85
S8.	Survival of Obligations.....	86
S9.	Exclusivity of Termination Provisions	86
SECTION T TERMINATION PAYMENTS.....		87
T1.	Termination Payments	87
T2.	Full and Final Settlement.....	87
SECTION U ANNOUNCEMENTS, CONFIDENTIALITY AND INTELLECTUAL PROPERTY ..		87
U1.	Public Announcements and Stakeholder Communications.....	87
U2.	Confidential Information	88
U3.	Disclosure of Confidential Information	88
U4.	Public Disclosure of Project Agreement and Project Information	88
U5.	Collection, Use and Disclosure of Personal Information	89
U6.	Naming Rights.....	89
U7.	Intellectual Property.....	90
SECTION V PROJECT GOVERNANCE.....		91
V1.	Design and Construction Committee	91
V2.	OMR Committee	92
SECTION W DISPUTE RESOLUTION		93
W1.	Dispute Resolution Procedure	93
W2.	Exception to Dispute Resolution Procedure	93
W3.	Termination and Dispute Resolution Procedure	93
W4.	No Court Proceedings	94
W5.	Payments Where Amount in Dispute.....	94
SECTION X GENERAL PROVISIONS		94
X1.	Notices.....	94
X2.	Authority to Give Notices.....	95
X3.	Assignment by Project Co	95
X4.	Subcontracting by Project Co	96
X5.	Change in Ownership.....	96
X6.	Assignment by City	97
X7.	Applicable Law and Jurisdiction	98
X8.	Amendment and Waiver.....	98
X9.	Additional Assurances.....	98

X10.	Counterparts	98
X11.	Joint and Several	98
X12.	Entire Agreement	98
X13.	Currency	99
X14.	Liquidated Damages	99
X15.	No Agency, Joint Venture, Partnership, Lease or Loan	99

THIS PROJECT AGREEMENT is made as of the 21st day of June, 2016

BETWEEN:

THE CITY OF WINNIPEG

AND:

PLENARY ROADS [REDACTED]

PLENARY ROADS [REDACTED]

and

PCL [REDACTED],

("Project Co")

WHEREAS:

- A. The City intends to undertake the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project, which includes development of the New Infrastructure and other related infrastructure in the City of Winnipeg.
- B. Project Co will design, build, finance, (operate) and maintain the New Infrastructure as set out in this Project Agreement (the "**Project**").
- C. The City and Project Co wish to enter into this project agreement (the "**Project Agreement**"), which sets out the terms and conditions upon which Project Co shall perform the Project.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

SECTION A INTERPRETATION

A1. Section References

- A1.1 References in this Project Agreement to Sections of this Project Agreement are to the correspondingly numbered provisions of this Project Agreement. References to Schedules are to the correspondingly numbered Schedules listed in Section A2.1.

A2. Schedules

- A2.1 The following Schedules are for every purpose to be considered as part of this Project Agreement (and provisions of the Schedules are to be considered as provisions of this Project Agreement):

- Schedule 1 – Definitions and Interpretation
- Schedule 2 – Project Co's Design and Construction Schedule
- Schedule 3 – Project Co Proposal Extracts
- Schedule 4 – Project Co's Management Systems and Plans
- Schedule 5 – Review Procedure
- Schedule 6 – Subcontractors and Key Individuals
- Schedule 7 – Dispute Resolution Procedure
- Schedule 8 – Lenders' Direct Agreement
- Schedule 9 – Direct Agreements
- Schedule 10 – Independent Certifier Agreement
- Schedule 11 – Insurance Requirements
- Schedule 12 – Lands and Identified Encumbrances
- Schedule 13 – Traffic Management
- Schedule 14 – Payment Mechanism
- Schedule 15 – Termination Payments
- Schedule 16 – Standby Letters of Credit
- Schedule 17 – Change Orders
- Schedule 18 – Technical Requirements
- Schedule 19 – Handback Procedure
- Schedule 20 – Insurance Trust Agreement
- Schedule 21 – Refinancing
- Schedule 22 – Security Clearance Requirements
- Schedule 23 – Public Art
- Schedule 24 – Communications Plan

A3. Order of Precedence

A3.1 In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions of amendments in writing to this Project Agreement signed by the Parties and Change Order Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
- (b) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
- (c) the body of this Project Agreement;
- (d) Schedule 1 - Definitions and Interpretation;
- (e) Schedule 7 - Dispute Resolution Procedure;
- (f) Schedule 14 – Payment Mechanism;
- (g) Schedule 13 – Traffic Management;
- (h) Schedule 18 – Technical Requirements;
- (i) Schedule 11 - Insurance Requirements;
- (j) Schedule 17 – Change Orders;
- (k) Schedule 5 – Review Procedure;
- (l) Schedule 4 – Project Co's Management Systems and Plans;
- (m) Schedule 15 – Termination Payments;
- (n) Schedule 19 – Handback Procedure;
- (o) the other Schedules in the order in which they are listed in Section A2.1 except for Schedule 3 – Project Co Proposal Extracts; and
- (p) Schedule 3 – Project Co Proposal Extracts.

A3.2 Subject to Section A3.1, if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design and Construction or OMR Services, the provision that applies to the specific part of the Design and Construction or OMR Services shall govern for that specific part of the Design and Construction or OMR Services.

- A3.3 If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section A3, then Project Co or the City, upon discovery of same, shall immediately give notice to the City Representative. The City Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- A3.4 The City and Project Co shall comply with the determination of the City Representative pursuant to this Section A3 unless the City or Project Co dispute the decision of the City Representative in which event such Dispute may be referred for resolution in accordance with Schedule 7 - Dispute Resolution Procedure.
- A3.5 Except for those parts of Project Co's Proposal which the City determines are incorporated into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's Proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, the City or anyone else (including anyone pursuant to Schedule 7 – Dispute Resolution Procedure or any arbitral body or any Court) in any way to interpret or qualify the scope of the Project or the Technical Requirements, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.

A4. Project Co's Knowledge

- A4.1 Where any provision of this Project Agreement refers to the knowledge of or matters known to Project Co, then:
- (a) prior to execution of this Project Agreement, knowledge on the part of any personnel having direct involvement in the preparation of Project Co's Proposal on behalf of any consortium member named in Project Co's Proposal shall be deemed to have been knowledge of Project Co, even if Project Co had not yet been incorporated or created;
 - (b) during the Construction Period, knowledge on the part of personnel of Project Co's principal design subcontractor or principal construction subcontractor, provided such personnel are directly involved in the Design and Construction, shall be deemed to be knowledge of Project Co; and
 - (c) during the OMR Period, knowledge on the part of personnel directly involved in the OMR Services shall be deemed to be knowledge of Project Co.

A5. Restated Schedules

- A5.1 Where any provision of this Project Agreement contemplates amendment of a Schedule, the City shall as soon as practicable after the amendment comes into effect prepare a restated Schedule reflecting the amendment and deliver it to Project Co.

A6. Conflict of Documents

- A6.1 In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders'

Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

SECTION B COMMERCIAL CLOSE AND FINANCIAL CLOSE

B1. Effective Date

The provisions of Section A, Section B, Section C, Section D3, Section D4, Section E, Section F10, Section I, Section K, Section L, Section P, Section Q, Section R, Section U, Section V, Section W and Section X, Schedule 1 – Definitions and Interpretation, Schedule 2 – Project Co's Design and Construction Schedule, Schedule 3 – Project Co Proposal Extracts, Schedule 4 – Project Co's Management Systems and Plans, Schedule 5 – Review Procedure, Schedule 6 – Subcontractors and Key Individuals, Schedule 7 – Dispute Resolution Procedure, Schedule 9 – Direct Agreements, Schedule 11 – Insurance Requirements, Schedule 12 – Lands and Identified Encumbrances, Schedule 16 – Standby Letters of Credit, Schedule 17 – Change Orders, Schedule 18 – Technical Requirements, Schedule 22 – Security Clearance Requirements and Schedule 24 – Communications Plan will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. Subject to Section S8, the provisions of this Project Agreement will terminate on the Termination Date.

B2. Financial Close Letter of Credit

- B2.1 On Commercial Close, Project Co shall deliver, or cause to be delivered, to the City an irrevocable standby letter of credit (the "**Financial Close Letter of Credit**") in the amount of [REDACTED] substantially in the form set out in Schedule 16 – Standby Letters of Credit.
- B2.2 Unless the Financial Close Letter of Credit is drawn by the City in accordance with the provisions of this Project Agreement, the City shall release and deliver the Financial Close Letter of Credit to Project Co on Financial Close.
- B2.3 Project Co shall ensure that the Financial Close Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

B3. Financial Close

- B3.1 No later than 30 days prior to the Commercial Close Target Date, Project Co will deliver, to the City, drafts of all documents referred to in Section B4.1.
- B3.2 On or before the Financial Close Target Date, Project Co shall deliver to the City the documents referred to in Section B4.
- B3.3 If Project Co fails,
- (a) to deliver to the City any of the documents referred to in Section B4.1 by the Financial Close Target Date and the City does not waive such requirement; or
 - (b) to achieve Financial Close on or before the Financial Close Target Date,

(other than as a direct result of a breach by the City of its obligations under Section B4.2) the City will be entitled to draw on the Financial Close Letter of Credit and to retain the proceeds thereof as liquidated damages and to terminate this Project Agreement in its entirety by written notice having immediate effect.

- B3.4 The Parties agree that, for the purposes of Section B3.3, such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of the happening of the specified event and it would be difficult or impossible to quantify such damages upon the happening of the specified event. The retention of the proceeds by the City in accordance with Section B3.3 shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of Project Co breaching Section B3.3. The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall not have any obligation to mitigate any such damages.
- B3.5 As contemplated under Section J3.2 of the Request for Proposals, Project Co shall, no later than 10 days following written instructions from the City given on or after Financial Close, pay the Proposal Submission Fee (as that term is defined in the Request for Proposals) amount to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals) as directed by the City. If fewer than two Proponents are eligible to receive the Proposal Submission Fee, as determined by the City, then,
- (a) if the determination is made prior to Financial Close, Project Co shall revise the Financial Model prior to Financial Close to credit the amount of the unpaid Proposal Submission Fee(s) to the City; or
 - (b) if the determination is made following Financial Close, the City shall be entitled to a credit in the amount of the unpaid Proposal Submission Fee(s) to be applied to reduce the Substantial Completion Payment.

B4. Financial Close Deliverables

- B4.1 On or prior to Financial Close, Project Co shall deliver to the City the following documents executed by the parties to such agreements other than the City and in form and substance satisfactory to the City:
- (a) a certificate of the secretary or other officer of Project Co dated as of Commercial Close that certifies the following:
 - (i) the formation documents and by-laws of Project Co;
 - (ii) the resolution approving the execution, delivery and performance of the Project Agreement by Project Co; and
 - (iii) any other items requested by the City, acting reasonably;
 - (b) an original of the Construction Contractor's Direct Agreement;
 - (c) an original of the Independent Certifier Agreement;

- (d) an original of the Insurance Trust Agreement;
- (e) all agreements relating to the Project Financing between Project Co and the Lenders, including an original of the Lenders' Direct Agreement;
- (f) all agreements that Project Co has entered into with an individual, company or other person that satisfies one or more of the following criteria:
 - (i) has or will have an equity interest in Project Co;
 - (ii) will undertake at least twenty-five percent of the design work based on total estimated construction costs of the Project;
 - (iii) will undertake at least twenty-five percent of the construction work based on total estimated construction costs of the Project;
 - (iv) will undertake at least twenty-five percent of the operations and maintenance work based on total estimated operations and maintenance costs of the Project; or
 - (v) is the proposed lead for financing, construction, design, operations and maintenance, project management or project development;
- (g) an original of the opinion(s) from counsel to Project Co, the Construction Contractor and such other Project Co Parties as the City may reasonably require; and
- (h) such other documents as the Parties may agree, each acting reasonably.

B4.2 On or prior to Financial Close, the City shall deliver to Project Co the following documents executed by the City:

- (a) an original of the Construction Contractor's Direct Agreement;
- (b) an original of the Independent Certifier Agreement;
- (c) an original of the Insurance Trust Agreement;
- (d) an original of the Lenders' Direct Agreement;
- (e) a certificate of an officer of the City dated as of Commercial Close;
- (f) an original of the opinion from counsel to the City; and
- (g) such other documents as the Parties may agree, acting reasonably.

SECTION C DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN

C1. Project Financing

C1.1 Project Co shall arrange the Project Financing, as more particularly set out in Section D.

C2. Design and Build

- C2.1 Project Co shall design and build the New Infrastructure in accordance with the Technical Requirements and as more particularly set out in Section F.

C3. Operations, Maintenance and Rehabilitation

- C3.1 Project Co shall operate, maintain and rehabilitate the OMR Infrastructure in accordance with the OMR Requirements and as more particularly set out in Section H.

C4. Handback

- C4.1 Project Co shall, upon expiry of the Project Term, turn over the OMR Infrastructure to the City in the condition specified by the Handback Requirements and as more particularly set out in Schedule 19 – Handback Procedure.

C5. Assumption of Risk

- C5.1 Except to the extent otherwise expressly allocated to the City by the provisions of this Project Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Project Agreement are allocated to, and as between the City and Project Co, are the exclusive responsibility of Project Co.

C6. Responsibility for Costs

- C6.1 Except as expressly set out in this Project Agreement, Project Co is solely responsible for paying all costs, fees and charges of any nature whatsoever required to complete the Project, except for:
- (a) the costs, fees and charges of the City's own personnel, consultants and professional advisors, including the City Representative;
 - (b) the costs, fees and charges of any mediation or arbitration pursuant to the Dispute Resolution Procedure, which are specifically provided for in Schedule 7 - Dispute Resolution Procedure;
 - (c) any costs, fees, charges or payments expressly to be made by the City under the provisions of this Project Agreement;
 - (d) land acquisition costs; and
 - (e) Manitoba Hydro Transmission Line Relocation.
- C6.2 The City shall not be obligated to pay any costs, fees or charges in relation to the Project except as expressly set out in this Project Agreement.

C7. Project Co Responsibilities

- C7.1 Without limiting any of Project Co's obligations pursuant to this Project Agreement, Project Co shall, at its own cost and risk:

- (a) perform all of its obligations under, and observe all provisions of this Project Agreement, in compliance with Applicable Law;
- (b) perform all of the Design and Construction and OMR Services:
 - (i) in compliance with all Permits, Licences, and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences, and Approvals;
 - (ii) so as to satisfy the Technical Requirements;
 - (iii) in accordance with Good Industry Practice;
 - (iv) in a timely and professional manner;
 - (v) with due regard to the health and safety of persons and property;
 - (vi) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of the City or any City Party to comply with Applicable Law; and
 - (vii) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the City Operations; and
- (c) cooperate with the City in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of the City's obligations under this Project Agreement.

C7.2 Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform any obligation under this Project Agreement on behalf of Project Co, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

C8. Key Individuals

C8.1 The individuals who are critical to the performance of the Design and Construction are identified in Schedule 6 – Subcontractors and Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Design and Construction in the capacity set out in Schedule 6 – Subcontractors and Key Individuals.

C8.2 As long as a Key Individual referred to in Section C8.1 continues to be employed by Project Co or a Project Co Party (and the employee is not on short or long term disability or required to relocate due to the employment-related relocation of the employee's spouse), Project Co shall not,

- (a) for the period of one year following Financial Close and three months prior to the Scheduled Substantial Completion Date, require or request any such Key Individual to be involved in any other project on behalf of Project Co or any

Project Co Party if, in the reasonable opinion of the City, such involvement would have a material adverse effect on the Design and Construction; and

- (b) without limiting the generality of the foregoing, Project Co shall not request the replacement of any position occupied by a Key Individual, as set out in Schedule 6 – Subcontractors and Key Individuals, more than twice during the Construction Period.
- C8.3 If Project Co fails to comply with Section C8.2, Project Co shall pay to the City an amount equal to \$100,000 for each Key Individual to which the failure to comply applies, as liquidated damages. The Parties agree that the liquidated damages set out in this Section C8.3 are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of Project Co's failure to provide the applicable Key Individual.
- C8.4 The individuals who are critical to the start-up of the performance of the OMR Services are identified in Schedule 6 – Subcontractors and Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons are involved in the OMR Services in the capacity set out in Schedule 6 – Subcontractors and Key Individuals at the outset of the OMR Period. Project Co shall ensure that such Key Individuals are replaced over the duration of the OMR Period in a planned and orderly fashion and in consultation with the City and with explicit identification of each Key Individual's length of time as a Key Individual during the OMR Period. Once a Key Individual has been identified and approved by the City as part of the planned and orderly replacement of Key Individuals pursuant to this Section C8.4, if that Key Individual continues to be employed by Project Co or a Project Co Party (and the employee is not on short or long term disability or required to relocate due to the employment-related relocation of the employee's spouse), Project Co shall not, for the planned period of the OMR Services, require or request any such Key Individual to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of the City, such involvement would have a material adverse effect on the OMR Services.
- C8.5 Subject to Project Co's obligations to ensure that Key Individuals remain involved in the Design and Construction and in the OMR Services as set out in Sections C8.1 and C8.4, if it becomes necessary for Project Co to replace any individual identified in Schedule 6 – Subcontractors and Key Individuals, Project Co shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 6 – Subcontractors and Key Individuals without the prior written consent of the City, which consent shall not be withheld or delayed if Project Co is compliant with Sections C8.1, C8.2, C8.4 and C8.6 and the proposed replacement is suitably qualified and experienced.
- C8.6 If the City determines, acting reasonably, that it is in the best interests of the City that any individual identified in Schedule 6 – Subcontractors and Key Individuals be replaced, the City shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days after receipt by Project Co of such notice, Project Co shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement.

C9. Human Resources

- C9.1 The City shall have the right to order the removal from the Lands and the Stage 1 Lands of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of the City is likely to have an adverse effect on the City Operations or who, in the reasonable opinion of the City is not a fit and proper person to be on the Lands or the Stage 1 Lands for any reason, including a failure to comply with any City policy or any immediate obligation of the City to ensure the safety and wellbeing of persons on the Lands and the Stage 1 Lands.
- C9.2 Any decision of the City made pursuant to this Section C9 shall be final and conclusive. Any action taken under Section C9 shall promptly be confirmed by the City to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.
- C9.3 Project Co shall ensure that:
- (a) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party engaged in the performance of the Design and Construction or the OMR Services with the requisite level of skill and experience to perform the Design and Construction or the OMR Services in accordance with this Project Agreement;
 - (b) all persons employed or engaged by Project Co or any Project Co Party engaged in the provision of the Design and Construction or the OMR Services receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements; and
 - (c) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party engaged in the provision of the Design and Construction or the OMR Services to ensure the proper performance of this Project Agreement.
- C9.4 Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Design and Construction and the OMR Services (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to the City upon request.

C10. City's Authority

- C10.1 Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of the City or any Governmental Authority in fulfilling its statutory or regulatory functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude the City of Winnipeg from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law.

SECTION D FINANCING MATTERS AND PERFORMANCE SECURITY

D1. Project Financing

D1.1 The arranging of the Project Financing is the sole responsibility of Project Co.

D2. Lenders' Direct Agreement

D2.1 The City will enter into a Lenders' Direct Agreement with Project Co and a Lender or Lenders (or any agent for or other representative of Lenders) who provide all or a substantial portion of the Project Financing subject to the following:

- (a) the Lenders' Direct Agreement to be entered into under this Project Agreement must be in all material respects in the form prescribed by Schedule 8 – Lenders' Direct Agreement, and must not include any substantive obligations on the part of the City other than as expressly contemplated by Schedule 8 – Lenders' Direct Agreement; and
- (b) the City will enter into a replacement Lenders' Direct Agreement at Project Co's request, provided Project Co has arranged cancellation of the Lenders' Direct Agreement previously in effect, so that no more than one Lenders' Direct Agreement is in effect at any time.

D3. Minimum Requirements for Performance Security

D3.1 The standards set out in this Section D3, shall apply to the Financial Close Letter of Credit, the Early Access Letter of Credit and any other security delivered by Project Co to the City (collectively, the **"Performance Security"**).

D3.2 All Performance Security required to be delivered by Project Co pursuant to the Project Agreement and any replacements shall be issued by a Canadian chartered bank with a minimum senior, unsecured long term credit rating of not less than A (with a stable outlook) or equivalent from one of (and no rating less than A (with a stable outlook) or equivalent from any other of) Standard & Poor's, DBRS (formerly known as Dominion Bond Rating Service), Moody's Investors Service or Fitch Ratings (or any other major credit rating agency approved for the purposes of this Section D3 by the City, who may grant or decline such approval in its absolute discretion) and must be callable at such bank's counters in Winnipeg, Manitoba, Vancouver, British Columbia or Toronto, Ontario. In the event that any of the ratings as described above of such bank that has issued the Performance Security falls below A, Project Co shall, no later than 10 Business Days after the rating of such bank has fallen below A, replace the Performance Security, with a replacement, substantially in the form required by this Section D3.2, for the same amount and issued by a Canadian chartered bank with a minimum rating of A.

D3.3 All Performance Security shall be in form and substance acceptable to the City.

D3.4 It shall be a condition of all Performance Security that each letter of credit shall be deemed to be automatically extended without amendment for year to year from the date of such letter of credit or any future expiration date.

D4. Construction Contract Performance Security

- D4.1 From Financial Close to the Final Completion Date, Project Co shall ensure that the performance security obligations of the Construction Contractor set out in the Construction Contract as of Financial Close (the “**Construction Contract Performance Security**”), are retained and maintained. In the event of a proposed change to the Construction Contract Performance Security, Project Co shall provide no fewer than 10 Business Days’ notice to the City which notice shall provide details with respect to any proposed changes. Project Co shall not permit any changes to the Construction Contract Performance Security without the City’s prior written consent, provided that the City shall consent where such change results in performance security obligations that are materially equivalent to the Construction Contract Performance Security as of Financial Close.

SECTION E ACCESS TO THE LANDS AND CONDITION OF THE LANDS

E1. Access and Use

- E1.1 Effective from the date of Commercial Close until the earlier of the Final Completion Date and the Termination Date, and subject to this Project Agreement, including any restrictions on the use and access to the Lands set out in Schedule 12 – Lands and Identified Encumbrances, the City hereby grants or shall cause to be granted to Project Co and all Project Co Parties such non-exclusive licence right of use and access to, on and over the Construction Period Lands sufficient to allow Project Co and such Project Co Parties to perform the Design and Construction and the OMR Services in respect of the Stadium Access Works following the completion of the Stadium Access Works, subject to Project Co performing its obligations with respect to Permits, Licenses and Approvals. The City shall provide Project Co with access to the Construction Period Lands without material interference by the City or any City Party, except as contemplated by this Project Agreement. Project Co acknowledges and agrees that Project Co’s access to the Construction Period Lands shall be subject to the City’s rights of access to the Early Access Site and the Stadium Access Works during the Event Access Periods in accordance with Section E11.
- E1.2 Effective from Substantial Completion until the Termination Date and subject to this Project Agreement, including any restrictions on the use and access to the Lands set out in Schedule 12 – Lands and Identified Encumbrances and Schedule 18 – Technical Requirements, the City hereby grants or shall cause to be granted to Project Co and all Project Co Parties such limited and non-exclusive access to the OMR Period Lands and the Stage 1 Lands necessary for the performance of the OMR Services in accordance with the Project Agreement. The City acknowledges that, in respect of the OMR Infrastructure, Project Co and Project Co Parties require, and City shall provide, access to the OMR Period Lands, the Stage 1 Lands and the OMR Infrastructure without material interference by the City or any City Party, except as contemplated by this Project Agreement. Project Co acknowledges and agrees that Project Co’s access to the OMR Period Lands and the Stage 1 Lands shall be subject to the City’s right to conduct the City Operations in the normal course of operations.
- E1.3 In consideration for the licences granted pursuant to Section E1.1 and E1.2, Project Co shall carry out its obligations under this Project Agreement subject to and in accordance with the terms and conditions of this Project Agreement.

- E1.4 None of the rights granted pursuant to this Section E1 shall extend beyond the boundaries of the Lands and the Stage 1 Lands or to any lands other than the Lands and the Stage 1 Lands, other than easements, encumbrances and similar interests of the City which benefit the Lands and the Stage 1 Lands, to the extent such easements, encumbrances and similar interests are necessary for the Project.
- E1.5 Project Co acknowledges and agrees that the City, City Parties and/or third parties may, from time to time, use or develop or permit the use or development of all or part of the Lands and the Stage 1 Lands or property adjacent to the Lands and the Stage 1 Lands and that such use or development shall not give rise to any right of Project Co to claim any delay, compensation or right to a Change Order unless such use or development materially interferes with Project Co's carrying out of the Design and Construction or Project Co's delivery of the OMR Services subject to the Identified Encumbrances.
- E1.6 The licence to the Lands and the Stage 1 Lands provided in this Section E1 shall automatically terminate on the Termination Date.
- E1.7 Without limiting the City's obligations in Section E1.1 and E1.2, Project Co acknowledges and agrees that the City may grant PPP Canada (or its successor) and the Province of Manitoba access to the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure at any time during the Project Term, provided that such access does not materially interfere with Project Co's carrying out of the Design and Construction or the OMR Services.

E2. No Access Fee

- E2.1 No fee or other monetary amount shall be payable by Project Co for its right of access to and use of the Lands and the Stage 1 Lands.

E3. Status of the Lands

- E3.1 Except as expressly set out in this Project Agreement:
- (a) access to and use of the Lands and the Stage 1 Lands is being provided to Project Co on an "as is, where is" basis; and
 - (b) the City provides no representations or warranties with respect to the Lands and the Stage 1 Lands.

E4. Condition of the Lands

- E4.1 Subject to Sections M6, M7 and O1.1(d), and subject to Project Co's obligations under this Project Agreement to carry out the Project, Project Co shall, and shall ensure that all Project Co Parties use and maintain the Lands and the Stage 1 Lands so as to comply with the Technical Requirements throughout the duration of this Project Agreement. Project Co shall not stockpile any material on the Lands or the Stage 1 Lands except, in relation to the Lands, prior to Substantial Completion being achieved, and except for the purpose of doing major rehabilitation or otherwise carrying out construction, maintenance or repair activities under this Project Agreement. Subject to Section E4.3, Project Co shall not commit or permit any waste, nuisance or Environmental Damage or Degradation on the Lands.

- E4.2 Subject to Sections E4.3, M6 and M7, Project Co shall be responsible for repairing all damage to the Construction Period Lands during the Construction Period and to the OMR Period Lands during the OMR Period, including Environmental Damage or Degradation, however caused, except for damage caused,
- (a) by a Force Majeure Event;
 - (b) directly by the City or any City Parties;
 - (c) by any person exercising rights under an Identified Encumbrance;
 - (d) prior to Mobilization of the Construction Period Lands; or
 - (e) during the OMR Period, by any person other than Project Co or a Project Co Party.
- E4.3 Subject to Section E4.5, Project Co shall promptly deal with any Environmental Damage or Degradation to the Construction Period Lands during the Construction Period and to the OMR Period Lands during the OMR Period as required by Applicable Law, except for:
- (a) Environmental Damage or Degradation (including the presence of any Hazardous Substance) that was not disclosed in or readily inferable from the Project Background Information, provided that if such Environmental Damage or Degradation is required to be dealt with in order to carry out the Design and Construction or the OMR Services, Project Co shall do so and shall be entitled to a Relief Event pursuant to Section O1.1(d);
 - (b) Environmental Damage or Degradation (including the presence of any Hazardous Substance) directly caused after the date of this Project Agreement by the City or any City Party; and
 - (c) Environmental Damage or Degradation (including the presence of any Hazardous Substance) caused during the OMR Period by any person other than Project Co or a Project Co Party.
- E4.4 The Environmental Damage or Degradation which is the responsibility of the City in accordance with Sections E4.3(a), E4.3(b) or E4.3(c) shall be remediated by the City in such manner and upon such timetable as the City may determine, provided however that the City shall ensure that neither the remediation nor any failure or delay by the City to carry out the remediation materially interferes with the carrying out by Project Co of the Design and Construction or the OMR Services, as the case may be.
- E4.5 Project Co's cost of dealing with any Environmental Damage or Degradation (including the presence of any Hazardous Substance) caused by CN Rail on any portion of the Lands owned by CN Rail or the Stage 1 Lands owned by CN Rail as required by Applicable Law shall be limited to the amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement.

- E4.6 With respect to the Environmental Damage or Degradation that is disclosed or readily inferable from the Project Background Information as being present at the Wye area



be dealt with in accordance with Applicable Law, Project Co shall provide the City with Project Co's remediation plan with respect to such Environmental Damage or Degradation and Project Co shall not proceed with any remediation work prior to the approval of Project Co's remediation plan. Project Co shall consult with the City in order to mitigate the cost of the required remediation and with respect to the engagement of any Project Co Party to complete remediation work. Project Co shall perform all approved remediation work in accordance with Applicable Law and at the City's cost pursuant to Section E12 (the "**Contaminated Wye Area Work**").

E5. Permitted Use

- E5.1 Project Co shall, and shall ensure that all Project Co Parties, use the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure only for the purposes of the Project and, from and after such time as Substantial Completion is achieved, not for any purposes other than the Project and the delivery of the OMR Services.
- E5.2 Following Substantial Completion, Project Co shall not, and shall ensure that Project Co Parties do not, interfere with use by the City or Infrastructure Users of, or cause the unavailability of, the New Infrastructure, the Existing Infrastructure, the Lands and the Stage 1 Lands, all of which shall remain continuously open and available for the purposes of the City Operations and otherwise as set out in the Technical Requirements, save and except for any closures or partial closures as are expressly contemplated and authorized by the Technical Requirements.

E6. Liens and Claims

- E6.1 Project Co shall promptly pay all proper accounts for work done or materials furnished under all contracts it enters into relating to the Design and Construction or relating to the OMR Services, excepting those sums required to be retained under the provisions of any applicable statute of Manitoba, and shall not by any act or omission cause, encourage, suffer or allow any lien or claim under any such statute or in equity to be made against the City or filed or registered against the Lands by reason of work, services or materials supplied or claimed to have been supplied to Project Co, any Project Co Party or anyone holding any interest through or under Project Co. Project Co shall, at its own cost and expense, promptly take all steps required to effect a discharge of any lien or deal with any claim so filed or registered.
- E6.2 In the event that Project Co fails to promptly take all steps required to effect a discharge of any lien or deal with any claim filed or registered against the City or the Lands in accordance with Section E6.1, the City, without prejudice to any other rights or remedies it may have, shall take any steps it deems necessary and appropriate to remove, vacate or discharge the lien or claim and seek immediate recovery from Project Co of the amount of any such payment and associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.

E7. Ownership of Lands and Infrastructure

- E7.1 Project Co acknowledges that Project Co shall not have any ownership interest in any of the Lands, the Stage 1 Lands, the New Infrastructure or the Existing Infrastructure and that the City shall, at all times, retain all right, title and ownership in and to the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure.
- E7.2 For clarity, title to each item and part of the New Infrastructure but not the risk of loss or damage or destruction thereof, shall pass to the City upon receipt of such item on the Lands provided that title to items of tangible personal property that will comprise part of the New Infrastructure or are to be affixed or attached to the New Infrastructure prior to Substantial Completion shall pass to the City at the time that such items of tangible personal property are included in the New Infrastructure or are affixed or attached to the New Infrastructure.

E8. Uninterrupted Access and Use

- E8.1 The City acknowledges and agrees that Project Co's access to and use of,
- (a) the Lands, the New Infrastructure and the Existing Infrastructure (other than the Stage 1 Infrastructure) pursuant to Section E1 shall be uninterrupted during the duration of this Project Agreement, shall be without any disturbance or interference from the City or any City Party or any person claiming a right of access to or use of the Lands or the New Infrastructure or the Existing Infrastructure from or under the City and shall be adequate to enable Project Co to carry out the Design and Construction throughout the Construction Period and to carry out the OMR Services throughout the OMR Period; and
 - (b) the Stage 1 Lands and the Stage 1 Infrastructure shall be solely for the purpose of carrying out the OMR Services,
- in each case subject to the following:
- (i) the Identified Encumbrances;
 - (ii) the exercise by the City of any express right under and in accordance with this Project Agreement, including the City's right under Section F8 to direct Project Co to cease construction, the City's right under Section Q3 to access to and use of the Lands, the Stage 1 Lands, the New Infrastructure or the Existing Infrastructure for inspection purposes, the City's step-in rights under Section S1, the City's emergency response rights under Schedule 18 - Technical Requirements and all other rights of the City to access the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure for the purposes of any inspection or review under Schedule 18 - Technical Requirements;
 - (iii) any entry upon the Lands, the Stage 1 Lands, the New Infrastructure or the Existing Infrastructure by the City in accordance with the provisions of this Project Agreement or by any third party through written consent of the City, provided that such entry does not materially adversely interfere with

Project Co's carrying out of the Design and Construction or the OMR Services;

- (iv) the conduct of the City Operations by the City and City Parties, provided that such entry does not materially adversely interfere with Project Co's carrying out of the Design and Construction or the OMR Services;
- (v) the restrictions on access to the Lands, the Stage 1 Lands and the OMR Infrastructure during the OMR Period set out in Schedule 18 - Technical Requirements;
- (vi) the right of any Governmental Authority to enter the Lands, the Stage 1 Lands, the New Infrastructure or the Existing Infrastructure for any purpose pursuant to Applicable Law;
- (vii) any interference, including by means of an injunction issued by a Court, or action by protesters, to the extent attributable to any act or omission by Project Co or any Project Co Party; and
- (viii) the City's rights of access to the Early Access Site and the Stadium Access Works during the Event Access Periods in accordance with Section E11.

E9. Access and Use Rights to Cease

E9.1 Project Co's access and use to the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure shall terminate in accordance with Sections E1.1 and E1.2. If Project Co fails to vacate Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure in accordance with this Project Agreement, then, subject to Section R3, it shall indemnify the City Indemnified Parties for any Direct Losses incurred by the City Indemnified Parties as a result of such failure. If the Termination Date occurs before the Expiry Date, then Project Co shall have 30 days to demobilize and vacate the Lands and if applicable, the Stage 1 Lands.

E10. Additional Lands

E10.1 Project Co may propose, to the City, the acquisition of additional lands to improve the efficiency of Project Co's delivery of the Design and Construction or the OMR Services. The City may, in its sole discretion, accept or reject the Project Co proposal to acquire additional lands. In the event that the City agrees to Project Co's proposal on the acquisition of additional lands, such acquisition shall become part of the Construction Period Lands once acquired and shall, subject to and in accordance with Schedule 17 – Change Orders, result in a Change Order. Such additional lands shall not become Construction Period Lands and shall not be used in respect of the Design and Construction unless and until,

- (a) the City has issued a Change Order Confirmation pursuant to Schedule 17 – Change Orders; and

- (b) if the City does not already otherwise have title to the additional lands, title to the additional lands has been successfully conveyed to the City or the City has otherwise obtained access to the additional lands.

E10.2 Project Co acknowledges and agrees that any decision of the City pursuant to Section E10.1 shall be final and binding on the Parties and in the event that the City does not agree to an acquisition of additional lands pursuant to Section E10.1, Project Co acknowledges and agrees that the City's decision shall not be subject to resolution pursuant to Schedule 7 – Dispute Resolution Procedure.

E10.3 Project Co shall be entitled to obtain any lands outside the Lands (or obtain temporary access to any such lands) at its own cost and expense, however, such lands shall not, for the purposes of this Project Agreement, be Construction Period Lands and no New Infrastructure shall be located on, or rely in any way upon, any lands which Project Co acquires pursuant to this Section E10.3. Project Co shall be responsible for and shall rectify any damage to lands outside of the Lands, irrespective of who holds title to such lands where damage is caused by Project Co, any Project Co Party or any other party for whom Project Co is legally responsible. Project Co shall be responsible for obtaining all consents and complying with all Applicable Law as necessary to obtain required access to lands outside of the Lands, and the City provides no representations or assurances in relation to such matters.

E11. Stadium Access Works

E11.1 Project Co shall provide the City, Infrastructure Users and the general public with access to and use of the Early Access Site and the Stadium Access Works during the Event Access Periods as set out in this Section E11.

E11.2 Project Co shall provide the City with the access described in Sections E11.3 and E11.4 for the following events and purposes:

- (a) the Manitoba Marathon held annually;
- (b) all scheduled home games of the Winnipeg Blue Bombers taking place in the 2017, 2018 and 2019 seasons;
- (c) the Canada Summer Games to be held from July 24 to August 13, 2017;
- (d) 12 other events annually to be scheduled between June 1 and November 20 in each of 2017, 2018 and 2019; and
- (e) the NHL Heritage Classic to be held from October 1 to October 26, 2016,

(each an “**Early Access Event**”).

E11.3 Access to the Early Access Site and Stadium Access Works shall commence at 12:01 AM on the day of each Early Access Event and shall end at 3:00 AM of the next day (each, an “**Event Access Period**”) except in the case of the Canada Summer Games and the NHL Heritage Classic where the Event Access Period shall run continuously from 12:01 AM on the first day of the Early Access Event to 3:00 AM on the day following the last day of the Early Access Event.

E11.4 During each Event Access Period, Project Co,

- (a) shall ensure that the Early Access Site is accessible by the City, Infrastructure Users and the general public for its intended use and free from any safety hazards; and
- (b) shall not undertake any activities on the Early Access Site or the Stadium Access Works that would interfere with the access and use of the City, Infrastructure Users and the general public.

E11.5 On Commercial Close, Project Co shall deliver or cause to be delivered to the City an irrevocable standby letter of credit (the “**Early Access Letter of Credit**”) in the amount of \$ [REDACTED] substantially in the form set out in Schedule 16 – Standby Letters of Credit. Project Co shall maintain or cause to be maintained the Early Access Letter of Credit until it has completed the Stadium Access Works in accordance with Section F16.

E11.6 The City shall, no later than 15 Business Days following the completion of the Stadium Access Works in accordance with Section F16, return the Early Access Letter of Credit to Project Co. The City shall be entitled to draw on the entire amount of the Early Access Letter of Credit,

- (a) at any time following the day that is 15 days following the Early Access Deadline if Project Co does not complete the Stadium Access Works in accordance with Section F16 on or prior to the Early Access Deadline;
- (b) if the Project Agreement is terminated as a result of a Construction Period Termination and the City is still in possession of the Early Access Letter of Credit.

E11.7 The City shall, as soon as reasonably practicable, return the Early Access Letter of Credit to Project Co if the Project Agreement is terminated other than as a result of a Termination Event.

E11.8 Subject to Section E11.9, upon presenting the Early Access Letter of Credit for payment, the City may retain the proceeds therefrom as liquidated damages.

E11.9 If the City draws on the Early Access Letter of Credit in accordance with Section E11.6(a) and Project Co completes the Stadium Access Works in accordance with Section F16 on or prior to the day that is 30 days following the Early Access Deadline, the City shall return half of the proceeds of the Early Access Letter of Credit to Project Co within 30 days. If Project Co does not complete the Stadium Access Works within the 30 day period following the Early Access Deadline, the City shall be entitled to retain the entire amount of the Early Access Letter of Credit.

E12. Cash Allowance

E12.1 Project Co shall open the Cash Allowance Account and deposit the Cash Allowance Amount into the Cash Allowance Account on Financial Close and shall manage the Cash Allowance Account in accordance with this Section E12 solely for the purposes of carrying out the Contaminated Wye Area Work and paying Project Co's portion of the

Independent Certifier's fees and expenses in accordance with Section F10.1(d) and the Independent Certifier Agreement (the "**Cash Allowance Items**").

E12.2 The cash flow process applicable to the Cash Allowance Account will be as follows:

- (a) Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account on Financial Close;
- (b) Project Co will hold and manage all monies in the Cash Allowance Account solely for the purposes set out in Section E12.1;
- (c) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of the City;
- (d) Project Co shall provide a reconciliation of the Cash Allowance Account to the City on a monthly basis, including a breakdown of costs associated with each Cash Allowance Item;
- (e) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section E12.2(a), the City shall make deposits into the Cash Allowance Account in the event that the payment requirements for the Contaminated Wye Area Work exceed the then balance of the Cash Allowance Account;
- (f) if, at the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance will be the property of the City and will be paid by Project Co to the City or as the City direct; and
- (g) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.

E12.3 Project Co shall, when requesting use of the Cash Allowance Account for the purposes described in Section E12.1, provide to the City a request for payment approval and the City shall, within 10 Business Days of receipt of such request, advise Project Co, in writing, whether or not payment is approved. The City shall only be permitted to withhold its approval if the City determines that Project Co's request made pursuant to this Section E12.3 does not contain the information that the City requires, acting reasonably, to approve the payment as being in accordance with Project Co's remediation plan, as approved by the City. If the City withholds its approval pursuant to this Section E12 and subsequently receives the information that the City requires, acting reasonably, to approve the payment as being in accordance with Project Co's remediation plan, as approved by the City, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, the City's approval of the applicable payment request.

E12.4 When the City approves the payment pursuant to Section E12.3, Project Co shall make the payment from the Cash Allowance Account.

E12.5 Project Co acknowledges and agrees that:

- (a) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Account or payments to be made from the Cash Allowance Account;
- (b) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Project Co Party in connection with the Cash Allowance Account shall be attributed solely to and shall benefit the costs of carrying out the remediation described in Section E12.1; and
- (c) all costs and expenses related to the administration of the Cash Allowance Account, shall be borne by Project Co and shall not be charged to the Cash Allowance Account.

E12.6 Subject to the City's obligations under Section E12.2(e), any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

SECTION F DESIGN AND BUILD OF THE NEW INFRASTRUCTURE

F1. Project Co's Obligations

F1.1 Project Co shall design and build the New Infrastructure in accordance with the Technical Requirements so as to:

- (a) complete the Stadium Access Works on or prior to the Early Access Deadline; and
- (b) achieve Substantial Completion on the Scheduled Substantial Completion Date.

F1.2 In the event of any conflict or inconsistency among the Technical Requirements, the Project Co Proposal Extracts, Project Co's Design and Project Co's Management Systems and Plans, the higher standard or specification shall apply, save and except, that the Technical Requirements shall, at all times, take precedence and prevail over the Project Co Proposal Extracts, Project Co's Design and Project Co's Management Systems and Plans in the event of conflict or inconsistency.

F2. Technical Requirements

F2.1 Notwithstanding any other provision of this Project Agreement, Project Co's obligation to design and build the New Infrastructure in accordance with the Technical Requirements is absolute, and cannot be modified or waived except by amendment of the Technical Requirements in accordance with Section I1.

F3. Project Co's Responsibility to Carry Out Technical Requirements

F3.1 Except as expressly stated otherwise in this Project Agreement, no consultation with or inspection, test, approval or comment (whether under the procedure contemplated by Section F7 or otherwise) or purported direction by or on behalf of the City, and no Project Background Information shall relieve Project Co from exclusive responsibility for ensuring that the New Infrastructure complies with the Technical Requirements or estop

the City from asserting any non-compliance with the Technical Requirements. In the event of any failure by Project Co to comply with the Technical Requirements, Project Co shall not assert any duty of care or contributory negligence on the part of the City in relation to such failure.

F4. Project Co's Designs, Plans and Design and Construction Schedule

- F4.1 Project Co may, in accordance with the procedures set out in Schedule 5 - Review Procedure, amend Project Co's Design, Schedule 4 - Project Co's Management Systems and Plans or Schedule 2 - Project Co's Design and Construction Schedule, with the City's prior consent, such consent not to be unreasonably withheld. Project Co acknowledges the City may withhold consent in respect of any amendment that would affect the safety or security of the Lands, Project or City Operations or the deadlines for review of documents by the City pursuant to Schedule 5 – Review Procedure. If Project Co asserts that the City has unreasonably withheld consent, either Party may require that the matter be determined in accordance with the Dispute Resolution Procedure.
- F4.2 Notwithstanding Section F4.1, Project Co may make amendments to non-critical path items in Schedule 2 - Project Co's Design and Construction Schedule without obtaining the City's prior consent, provided that notice of each such amendment is provided to the City prior to or as soon as practicable after the amendment is made.

F5. Project Co's Responsibility for Project

- F5.1 Except for the obligations of the City set out in Section F13, during the Construction Period, Project Co is solely responsible for doing all things of any nature whatsoever required to complete the Project, including:
- (a) the obtaining of all required Permits, Licenses and Approvals; and
 - (b) complying with all Applicable Law.

F6. Construction Within the Lands Boundaries

- F6.1 Except as set out in Section E10, Project Co shall design and construct the New Infrastructure within the Construction Period Lands, and acknowledges that it has fully familiarized itself with the requirements of the New Infrastructure, as detailed in Schedule 18 - Technical Requirements, and has satisfied itself that no other land outside the Construction Period Lands will be required for the Design and Construction of the New Infrastructure.

F7. Detailed Designs

- F7.1 Project Co shall, in accordance with the procedures set out in Schedule 5 - Review Procedure, provide the City with copies of all detailed designs (including design reports, detailed design drawings, shop drawings and construction specifications, and for clarity, including any changes to detailed designs previously provided to the City in accordance with this Section F7) for the Project, and, if applicable, for any modifications made to the New Infrastructure or any rehabilitation carried out during the Project Term, as they are prepared, and invite comment from the City on the detailed designs, all in accordance with the procedures set out in Schedule 5 - Review Procedure. Subject to the procedure

set out in Schedule 5 – Review Procedure, Project Co shall not commence work on any component of the Project, or, if applicable, on any modifications to the New Infrastructure or rehabilitation, if such work has not been addressed in detailed designs provided to the City in accordance with this Section F7.

- F7.2 The Parties expressly acknowledge and agree that neither comment by the City, nor failure by the City to comment or otherwise participate in any manner in respect of the procedure prescribed by Schedule 5 - Review Procedure, shall vary Project Co's obligation under Section F3 to carry out the Project in accordance with the Technical Requirements.

F8. Stop Work Order

- F8.1 The City may, at any time, direct Project Co to cease any aspect of construction of the New Infrastructure that it considers to be not in accordance with the Technical Requirements.
- F8.2 If it is subsequently determined that the work was in accordance with the Technical Requirements, then such direction shall, subject to Section O1.1, constitute a Relief Event under Section O1.1(b).

F9. Construction Delays

- F9.1 Without limiting any other provision of this Project Agreement but subject to Section O, if, at any time:
- (a) the actual progress of the Design and Construction has significantly fallen behind Project Co's Design and Construction Schedule, in which case Project Co shall notify the City promptly upon becoming aware of such delay; or
 - (b) the City is of the opinion that either:
 - (i) the actual progress of the Design and Construction has significantly fallen behind Project Co's Design and Construction Schedule; or
 - (ii) Project Co will not achieve Substantial Completion by the Longstop Date,
- the City will notify Project Co of such opinion.
- F9.2 No later than five Business Days following either delivery of the notice by Project Co in accordance with Section F9.1(a) or delivery of the notice from the City in accordance with Section F9.1(b), Project Co shall produce and submit to the City and the Independent Certifier,
- (a) a detailed report identifying the reason for the delay;
 - (b) a plan to bring the progress of the Design and Construction back on schedule (the "**Project Co Schedule Remediation Plan**"), including an updated Project Co's Design and Construction Schedule showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:

- (i) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
- (ii) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date.

F9.3 The City shall review the Project Co Schedule Remediation Plan delivered by Project Co under Section F9.2(b) in accordance with Schedule 5 - Review Procedure.

F9.4 Following review of the Project Co Schedule Remediation Plan by the City and the Independent Certifier, Project Co shall implement the Project Co Schedule Remediation Plan and shall provide the City with weekly progress reports on the progress of the Design and Construction, in a form specified by the City.

F9.5 Project Co shall notify the City if, at any time, the actual progress of the Design and Construction is significantly ahead of Project Co's Design and Construction Schedule.

F10. Independent Certifier

F10.1 On or prior to Financial Close, Project Co and the City shall jointly retain an Independent Certifier acceptable to both Parties, acting reasonably, to perform all of the obligations set out in this Project Agreement, including in Schedule 10 – Independent Certifier Agreement. The Independent Certifier shall be retained in accordance with the following:

- (a) the Independent Certifier shall be an engineering consultant having strong expertise in roadway design and construction;
- (b) the Independent Certifier must agree to carry out and discharge the responsibilities contemplated by this Section F10, and Sections G1, G2, G3, and G4, as well as the scope of services set out in Schedule 10 – Independent Certifier Agreement, and be available to carry out and discharge such responsibilities promptly and within the timelines contemplated in this Project Agreement;
- (c) the Independent Certifier must carry professional liability insurance with errors and omissions coverage of not less than \$1,000,000 per claim;
- (d) all fees and expenses of the Independent Certifier are to be shared equally by Project Co and the City;
- (e) the Independent Certifier shall be impartial to the Parties when required to make any recommendation, determination or assessment in accordance with this Project Agreement; and
- (f) the Independent Certifier shall execute an agreement with the City and Project Co in the form set out in Schedule 10 – Independent Certifier Agreement.

F11. Work by City Contractors or City's Own Forces

F11.1 The City may in its sole discretion:

- (a) award separate contracts to other contractors in connection with work related to the Project that is outside the scope of the Design and Construction or OMR Services;
- (b) award separate contracts to other contractors for work on the Lands or the Stage 1 Lands unrelated to the Project; or
- (c) perform work with its own forces related to the Project or on the Lands or the Stage 1 Lands that is outside the scope of the Design and Construction or OMR Services,

(collectively, the “**City Work**”).

The City may assign the coordination and/or scheduling of the City Work and the safety training in respect of the City Work of the City's other contractors or the City's own forces to Project Co.

F11.2 When undertaking City Work, the City shall:

- (a) cause the City's other contractors or the City's own forces to comply with:
 - (i) the instructions of Project Co relating to coordination and scheduling of the City Work; and
 - (ii) all directions of Project Co in respect of any matter regarding site safety or compliance with Applicable Law relating to health and safety; and
- (b) with respect to the City's other contractors, ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co as it affects the City Work and in any event, such insurance shall provide for liability insurance of not less than \$2,000,000.

F11.3 In relation to City Work where the City has assigned the coordination and scheduling in accordance with Section F11.1, Project Co shall:

- (a) provide for the coordination and scheduling of the City Work with the Design and Construction and the OMR Services to be performed under this Project Agreement;
- (b) provide the City and the City's other contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment on or around the Lands to execute the City Work, provided that the use of such Lands does not materially interfere with the performance of the Design and Construction;

- (c) participate with the City's other contractors and the City in reviewing their construction schedules when directed to do so by the City;
- (d) where part of the Design and Construction is affected by or depends upon, for its proper execution, the City Work, promptly report to the City Representative, in writing and prior to proceeding with that part of the Design and Construction, any readily apparent deficiencies in the City Work. Failure by Project Co to so report shall invalidate any claims against the City by reason of such readily apparent deficiencies;
- (e) assume overall responsibility as "*prime contractor*" for compliance with all aspects of Applicable Law relating to health and safety in respect of the Lands; and
- (f) respond to the City and the City's own forces or contractors in a timely manner so as not to delay the planning, scheduling or implementation of the City Work, provided that the City and the City's own forces or contractors provide sufficient notice of their requirements to Project Co to enable Project Co to provide timely response without affecting the Design and Construction.

F11.4 Project Co shall not be responsible for any failure in the performance of the City Work by the City's other contractors or the City's own forces, and shall be entitled to a Change Order in accordance with Schedule 17 – Change Orders, in the event that,

- (a) any of the City's other contractors or the City's own forces cause any damage to the New Infrastructure during the Construction Period or the OMR Infrastructure during the OMR Period;
- (b) Project Co incurs any additional costs or there is any delay in any of the items on the critical path of Project Co's Design and Construction Schedule as a result of any of the City's other contractors or the City's own forces not complying with the coordination, scheduling and safety instructions of Project Co; or
- (c) Project Co incurs any additional costs or there is any delay in any of the items on the critical path of Project Co's Design and Construction Schedule as a result of any work done by the City's other contractors or the City's own forces, other than work that is described in the Technical Requirements and performed by the City's other contractors or the City's own forces in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with the City.

F12. Construction Impact on Residents and Community

F12.1 Project Co shall refine, update and deliver to the City for review in accordance with Schedule 5 – Review Procedure each section of the Communications Plan in accordance with Schedule 24 – Communications Plan.

F12.2 Project Co shall undertake the Design and Construction of the New Infrastructure in accordance with the Communications Plan and in a manner that,

- (a) minimizes actual or potential nuisance claims by surrounding community members in the vicinity of the Lands;
- (b) minimizes the impact of construction activities on surrounding community members; and
- (c) subject to Section U1, promotes public communication and education with respect to the Project.

For the purposes of Section F12.2(a), Project Co will be deemed to have complied with its obligation to minimize nuisance claims and the impact of construction activities on surrounding community members if it operates in accordance with Good Industry Practice and the Technical Requirements.

F12.3 Without derogating from Project Co's responsibilities under this Section F12, the City shall, in response to any reasonable request by Project Co, provide Project Co with such assistance and information as Project Co may reasonably require in relation to the Communications Plan and related activities set out in this Section F12.

F13. City Assistance with Permits and Approvals and Utility Arrangements

F13.1 Without derogating from Project Co's responsibilities under Section F5 to obtain all Permits, Licenses and Approvals required for the Project and Project Co's responsibility to make all required arrangements relating to utilities under Section F17.1, the City shall, in response to any reasonable request by Project Co, provide Project Co with such assistance and information as Project Co may reasonably require in relation to the Permits, Licenses and Approvals, the Utility Work, the Specified Utility Work and the Rail Work. For clarity, nothing in this Section F13.1 nor any assistance or direction provided by the City to Project Co shall be construed as a fettering of any authority or discretion that the City may have pursuant to the exercise of its statutory powers under Applicable Law in relation to any Permits, Licenses and Approvals or in relation to the Utility Work, the Specified Utility Work or the Rail Work. The obligations of the City pursuant to this Section F13.1 shall include the exercise of any legal rights and remedies available to the City pursuant to agreements with Utility Companies, only to the extent that it is reasonable in the circumstances for the City to exercise such rights and remedies.

F13.2 Where a Permit, License or Approval requires execution of documents by the City as owner of the Lands and the New Infrastructure, Project Co shall:

- (a) prepare all applications for any Permits, Licenses or Approvals;
- (b) provide all information and documentation necessary for the City to review such application;
- (c) communicate with any authority responsible for any such Permit, License or Approval; and
- (d) promptly respond to any inquiries by the City with respect to such Permit, License or Approval.

F13.3 Provided that Project Co has complied with Section F13.2, the City shall, within the timeframe requested by Project Co, acting reasonably and having regard to the City's internal approval processes, review the documents prepared by Project Co and, when the City is satisfied with the content of such applications, the City shall execute the applications in accordance with the requirements of the Permits, Licenses and Approvals. Where any Permits, Licenses or Approvals have requirements that impose any conditions, liability or obligations on the City, Project Co shall not obtain such Permit, License or Approval, without the prior written consent of the City, not to be unreasonably withheld or delayed.

F14. Security, Safety and Emergencies

F14.1 Project Co shall observe and comply with all safety and security requirements set out in Schedule 18 – Technical Requirements and Schedule 22 – Security Clearance Requirements and shall in all respects and at all times carry out the Design and Construction and the OMR Services with due regard for public security and safety, including the security and safety of the City, all City Parties and all Infrastructure Users, including the general public.

F14.2 Project Co shall take all such actions in the context of the Design and Construction and the OMR Services as are from time to time required in order to allow the City, other governmental authorities, police services and emergency response services to carry out their respective statutory duties in relation to the New Infrastructure.

F14.3 Without limiting Sections F14.1, F14.2 or the Technical Requirements,

- (a) Project Co shall be familiar with and comply with the Workplace Safety and Health Act and Regulations, The Employment Standards Code and shall be familiar with the City of Winnipeg's safety and health policies;
- (b) Project Co shall ensure that all notices, permits and warnings are posted as required by Applicable Law;
- (c) Project Co shall ensure that all Project Co employees and Project Co Parties on the Lands and the Stage 1 Lands are trained and have applicable certification on the type of job to be performed. Without limiting the generality of the foregoing, all employees operating powered mobile equipment shall be trained and certified in the operation of this equipment and in compliance with the Workplace Safety and Health Act and Regulations. Project Co shall produce proof of certification upon request by a City authorized representative;
- (d) during the Construction Period, Project Co shall be responsible for controlling and mitigating all workplace health and safety hazards at the Lands and the New Infrastructure and perform, or cause a Project Co Party to perform, all of the obligations of the "prime contractor" for the purposes of The Workplace Safety and Health Act and Regulations; and
- (e) during the OMR Period, Project Co shall comply with all obligations in respect of health and safety hazards at the Lands, the Stage 1 Lands and the OMR Infrastructure as set out in the Technical Requirements.

F15. Warranty for Maintenance-Exempt Work

- F15.1 Project Co warrants that all Maintenance-Exempt Work shall conform to the Technical Requirements in all respects and shall be new, of good quality material, of merchantable quality and fit for their intended purpose, as described in the Technical Requirements, and free of defects in materials, equipment and workmanship for a period commencing on the Substantial Completion Date and ending on the date that is two years after the Substantial Completion Date (the “**Warranty Period**”).
- F15.2 The warranty set out in Section F15.1 shall cover labour and material, including the costs of removal and replacement of covering materials. The warranty shall not limit extended warranties on any items of equipment or material specified in the Technical Requirements or otherwise provided by any manufacturer of such equipment or material. Project Co shall ensure that all extended warranties specified in the Project Agreement are provided and shall assign to the City all such extended warranties.
- F15.3 Project Co shall correct promptly, at its own expense, and in a manner approved by the City defects, deficiencies or non-compliant items in the Maintenance-Exempt Work which appear prior to, and during, the Warranty Period.
- F15.4 Project Co acknowledges that the timely performance of warranty work is critical to the ability of the City to maintain effective City Operations. Project Co shall use commercially reasonable efforts to respond to any requirement by the City to correct defective, deficient or non-compliant items in the Maintenance-Exempt Work within the time periods required by the City, which, for example, in relation to critical areas can require immediate correction. Project Co further acknowledges that if the City is unable to contact Project Co and/or obtain the corrective work within such time period required by the City, that the City’s own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Maintenance-Exempt Work at Project Co’s sole cost and expense. Except in the case of damage caused by the City’s own forces, such emergency steps taken by the City’s own forces shall not invalidate any warranties in respect of such portion of the Maintenance-Exempt Work affected by such corrective actions of the City.
- F15.5 Subject to Sections F15.3 and F15.4, Project Co shall, at its sole cost and expense, promptly Make Good any defects, deficiencies or non-compliant items in the Maintenance-Exempt Work which may develop within the Warranty Period, and also Make Good any damage to other Maintenance-Exempt Work caused by the repairing of such defects, deficiencies or non-compliant items. Project Co shall not be entitled to any Change Order, additional compensation or damages in relation to its obligation to Make Good set out in this Section F15.5. If, during the Warranty Period, Project Co fails to correct such defects, deficiencies or non-compliant items in the Maintenance-Exempt Work in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the City may have, the City may correct such Maintenance-Exempt Work and the City shall deduct the cost and expense thereof from any payment then or thereafter due to Project Co, provided the Independent Certifier has certified such cost to the City.
- F15.6 The performance of replacement work and Making Good of defects, deficiencies or non-compliant items for which Project Co is responsible, shall be commenced and completed as expeditiously as possible, and shall be executed at times convenient to the City and

this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete the replacement work, as directed by the City, to accommodate the operation of the New Infrastructure or other aspects of the Project as constructed shall be at Project Co's expense.

- F15.7 Project Co shall, at any time or times prior to the expiry of the Warranty Period and when required to do so by the City, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of, or in the vicinity of the Maintenance-Exempt Work as directed and shall, if required, Make Good again, to the satisfaction of the City, acting reasonably, any openings, excavations or disturbances of any property, real or personal, resulting therefrom. If any defect, deficiency or non-compliant item is found in the Maintenance-Exempt Work by such investigations, the cost of such investigations and such Making Good shall be borne by Project Co, but only to the extent to which Project Co is responsible for such defect, deficiency or non-compliant item. If no defect, deficiency or non-compliant item is found in the Maintenance-Exempt Work by such investigations, the cost of such investigations and the reinstatement of the Maintenance-Exempt Work shall be borne by the City.
- F15.8 The express warranties set out in this Section F15 shall not deprive the City of any action, right or remedy otherwise available to the City at law or in equity for breach of any of the provisions of the Project Agreement by Project Co, and the periods referred to in this Section F15, shall not be construed as a limitation on the time in which the City may pursue such other action, right or remedy.
- F15.9 The performance of work by the forces or other contractors of the City shall not, except with respect to any damage caused by the forces or other contractors of the City, limit the availability or terms of any warranty.

F16. Stadium Access Works

- F16.1 Project Co shall complete the Stadium Access Works in accordance with the requirements set out in Schedule 18 – Technical Requirements.
- F16.2 When Project Co anticipates that in approximately 10 Business Days the Stadium Access Works will be completed, Project Co shall notify the City, including a description of the work required to be completed by Project Co for the Stadium Access Works to be completed.
- F16.3 Concurrent with the delivery of the notice pursuant to Section F16.2, Project Co shall request an inspection by the Independent Certifier to determine whether the conditions for completion of the Stadium Access Works have been achieved by Project Co. The Parties shall cause the Independent Certifier to complete such an inspection and deliver a report in accordance with the instructions of Project Co and the City.
- F16.4 The City may, no later than five Business Days after receiving the results of the Independent Certifier's inspection,
- (a) perform its own inspection of the Stadium Access Works; and

- (b) notify Project Co and the Independent Certifier of any items that, in the opinion of the City, prevent the Stadium Access Works from satisfying the requirements for completion.

F16.5 When the Independent Certifier, having regard to any items noted by the City in accordance with Section F16.4 and all remedial action, if any, taken by Project Co in response thereto, is satisfied that the Stadium Access Works have satisfied all of the criteria for completion set out in Schedule 18 – Technical Requirements, the Independent Certifier shall promptly confirm in writing to Project Co and the City that the Stadium Access Works are complete.

F16.6 If the Independent Certifier, having completed the inspection referred to in Section F16.3 in respect of the Stadium Access Works and having considered any items noted by the City in accordance with Section F16.4 and all remedial action, if any, taken by Project Co in response thereto, determines that the Stadium Access Works have not satisfied the criteria for completion, then the Independent Certifier shall issue to Project Co and to the City a notice specifying any outstanding matters that must be remediated by Project Co before the completion can be achieved. Following remediation of the items noted by the Independent Certifier, when Project Co anticipates that the Stadium Access Works will satisfy the criteria for completion, Project Co shall again engage the process set out in Sections F16.2 and F16.3, with the exception that the time periods contemplated in Section F16.2 shall in each case be reduced to two Business Days.

F16.7 For clarity, Project Co shall maintain, or cause to be maintained, all holdbacks required pursuant to Applicable Law in respect of the Stadium Access Works and shall only release holdbacks following completion of the Stadium Access Works on being satisfied that no claims for lien can be claimed in respect of any subcontracts for which holdbacks are to be released.

F17. Utility Work

F17.1 Project Co shall be responsible for all Utility Work and Specified Utility Work for the Project including the requirements set out in Schedule 18 – Technical Requirements and the making of all required arrangements related to Utility Work and Specified Utility Work including the entering into of Utility Agreements as necessary.

F17.2 For the purposes of this Section F17, “**Specified Utility Costs**” means:

- (a) Project Co’s direct out-of-pocket costs billed by Utility Companies to Project Co pursuant to Utility Agreements for the Specified Utility Works; and
- (b) where a Utility Company permits Project Co or the Construction Contractor to self-perform Specified Utility Works, the Specified Utility Costs shall be the lesser of:
 - (i) Project Co’s direct costs of self-performing Specified Utility Works; and
 - (ii) the amount quoted in writing by the relevant Utility Company to perform such Specified Utility Works.

F17.3 Subject to Section F17.4, in the event that Project Co incurs Specified Utility Costs during the Construction Period in the aggregate exceeding \$ [REDACTED] (the “**Baseline Specified Utility Cost**”), the City shall, upon receipt of appropriate invoices and supporting documentation, reimburse Project Co for:

- (a) 50% of the amount by which the Specified Utility Costs in aggregate exceeds the Baseline Specified Utility Cost but does not exceed \$ [REDACTED];
- (b) 75% of the amount by which the Specified Utility Costs in aggregate exceeds \$ [REDACTED] but does not exceed \$ [REDACTED] and
- (c) 100% of the amount by which the Specified Utility Costs in aggregate exceeds \$ [REDACTED].

F17.4 The City shall be obligated to reimburse Project Co pursuant to Section F17.3 provided that,

- (a) Project Co takes all commercially reasonable efforts to mitigate Specified Utility Costs in excess of the Baseline Specified Utility Cost, including modifications to Project Co’s Design and Project Co’s Design and Construction Schedule;
- (b) the excess Specified Utility Costs are not caused by any act or omission of Project Co or any Project Co Party; and
- (c) Project Co is not otherwise entitled to relief in accordance with Sections N1 or O2.

F17.5 For the purposes of reimbursement set out in Section F17.3, Project Co shall provide evidence satisfactory to the City of all Specified Utility Costs incurred by Project Co. Where such Specified Utility Costs are billed by Utility Companies directly to Project Co, such evidence shall include all documentation issued by the relevant Utility Company. Where such Specified Utility Costs are costs incurred by Project Co in the course of self-performing Specified Utility Work, such evidence shall include a detailed breakdown of Project Co’s direct costs in a format acceptable to the City. Where a Utility Company has permitted Project Co to self-perform Specified Utility Works, Project Co shall obtain a written quote from the relevant Utility Company prior to the performance of any such Specified Utility Works detailing the cost of the relevant Utility Company performing such Specified Utility Works.

F18. Existing Infrastructure

F18.1 Project Co acknowledges and agrees that:

- (a) the Existing Infrastructure is being provided to Project Co on an “as is where is” basis for the purposes of Project Co’s carrying out of,
 - (i) the Design and Construction, in the case of the Existing Infrastructure other than the Stage 1 Infrastructure; and
 - (ii) the OMR Services, in the case of the Stage 1 Infrastructure; and

- (b) the City provides no representations or warranties with respect to the condition of the Existing Infrastructure.

F19. Integration of Public Art

- F19.1 Project Co shall be responsible for the coordination and integration of Public Art within the Project in accordance with the principles, terms and conditions set out in Schedule 23 – Public Art.
- F19.2 Project Co agrees to work with the City and The Winnipeg Arts Council Inc. in relation to the Public Art component of the Project and agrees that each shall have the roles and responsibilities set out in Schedule 23 - Public Art.
- F19.3 Project Co shall integrate Public Art into the Project in accordance with the Public Art Cash Allowance set out in Schedule 23 – Public Art.

F20. Safety Certification

- F20.1 Project Co shall, no later than five Business Days after receipt of a request by the City, provide proof satisfactory to the City Representative that the Construction Contractor, the OMR Provider, if any, any Project Co Party performing obligations of the “prime contractor” for the purposes of the Workplace Safety and Health Act and Regulations and any other Project Co Party as required in accordance with the Workplace Safety and Health Act and Regulations has a workplace safety and health program meeting the requirements of the Workplace Safety and Health Act and Regulations, by providing:
 - (a) a copy of its valid COR Certificate;
 - (b) a copy of its SECOR Certificate; or
 - (c) a report or letter to that effect from an independent reviewer acceptable to the City.

F21. Commissioning Plan

- F21.1 Project Co shall develop and update the Commissioning Plan in accordance with Schedule 18 – Technical Requirements.

F22. Manitoba Hydro Interface

- F22.1 In the event that Manitoba Hydro fails to perform its obligations in accordance with the applicable Utility Agreement, and provided that Project Co has taken all commercially reasonable efforts to compel Manitoba Hydro to perform its obligations, Project Co shall notify the City, providing details with respect to the applicable non-performance (the “**Manitoba Hydro Non-Performance Notice**”) and the City shall, in accordance with Section F13.1, provide assistance to Project Co to resolve the non-performance.
- F22.2 If the City and Project Co are unable to resolve, in any rolling one year period,

- (a) a single event of non-performance within 30 days following the issuance of a Manitoba Hydro Non-Performance Notice in respect of such non-performance; or
- (b) multiple events of non-performance within 48 days following the first issuance of a Manitoba Hydro Non-Performance Notice in respect of the first non-performance, provided that any single event of non-performance continues for longer than 12 days following the issuance of a Manitoba Hydro Non-Performance Notice in respect of such non-performance,

Project Co shall, subject to Section O1.1, be entitled to a Relief Event in accordance with Section O1.1(q) to the extent that Manitoba Hydro's non-performance affects the Design and Construction so as to cause a delay in the critical path of Project Co's Design and Construction Schedule but only to the extent that it delays Project Co from achieving Substantial Completion by the Scheduled Substantial Completion Date.

F22.3 For clarity, this Section F22 does not apply to a delay in negotiation and execution of a Utility Agreement with Manitoba Hydro.

F23. CN Rail Interface

F23.1 In the event that CN Rail fails to perform the following obligations:

- (a) plan review and approval in accordance with Section C23.4.2 of Schedule 18 – Technical Requirements;
- (b) supply of all rail hardware, ballast ties and switches in accordance with Section C23.13.2 of Schedule 18 – Technical Requirements;
- (c) design and construction of the Centralized Traffic Control System in accordance with Section C23.16.5 of Schedule 18 – Technical Requirements; or
- (d) design, supply and installation of the signals at all at-grade crossings in accordance with Section 23.13.1 of Schedule 18 – Technical Requirements,

and provided that Project Co has taken all commercially reasonable efforts to compel CN Rail to perform its obligations, Project Co shall notify the City, providing details with respect to the applicable non-performance (the "**CN Rail Non-Performance Notice**") and the City shall, in accordance with Section F13.1, provide assistance to Project Co to resolve the non-performance.

F23.2 If the City and Project Co are unable to resolve the non-performance within 45 days following issuance of the CN Rail Non-Performance Notice, Project Co shall, subject to Section O1, be entitled to a Relief Event in accordance with Section O1.1(r) to the extent that CN Rail's non-performance affects the Design and Construction so as to cause a delay in the critical path of Project Co's Design and Construction Schedule but only to the extent that it delays Project Co from achieving Substantial Completion by the Scheduled Substantial Completion Date.

F23.3 For clarity, this Section F23 does not apply to a delay in negotiation and execution of an agreement with CN Rail.

SECTION G COMPLETION OF THE NEW INFRASTRUCTURE

G1. Anticipated Substantial Completion

- G1.1 When Project Co anticipates that in approximately 30 Business Days the New Infrastructure will achieve Substantial Completion, Project Co shall notify the City, including a description of the work required to be completed by Project Co for the New Infrastructure to achieve Substantial Completion. For clarity, Project Co shall not achieve Substantial Completion prior to the Scheduled Substantial Completion Date without the prior written approval of the City. Upon receipt of the notice from Project Co pursuant to this Section G1.1, the City shall provide Project Co with a notice with respect to the anticipated in service date for the Southwest Transitway (Stage 2) which date the City shall determine in its sole discretion.
- G1.2 Concurrent with the delivery of the notice pursuant to Section G1.1, Project Co shall request an inspection by the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been achieved by Project Co. The Parties shall cause the Independent Certifier to complete such an inspection and deliver a report to Project Co and the City no later than 10 Business Days following issuance of the request.
- G1.3 The City may, no later than 10 Business Days after receiving the results of the Independent Certifier's inspection,
- (a) perform its own inspection of the New Infrastructure; and
 - (b) notify Project Co and the Independent Certifier of any items that, in the opinion of the City, prevent the New Infrastructure from satisfying the requirements for the achievement of Substantial Completion.

G2. Certification of Substantial Completion

- G2.1 When the Independent Certifier, having regard to any items noted by the City in accordance with Section G1.3 and all remedial action, if any, taken by Project Co in response thereto, is satisfied that the New Infrastructure have satisfied all of the criteria for the achievement of Substantial Completion set out in Schedule 18 – Technical Requirements, other than deficiencies which do not in the opinion of the Independent Certifier prevent the safe use of the New Infrastructure for its intended purpose, the Independent Certifier shall promptly issue to Project Co and to the City a certificate certifying that Substantial Completion has been achieved ("**Substantial Completion Certificate**"). The "**Substantial Completion Date**" shall be the date on which the Substantial Completion Certificate is issued by the Independent Certifier.
- G2.2 If the Independent Certifier, having completed the inspection referred to in Section G1.2 in respect of the New Infrastructure and having considered any items noted by the City in accordance with Section G1.3 and all remedial action, if any, taken by Project Co in response thereto, determines that the New Infrastructure have not satisfied the criteria for the achievement of Substantial Completion, then the Independent Certifier shall issue

to Project Co and to the City a notice stating that the Substantial Completion Certificate has not been issued and specifying any outstanding matters that must be remediated by Project Co before the Substantial Completion Certificate can be issued (the “**Notice of Failure to Achieve Substantial Completion**”). Following remediation of the items set out in the Notice of Failure to Achieve Substantial Completion, when Project Co anticipates that the New Infrastructure will satisfy the criteria for the achievement of Substantial Completion, Project Co shall again engage the process set out in Sections G1 and G2, with the exception that the time periods contemplated in Section G1 shall in each case be reduced to three Business Days.

G3. Final Completion

- G3.1 Upon issuing the Substantial Completion Certificate, the Independent Certifier shall also issue to Project Co and to the City a list of deficiencies identified by the Independent Certifier (the “**Deficiency List**”) required to be rectified for Final Completion and the Independent Certifier’s estimate of the cost to achieve Final Completion.
- G3.2 The City may, no later than five Business Days following receipt of the Deficiency List, notify Project Co and the Independent Certifier of any additional items that, in the opinion of the City, are required to be rectified for Final Completion and the Independent Certifier shall, to the extent that it agrees with the City, adjust the Deficiency List and its estimate of the cost to achieve Final Completion accordingly.
- G3.3 Following achievement of Substantial Completion, Project Co shall diligently proceed to Final Completion, subject to any restrictions on access set out in Schedule 18 - Technical Requirements.
- G3.4 When Project Co is of the opinion that it has rectified all of the deficiencies on the Deficiency List, it shall notify the City and the Independent Certifier in writing and request that the Independent Certifier inspect for Final Completion. The Independent Certifier shall, no later than five Business Days following receipt of Project Co’s notice, carry out an inspection (which shall be carried out jointly with the City and Project Co). If all of the items on the Deficiency List have been rectified, the Independent Certifier shall issue a certificate confirming Final Completion (the “**Final Completion Certificate**”).
- G3.5 If the Independent Certifier is of the view that certain items on the Deficiency List have not been rectified, then,
- (a) the Independent Certifier will advise Project Co and the City in writing of those outstanding items; and
 - (b) the Independent Certifier will conduct subsequent inspections and will issue a Final Completion Certificate when the Independent Certifier is satisfied that all items on the Deficiency List have been rectified.

G4. Deficiencies Holdback

- G4.1 If the Independent Certifier issues a Deficiency List in accordance with Section G3.1 Project Co shall, no later than 30 days following the issuance of the Deficiencies List, prepare and deliver to the City a comprehensive workplan and schedule acceptable to the City, acting reasonably, designed to achieve Final Completion within a reasonable

time following Substantial Completion (the “**Deficiencies Workplan and Schedule**”). Following acceptance of the Deficiencies Workplan and Schedule by the City, Project Co shall keep the City fully advised of all activity and progress in carrying out the Deficiencies Workplan and Schedule.

G4.2 If,

- (a) Project Co fails to deliver an acceptable Deficiencies Workplan and Schedule no later than 30 days following issuance of the Deficiencies List; or
- (b) having delivered an acceptable Deficiencies Workplan and Schedule, fails in any material respect to diligently carry out the workplan in accordance with the schedule,

then the City may hold back from any amounts then owing to Project Co an amount equal to twice the amount of the Independent Certifier's estimate for the rectification of all of the items on the Deficiencies List (the “**Deficiencies Holdback**”).

G4.3 The City shall release the Deficiencies Holdback to Project Co, without interest, no later than 15 days following the issuance of the Final Completion Certificate.

G4.4 If Final Completion is not achieved no later than 60 days following Substantial Completion (or such longer period as may be agreed by the City, acting reasonably, including up to 180 days for completion of seasonal works that cannot be completed within the specified 60 day period provided such works do not impact City Operations), the City shall request that the Independent Certifier provide an estimate of the cost of achieving Final Completion based on the work that Project Co has not completed by the date of such request. The City may, by notice to Project Co, elect to do the remaining work required to achieve Final Completion by means of its own forces or another contractor. The City shall perform all such work in accordance with the Project Agreement and the Technical Requirements.

G4.5 In the event that the City exercises its right in Section G4.4, the City may retain, as liquidated damages, an amount equal to the Independent Certifier's estimate of the cost to complete the work remaining to be done to achieve Final Completion and the balance of the Deficiencies Holdback, if any, shall be released to Project Co without interest.

G5. Disputes Regarding the Achievement of Substantial Completion

G5.1 The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Date, and a Dispute in relation to the Substantial Completion Date shall not be subject to resolution pursuant to Schedule 7 - Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

SECTION H OPERATIONS, MAINTENANCE AND REHABILITATION

H1. Commencement of OMR Services

- H1.1 Project Co shall perform the OMR Services in accordance with Schedule 18 – Technical Requirements and, subject to Section H1.2, shall commence such OMR Services on the Substantial Completion Date.
- H1.2 Project Co shall commence the OMR Services in respect of the Stadium Access Works on the Early Access Commencement Date.

H2. OMR Requirements

- H2.1 If Project Co asserts that any aspect of the OMR Requirements is uncertain or ambiguous, either Party may require that the interpretation of that aspect of the OMR Requirements be determined by the Dispute Resolution Procedure.

H3. Compliance with Applicable Law

- H3.1 Project Co shall comply with Applicable Law in the carrying out of the OMR Requirements.

H4. Access and Performance of OMR Services

- H4.1 Project Co shall perform the OMR Services in compliance with the restrictions on access set out in Schedule 18 - Technical Requirements.

H5. Utility Rates During OMR Period

- H5.1 In the event of the privatization or dissolution of the Manitoba Public Utilities Board during the OMR Period and if the rates charged in respect of the consumption of electricity or gas for the OMR Infrastructure increase in any given year, solely by reason of such privatization or dissolution, by an amount greater than the higher of:
- (a) the three year rolling average rates for electricity and gas for the OMR Infrastructure actually paid by Project Co in respect of the immediately previous rolling three year period (the “**Rolling Average Utility Rates**”); or
 - (b) the Consumer Price Index (all items) for the City of Winnipeg, in the relevant year, as published monthly by Statistics Canada (the “**Winnipeg CPI**”),

the City shall reimburse Project Co in an amount equal to the incremental rate increase above the higher of the Rolling Average Utility Rates or Winnipeg CPI.

For the purposes of this Section H5, if Statistics Canada ceases to publish the Winnipeg CPI, the Parties may use such other index as the Parties may agree, or as may be determined in accordance with Schedule 7 – Dispute Resolution Procedure, which most closely resembles such index. If the privatization or dissolution of the Manitoba Public Utilities Board occurs prior to the fourth anniversary of Substantial Completion, for the purposes of the calculation in this Section H5, the Parties shall use Winnipeg CPI. For clarity, the compensation under this Section H5 will be limited to the incremental rate

increase above the higher of the Rolling Average Utility Rates or Winnipeg CPI for the applicable year in accordance with the calculation set out in this Section H5. Project Co acknowledges and agrees that it shall provide the City with any information and documentation that the City may request to verify or validate the calculation set out in this Section H5 and the amount of reimbursement owed to Project Co. The City shall reimburse Project Co no later than 30 days following agreement by the Parties of the amount of such reimbursement based on this Section H5.

SECTION I MODIFICATIONS AND CHANGE ORDERS

I1. Modification of Project, New Infrastructure or Technical Requirements

- I1.1 If the City wishes to modify the Project, the New Infrastructure or the Technical Requirements, it shall proceed as provided in Schedule 17 - Change Orders. If Project Co wishes to recommend modification of the Project or the Technical Requirements, it may invite the City to proceed as provided in Schedule 17 - Change Orders.
- I1.2 Upon issuance of a Change Order Confirmation or a Change Order Directive by the City pursuant to Schedule 17 – Change Orders in respect of the Project, the New Infrastructure or the Technical Requirements:
- (a) all Schedules, except Schedule 14 – Payment Mechanism, shall be amended accordingly;
 - (b) except as otherwise agreed between the City and Project Co, Project Co shall be entitled to payment from the City on a progress basis, invoiced and paid on a monthly basis, of the reasonable incremental costs, if any, calculated in accordance with Schedule 17 - Change Orders, of carrying out the Project or the Technical Requirements;
 - (c) if the Parties agree that the Change Order will delay the achievement of Substantial Completion by the Scheduled Substantial Completion Date, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense, or the Parties may agree to required adjustments to Project Co's Design and Construction Schedule;
 - (d) except as otherwise agreed between the City and Project Co, if the Change Order will increase or decrease the cost to Project Co of carrying out the OMR Requirements, then the OMR Payments in Schedule 14 - Payment Mechanism shall be adjusted accordingly; and
 - (e) in the event that the Parties cannot agree on the date that Substantial Completion would have been achieved but for the Change Order, or the revised date on which Substantial Completion should be scheduled to be achieved following the issuance of a Change Order, having used reasonable commercial efforts to resolve their dispute through negotiation, then either Project Co or the City may refer the matter to the Independent Certifier for determination in accordance with Schedule 5 – Review Procedure.
- I1.3 The City shall not, without the prior consent of Project Co, pursue any Change Orders that singularly or in the aggregate involve an alteration in the scope of the Project of

such magnitude that it could reasonably be expected to materially impact the Project Financing or Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or otherwise materially and adversely alter the risk profile of the Project (including increased exposure to Payment Adjustments).

I2. Determination of Costs of Change Orders

- I2.1 All payments and adjustments to Schedule 14 - Payment Mechanism on account of Change Orders shall be calculated in accordance with the provisions of Schedule 17 - Change Orders.

SECTION J HANDBACK UPON EXPIRY

J1. Handback Requirements

- J1.1 Upon expiry of the Project Term, Project Co shall turn over the OMR Infrastructure to the City,
- (a) in the condition required by the Handback Requirements; and
 - (b) in accordance with the requirements set out in Schedule 18 – Technical Requirements and Schedule 19 – Handback Procedure.

SECTION K PAYMENT

K1. Substantial Completion Payment

- K1.1 The City shall pay to Project Co the Substantial Completion Payment, plus, for clarity, applicable GST, no later than 5 Business Days following the Substantial Completion Date, (the “**Substantial Completion Payment Date**”) in accordance with this Project Agreement. On the Substantial Completion Date, Project Co shall submit, to the City, an invoice in respect of the Substantial Completion Payment in the form agreed to by the Parties.

K2. Monthly Payments

- K2.1 Subject to and in accordance with this Project Agreement, including this Section K and Schedule 14 – Payment Mechanism, the City shall pay, to Project Co, the Monthly Payments.

K3. Payment Adjustments

- K3.1 Project Co acknowledges and agrees that:
- (a) the amount of any Monthly Payment may be adjusted pursuant to Schedule 14 – Payment Mechanism (each a “**Payment Adjustment**”); and
 - (b) such Payment Adjustments are integral to the provisions of this Project Agreement.

K3.2 If, for any reason, any Payment Adjustment (including a Deduction) made pursuant to Schedule 14 – Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the City to recover or to cause such Payment Adjustment to be enforceable, such Change in Law (only to the extent that it permits the City to recover or to cause such Payment Adjustment to be enforceable) shall be deemed to not be a Designated Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

K4. Payment Commencement

K4.1 Subject to and in accordance with this Project Agreement, the City shall pay Project Co the Monthly Payments calculated as being due to Project Co in respect of each Contract Month following the Substantial Completion Date in accordance with Schedule 14 – Payment Mechanism.

K4.2 Project Co shall not be entitled to any Monthly Payments for any period prior to the Substantial Completion Date.

K5. Invoicing and Payment Arrangements

K5.1 No later than seven Business Days following the end of each Contract Month, Project Co shall issue to the City an invoice for the amount of the Monthly Payment, owing by the City to Project Co for such Contract Month, with such Payment Adjustments as provided in the Payment Adjustment Report issued in the previous Contract Month.

K5.2 Project Co shall comply with all requirements of Schedule 14 – Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as the City may reasonably require in connection with payments hereunder.

K5.3 Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:

- (a) the Monthly Payment, payable in respect of the applicable Contract Month;
- (b) any Payment Adjustments set out in the Payment Adjustment Report issued in the previous Contract Month that have been approved by the City;
- (c) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 7 – Dispute Resolution Procedure;
- (d) any amount owing to the City under this Project Agreement;
- (e) any amount owing to Project Co under this Project Agreement; and
- (f) the net amount owing by the City to Project Co, or by Project Co to the City, as applicable.

K5.4 Any applicable GST shall be shown separately on all invoices from Project Co, together with Project Co's GST registration number.

- K5.5 Upon agreement of the Parties, the form of invoice may be changed from time to time.
- K5.6 The City Representative shall review each invoice submitted in accordance with this Section K5, and, within seven Business Days of receiving such invoice, the City shall pay the amount stated in such invoice. Any such payment shall be subject to adjustment pursuant to Section K5.10.
- K5.7 The City shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, the City shall not be obligated to pay an invoice delivered by Project Co after the second Contract Month following the Substantial Completion Date until Project Co has delivered the Payment Adjustment Report referred to in Section K5.8 for the previous Contract Month. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section K5.8, the City's obligation to pay the invoice issued by Project Co for the immediately following Contract Month shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to the City.
- K5.8 Within seven Business Days following the end of each Contract Month, Project Co shall also submit to the City:
- (a) a Performance Monitoring Report in respect of the Contract Month just ended; and
 - (b) a report (a "**Payment Adjustment Report**") setting out any Payment Adjustments in respect of the Contract Month just ended, including details of:
 - (i) all Deductions in relation to Availability Failures;
 - (ii) all Deductions in relation to Quality Failures; and
 - (iii) all Deductions in relation to Service Failures.
- K5.9 Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- K5.10 Within 10 Business Days of receipt by the City of the Payment Adjustment Report, the City Representative shall:
- (a) determine and advise Project Co that the Payment Adjustment Report is approved by the City, in which case the Payment Adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (b) if the City disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the City shall withhold payment of any disputed amount pending agreement or

determination of Project Co's entitlement to the disputed amount in accordance with Section K7.

K6. Electronic Invoicing

- K6.1 Project Co shall cooperate with the reasonable requirements of the City's finance department, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with the City's information systems.

K7. Disputes

- K7.1 If the City, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 7 – Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by the City that is determined not to have been payable shall be paid forthwith by Project Co to the City, plus any interest payable in accordance with Section K12 calculated on the basis that the due date was the date of the overpayment by the City. Following resolution of the Dispute, any amount which has been withheld by the City that is determined to have been payable shall be paid forthwith by the City to Project Co, plus any interest payable in accordance with Section K12 calculated on the basis that the due date was the date upon which such amount became payable to Project Co.

K8. Timing and Method of Payments

- K8.1 Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due no later than 30 days following receipt of an invoice by the City, provided that such amounts are not in Dispute in which case such amounts shall be due no later than 30 days following final resolution of such Dispute.
- K8.2 Project Co shall maintain, or cause to be maintained, all holdbacks required pursuant to Applicable Law and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of any subcontracts for which holdbacks are to be released.
- K8.3 All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which such payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party. Payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and details of the transfer.

K8.4 If the due date of a payment under this Project Agreement falls on a day that is not a Business Day, then the electronic transfer of such payment shall be made on the next Business Day following the due date.

K9. Audit

K9.1 Without limiting the City's rights and Project Co's obligations pursuant to Section Q at any time and from time to time until 180 days after the Termination Date, the City may give notice to Project Co requiring an audit of any matter relating to performance of the Design and Construction or the OMR Services and payments by or to the City within the 7 year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.

K9.2 The City shall appoint an auditor to perform and complete such audit at the City's cost and expense and pursuant to terms of reference determined by the City.

K9.3 Within a reasonable time following receipt of a notice referred to in Section K9.1, Project Co shall make available to the City's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.

K9.4 The City shall notify Project Co of the results of the audit, and if the City's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 7 – Dispute Resolution Procedure,

(a) Project Co shall:

(i) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and

(ii) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by the City, reimburse the City for all costs relating to the auditor and audit to a maximum amount that is the lesser of:

(A) the actual costs relating to the auditor and audit; or

(B) an amount equal to the amount of any overpayment;

(b) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by the City, Project Co shall reimburse the City for the amount of such overpayment, and, further, shall indemnify the City from and against any damages suffered or incurred resulting from such overpayment by the City in accordance with Section R1 on the basis that the due date was the date of the overpayment by the City; and

(c) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by the City, the City shall pay Project

Co the amount of such underpayment and, further, shall indemnify Project Co from and against any damages suffered or incurred resulting from such underpayment by the City in accordance with Section R2 on the basis that the due date was the date of the underpayment by the City.

K10. Late Completion

K10.1 In the event that Substantial Completion is not achieved until after the Scheduled Substantial Completion Date, then, without limiting any of the City's rights pursuant to this Project Agreement or otherwise at law,

- (a) the Project Term shall expire 30 years from the Scheduled Substantial Completion Date so that the OMR Period is less than 30 years; and
- (b) Schedule 14 – Payment Mechanism shall not be adjusted or amended, except that the City and Project Co acknowledge and agree that in the event that Substantial Completion is not achieved until after the Scheduled Substantial Completion Date, both the OMR Period and, subject to Section M6.3 and N1.3, the aggregate amounts of Capital Payments and OMR Payments payable over the OMR Period shall be reduced accordingly by eliminating the Capital Payments (unless otherwise paid pursuant to Sections M6.3 or N1.3) and the OMR Payments for the period between the Scheduled Substantial Completion Date and the Substantial Completion Date.

K11. Set-off

K11.1 Subject to Section C1.1 of Schedule 15 – Termination Payments, the City is entitled to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts which are agreed or determined pursuant to the Dispute Resolution Procedure as being due to the City by Project Co pursuant to the terms of this Project Agreement, including, for clarity, any amounts in relation to a Dispute.

K11.2 Project Co is entitled to set off against any amounts otherwise due to the City pursuant to the terms of this Project Agreement, any amounts which are agreed or determined pursuant to the Dispute Resolution Procedure as being due to Project Co by the City pursuant to the terms of this Project Agreement, including, for clarity, any amounts in relation to a Dispute.

K12. Interest on Overdue Payments

K12.1 Except as otherwise provided in Section S7.1(b)(i), any amount payable under this Project Agreement and not paid when it becomes due shall bear interest at Prime plus 2%, without compounding, from the due date of the amount payable until the date (or dates) of payment. Where pursuant to the Dispute Resolution Procedure a disputed amount is determined to have been payable, then subject to any contrary determination pursuant to the Dispute Resolution Procedure, interest at Prime plus 2%, without compounding, shall be payable from the date when such amount ought to have been paid until the date (or dates) of payment.

K13. Taxes

- K13.1 All amounts specified in this Project Agreement are expressed exclusive of applicable GST but inclusive of all other taxes. Except as specified in Section K13.2, applicable GST shall be paid simultaneously with any amount due hereunder, including, for greater certainty, any compensation on termination and holdbacks.
- K13.2 Within 15 Business Days of the end of the month in which Substantial Completion occurs, the City shall pay to Project Co all GST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada). This amount shall be set out in an invoice issued by Project Co to the City upon the occurrence of Substantial Completion and shall reflect the GST corresponding to the capital cost of Design and Construction of the New Infrastructure less the Deficiencies Holdback. In accordance with subsection 168(7) of the *Excise Tax Act* (Canada), GST applicable to any Deficiencies Holdback shall be paid by the City upon release of such Deficiency Holdback to Project Co. With respect to Monthly Payments, the amount of GST payment made by the City to Project Co pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada) shall not include any GST amounts already paid by the City to Project Co on the Substantial Completion Payment.
- K13.3 In each invoice for Monthly Payments, Project Co shall show on a distinct line of the invoice the Monthly Previously Paid GST Amount used to determine the amount of unpaid GST payable by the City on such Monthly Payment. For greater certainty, a Monthly Previously Paid GST Amount must be credited to the City on each invoice for a Monthly Payment.

K14. Changes in Recoverability of Tax Credits

- K14.1 The City will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from the coming into effect or repeal (without re-enactment or consolidation) in Manitoba of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Manitoba, in each case after the date of the Project Agreement. Project Co will pay to the City from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from the coming into effect or repeal (without re-enactment or consolidation) in Manitoba of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Manitoba, in each case after the date of the Project Agreement.
- K14.2 For the purposes of this Section K14, the term “**Irrecoverable Tax**” means GST, RST or an irrecoverable sales tax levied by the Legislative Assembly of Manitoba in lieu of all or a portion of RST incurred by Project Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design and Construction or otherwise performing the OMR Services to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or RST, or after obtaining an input tax credit, refund, rebate or exemption, is required to pay an additional amount to the Canada Revenue Agency or any other

Governmental Authority equal to all or part of the input tax credit, refund, rebate or exemption claimed.

- K14.3 For the purposes of this Section K14, the term “**Recoverable Tax**” means GST or RST incurred by Project Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design and Construction or otherwise performing the OMR Services to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or RST.

K15. Information and Assistance Provided by Project Co

- K15.1 Project Co shall, at the City’s request and cost, assist the City in applying for and obtaining all remissions and credits of GST or RST, as the case may be, outside of the City’s routine GST and RST filings, to which the City is entitled.
- K15.2 The City may apply for a global or general exemption, waiver, remission or refund of some or all taxes which may otherwise be applicable in relation to this Agreement. Project Co shall, at the City’s request and cost, assist the City in making any applications for such global or general exemption, waiver, remission or refund and shall provide the City with such documentation as the City may reasonably require to support such application and, in any event, shall provide such consent as the City may require. Any exemption, waiver, remission, refund or other recovery of taxes obtained by the City through such application shall accrue to the sole benefit of the City.
- K15.3 Project Co will provide the City with any information reasonably requested by the City from time to time in relation to the GST or RST, as the case may be, chargeable in accordance with this Agreement and payable by the City to Project Co from time to time.

K16. Withholding Taxes

- K16.1 Project Co shall not, without the prior written consent of the City, which consent may be withheld in its sole discretion, undertake any action or transaction that, if undertaken, would cause, the City to have (or result in the City having) any obligation to deduct, withhold or remit any taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co under this Agreement.

K17. Project Co Indemnities - Taxes

- K17.1 If Project Co becomes a non-resident (as defined in the *Income Tax Act* (Canada)) or the City is or becomes required by Applicable Law to deduct and withhold any amount in respect of taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City under this Agreement, then the City shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which,

- (a) Project Co or the Project Co Party becomes a non-resident and at all times while it remains a non-resident; or

- (b) the City is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a non-resident or otherwise as required by Applicable Law, and all amounts paid or credited by the City under this Agreement to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

K17.2 If Project Co becomes a non-resident (as defined in the *Income Tax Act* (Canada)) or the City is or becomes required by Applicable Law to deduct and withhold any amount in respect of taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City under this Agreement, Project Co shall, in each case, indemnify and hold harmless the City for,

- (a) the full amount of all taxes ("**Indemnifiable Taxes**") that arise, are imposed on or are required to be paid by the City in respect of any amounts paid or credited by the City to Project Co or any Project Co Party under this Agreement as a result of either of the foregoing items less any amount withheld or deducted by the City in respect of such taxes; and
- (b) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted ("**Associated Liabilities**").

Payment under this indemnification shall be made within 30 days from the date the City makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the City shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the City. The City shall be entitled to exercise its rights of set off under Section K11 against any amounts owing under this indemnification.

SECTION L INDEXING, PERFORMANCE MONITORING AND DEDUCTIONS

L1. Indexing of OMR Payment

- L1.1 The OMR Payment component of the Monthly Payment (but not the Capital Payment component of the Monthly Payment) is subject to annual indexing for inflation in the manner and at the times set out in Schedule 14 – Payment Mechanism.

L2. Monitoring of Performance

- L2.1 Project Co shall monitor the performance of the OMR Services in the manner and at the frequencies set out in Schedule 18 – Technical Requirements and Schedule 14 – Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations, as set out in Schedule 18 – Technical Requirements and Schedule 14 – Payment Mechanism, Project Co shall, as reasonably requested by the City, provide the City Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.

- L2.2 The City may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

L3. Deduction Thresholds

- L3.1 In each Contract Month, Project Co shall measure the performance of the OMR Services, and based on the performance of the OMR Services in the applicable Contract Month, Deductions may be incurred in respect of an OMR Service in accordance with Schedule 14 – Payment Mechanism. Deduction Thresholds in respect of Availability Failures, Quality Failures and Service Failures for the OMR Services are set out in Sections L4, L5, L6, S1 and S2. The Deduction Thresholds shall be index-linked using the Escalation Factor as referred to in Section B2 of Schedule 14 – Payment Mechanism.

L4. Warning Notices

- L4.1 Without prejudice to the City's rights under Sections S1 and S2 and any other rights under this Project Agreement, if Project Co incurs, during the OMR Period, more than:
- (a) an aggregate of \$ [REDACTED] in Deductions in respect of Availability Failures; or
 - (b) an aggregate of \$ [REDACTED] in Deductions in respect of Quality Failures and/or Service Failures,

in any 1 Contract Month then the City may give a warning notice to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice" (each, a **"Warning Notice"**).

L5. Monitoring Notices

- L5.1 Without prejudice to the City's rights under Sections S1 and S2 and any other rights under this Project Agreement, if Project Co incurs, during the OMR Period, more than:
- (a) an aggregate of \$ [REDACTED] in Deductions in respect of Availability Failures; or
 - (b) an aggregate of \$ [REDACTED] in Deductions in respect of Quality Failures and/or Service Failures,

in any rolling 3 Contract Months, the City may, by notice (a **"Monitoring Notice"**) to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement in respect of the relevant OMR Service until such time as Project Co shall have demonstrated to the reasonable satisfaction of the City that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant OMR Service.

- L5.2 The City may give a Warning Notice pursuant to Section L4 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.

L5.3 If a Monitoring Notice is given, then:

- (a) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
- (b) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that the City was not entitled to give the Monitoring Notice, Project Co shall, within three Business Days of the receipt of the Monitoring Notice, notify the City in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
- (c) if Project Co gives the City a notice under Section L5.3(b), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of the City's receipt of such notice, may be referred for resolution in accordance with Schedule 7 – Dispute Resolution Procedure;
- (d) if Project Co fails to increase Project Co's monitoring as provided herein, the City may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section L5.3(c);
- (e) if it is determined in accordance with Schedule 7 – Dispute Resolution Procedure that the City was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse the City for any reasonable costs and expenses incurred by or on behalf of the City in relation to the giving of such Monitoring Notice; and
- (f) if it is determined in accordance with Schedule 7 – Dispute Resolution Procedure that the City was not entitled to give the applicable Monitoring Notice, the City shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.

L5.4 In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of the City that Project Co has performed its obligations under this Project Agreement for a period of 90 days and during such period has not received a Warning Notice or Monitoring Notice in respect of the relevant OMR Service, Project Co may apply for the withdrawal of such Monitoring Notice. If the City is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

L5.5 If it is determined in accordance with Schedule 7 – Dispute Resolution Procedure that the City was not entitled to give any Monitoring Notice, the City shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

L6. Replacement of Non-Performing OMR Provider

L6.1 If Project Co incurs, in any rolling 6 Contract Months during the OMR Period, more than:

- (a) an aggregate of \$ [REDACTED] in Deductions in respect of Availability Failures; or
- (b) an aggregate of \$ [REDACTED] in Deductions in respect of Quality Failures and/or Service Failures,

the City may, acting reasonably,

- (c) if an OMR Contract is in place, require Project Co to terminate the OMR and ensure that a replacement OMR Provider is appointed to provide the OMR Services within 60 days as an alternative to termination of this Project Agreement pursuant to Section S4.1(a), in any circumstance in which the City could exercise such right of termination, if the Termination Event was caused, or contributed to, by the OMR Provider; or
- (d) if an OMR Contract is not in place, require Project Co to enter into an OMR Contract with a third party for all or substantially all of the OMR Services, with the City's prior written approval.

L6.2 If the City exercises its rights under this Section L6, Project Co shall, within five Business Days, put forward a proposal for the interim management or provision of the OMR Services until such time as a replacement OMR Provider or new OMR Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate provision of the OMR Services and the Parties cannot agree within a further three Business Days to a plan for the interim management or provision of the OMR Services, then, without prejudice to the other rights of the City in this Section L6, the City itself may perform, or engage others (including a third party) to perform, the OMR Services. Project Co shall reimburse the City for all costs and expenses incurred by the City in relation to the City's exercise of its rights pursuant to this Section L6.2. Any Dispute in respect of the interim management or provision of the OMR Services may be referred for resolution in accordance with Schedule 7 – Dispute Resolution Procedure.

L6.3 If Project Co fails to terminate, or secure the termination of, the OMR Contract and to secure a replacement OMR Provider in accordance with this Section L6.1(c) or secure a new OMR Provider in accordance with Section L6.1(d), the City shall be entitled to exercise its termination rights in accordance with Section S4 notwithstanding that Project Co may not have incurred the total Deductions set out in Section S2.1(j).

L6.4 Where a replacement OMR Provider or new OMR Provider is appointed in accordance with this Section L6, the measurement of aggregate Deductions calculated during the applicable rolling time period (measured against the Deduction Thresholds) tracked by Project Co prior to such replacement shall be reset to nil.

SECTION M INSURANCE, DAMAGE AND DESTRUCTION

M1. Insurance Requirements

- M1.1 Project Co shall obtain and maintain in place, or cause to be obtained and maintained, all of the insurance specified in Schedule 11 - Insurance Requirements.
- M1.2 Without limiting Project Co's obligations pursuant to Section M1.1, Project Co shall require and ensure that the Construction Contractor and OMR Provider, if applicable, obtain and maintain, or cause to be obtained and maintained, and provide evidence as reasonably requested by the City of the insurance required in Sections D1 and E1 of Schedule 11 - Insurance Requirements, as applicable.
- M1.3 All insurance required pursuant to Schedule 11 – Insurance Requirements shall be placed with Eligible Insurers.

M2. Evidence of Insurance

- M2.1 In relation to the insurance required from Commercial Close, Project Co shall deliver or cause to be delivered to the City, evidence satisfactory to the City acting reasonably (which evidence may include detailed insurance cover notes and detailed certificates of insurance and written confirmation from Project Co's insurance broker that all insurance required by this Section M is in effect and complies with each of the insurance requirements in Section M and Schedule 11 – Insurance Requirements) of all insurance required to be obtained and maintained by Project Co, the Construction Contractor and OMR Provider, if applicable, by this Section M, at least five Business Days prior to Project Co making any entry upon the Lands. Project Co shall deliver, or cause to be delivered, to the City certified copies of all insurance policies evidencing the insurance required to be obtained and maintained by Project Co and the Construction Contractor from Commercial Close by this Section M as soon as reasonably practicable, and in any event no later than 90 days following Commercial Close; and
- M2.2 In relation to the insurance required from Substantial Completion, Project Co shall deliver or cause to be delivered to the City, certified copies of all insurance policies evidencing the insurance required to be obtained and maintained by Project Co and the OMR Provider, if applicable, by this Section M prior to and as a precondition to Substantial Completion.
- M2.3 Project Co shall provide, or cause to be provided, not less than 10 days prior to expiration of any then current policy, documentation evidencing to the satisfaction of the City, the renewal, extension or replacement of such insurance and as soon as reasonably practicable, and in any event within 30 days after expiration of any then current policy, certified copies of policies evidencing to the satisfaction of the City, acting reasonably, the renewal, extension or replacement of such insurance. Delivery to and examination by the City of any policy of insurance or certificate or other form of documentation evidencing such insurance shall not relieve Project Co of any of its obligations pursuant to the provisions of this Section M and shall not operate as a waiver by the City of any rights.
- M2.4 Project Co shall arrange and ensure that all insurance documentation, including certified policies, certificates of insurance, notices of cancellation or notices of material changes

as described in Sections C and D of Schedule 11 – Insurance Requirements shall be sent to the City at the following address:

The City of Winnipeg,
Attention Chief Financial Officer
Administration Building
510 Main Street
Winnipeg, Manitoba R3B 1B9

M3. City May Insure

- M3.1 If Project Co at any time fails to furnish the City with evidence of all required insurance in the manner specified by Section M2, or if subsequent to providing evidence of all required insurance Project Co's insurance is subject to a material change restricting coverage or is cancelled, the City may upon 15 Business Days' notice to Project Co obtain the required insurance not so evidenced or restricted or cancelled, and may set off the cost of the insurance so obtained against any amount payable to Project Co under this Project Agreement.

M4. Uninsurability

- M4.1 Notwithstanding Section M1.1, Project Co shall not be obligated during the OMR Period to maintain insurance against a risk that has become uninsurable. For the purposes of this Section M4, a risk shall be considered to have become uninsurable only if:

- (a) insurance against that risk is generally not available to Canadian road and bridge maintenance contractors with Eligible Insurers; or
- (b) the terms and conditions generally required by insurers for insuring such risk are such that the risk is generally not being insured against by Canadian road and bridge maintenance contractors,

and shall only be considered an uninsurable risk during such period when Project Co has not obtained insurance against the risk. Upon Project Co becoming aware of an uninsurable risk, Project Co shall in a timely manner give the City notice of the uninsurable risk, including any details as may be reasonably requested by the City.

- M4.2 For so long as a risk is uninsurable, the OMR Payment shall be reduced by the amount of any reduction in the insurance premiums paid by Project Co (or that would have been paid by Project Co had Project Co obtained insurance in accordance with Schedule 11 – Insurance Requirements) as a result of no longer being required to insure against such risk.
- M4.3 In the event that, subsequent to Commercial Close, a risk becomes an uninsurable risk, and if Project Co would have been required under Section M1.1 to insure against that risk but for the risk having become an uninsurable risk during the OMR Period, and if a loss occurs in respect of that risk, then the City shall, at its option and upon notice to Project Co, either:
- (a) assume responsibility for the loss, to the extent of the insurance proceeds that would have been payable if the insurance specified in Sections C1, C2, D1 and

E1 of Schedule 11– Insurance Requirements had been available to and was obtained by Project Co (having regard to the coverage limits specified in Sections C1, C2, D1 and E1 of Schedule 11 – Insurance Requirements and any applicable deductibles) and in the event that the loss includes damage to the New Infrastructure, then Project Co shall proceed as if the repairs necessitated by the loss were requested by the City pursuant to a Change Order Directive under Schedule 17 - Change Orders; or

- (b) declare a Force Majeure Termination, pay the Termination Payment in accordance with Schedule 15 – Termination Payments, and, if applicable, assume responsibility for the loss arising from the occurrence to the extent of the insurance proceeds that would have been payable if the insurance specified in Sections C1, C2, D1 and E1 of Schedule 11 – Insurance Requirements had been available to and was obtained by Project Co (having regard to the coverage limits specified in Sections C1, C2, D1 and E1 of Schedule 11 – Insurance Requirements and any applicable deductibles),

provided that the City shall not declare a Force Majeure Termination under Section M4.3(b) unless the City has first afforded Project Co a reasonable opportunity to meet with the City to discuss alternative ways to address risks that have become uninsurable.

M5. Benchmarking of Insurance Costs

M5.1 No later than 60 days prior to each Insurance Review Date, Project Co's insurance broker shall, at Project Co's sole cost and expense, prepare a report on behalf of both Project Co and the City (the "**Joint Insurance Cost Report**"), which contains the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost;
- (b) a full breakdown of the Base Relevant Insurance Cost;
- (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;
- (d) the opinion of Project Co's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
- (e) the calculation of the Insurance Cost Differential; and
- (f) evidence satisfactory to the City, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.

M5.2 The Monthly Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the "**Insurance Adjustment**") in accordance with Schedule 14 - Payment Mechanism.

M6. Repair of Damage – Prior to Substantial Completion

M6.1 Project Co shall repair all damage to the New Infrastructure that occurs prior to Substantial Completion being achieved, of whatever nature and however caused, except for:

- (a) damage caused by a Force Majeure Event (in which case Sections N1 and N3 apply);
- (b) Environmental Damage or Degradation described in the exceptions set out in Section E4.3 (in which case Section E4.3 applies);
- (c) damage caused by the City, or a City Party (other than damage caused to the Stadium Access Works); or
- (d) damage caused prior to Mobilization of the Construction Period Lands.

M6.2 As soon as reasonably practicable upon Project Co becoming aware of the occurrence of damage to any of the New Infrastructure, Project Co shall give the City notice of the damage, including reasonable details of the anticipated effect of the damage upon Project Co's performance of this Project Agreement, and thereafter the Parties shall on an ongoing basis communicate and consult with each other with a view to monitoring, remedying, mitigating or otherwise addressing the consequences of the damage.

M6.3 If damage to the New Infrastructure during the Construction Period causes a delay in the critical path of Project Co's Design and Construction Schedule to the extent that it delays Project Co from achieving Substantial Completion by the Scheduled Substantial Completion Date, then provided that:

- (a) the damage was not caused by Project Co, any Project Co Parties or any other party for whom Project Co is legally responsible or results from any act or omission of Project Co or any Project Co Party;
- (b) Project Co takes all reasonable action to diligently repair the damage and mitigate the delay;
- (c) Project Co has maintained all insurance required by this Project Agreement that is relevant to the damage and made a claim thereunder for its loss; and
- (d) Project Co is not otherwise entitled to an adjustment of the Scheduled Substantial Completion Date, compensation or other relief in accordance with Sections N1 or O2,

the City shall, as compensation for Direct Losses incurred by Project Co arising from the delay in the achievement of Substantial Completion,

- (e) commence payment of the Capital Payments that would have been payable to Project Co had Substantial Completion been achieved on the original Scheduled Substantial Completion Date, as set out in the "Capital Payments Column" of Appendix C to Schedule 14 – Payment Mechanism on the date that is the original Scheduled Substantial Completion Date; and

- (f) the Scheduled Substantial Completion Date, the Early Access Deadline, if applicable, and the dates in Section F9 shall be adjusted proportionately to the period during which Project Co is prevented by the damage to the New Infrastructure from performing the Design and Construction.

M7. Repair of Damage – OMR Period

M7.1 From and after the date that Substantial Completion is achieved,

- (a) the City shall, where the damage is directly caused by the City or a City Party, and provided that Project Co has made a claim under Project Co's insurance required under Schedule 11 – Insurance Requirements, pay the actual deductible applicable to the claim pursuant to Project Co's insurance; and
- (b) Project Co shall bear the risk of damage to the New Infrastructure, except:
 - (i) damage caused by Force Majeure Events (in which case Sections N2 and N3 apply); and
 - (ii) in respect of the amount payable by the City in accordance with Section M7.1(a).

M7.2 All proceeds from Project Co's property insurance required under Schedule 11 - Insurance Requirements, except for the proceeds of any business interruption insurance or similar insurance protecting against lost revenues that Project Co may choose to carry and that may be associated with Project Co's property insurance required under Schedule 11 - Insurance Requirements, in respect of any loss or damage to the New Infrastructure must be applied by Project Co to repair, reinstate and replace each part or parts of the New Infrastructure in respect of which the proceeds are payable.

M7.3 The repair of all damage to the New Infrastructure shall be carried out in accordance with Schedule 18 – Technical Requirements.

M7.4 If by reason of damage occurring during the OMR Period and caused other than by a Force Majeure Event, all or any portion of the New Infrastructure is unavailable to the City, then the OMR Payment shall be reduced in the same manner as is set out in Section N2.5 in respect of unavailability caused by a Force Majeure Event, and notwithstanding Section R4, applicable Deductions shall also apply.

M7.5 Notwithstanding that the City bears the risk of damage to the New Infrastructure to the extent afforded in Section M7.1, where Project Co's property insurance required under Schedule 11 – Insurance Requirements provides coverage for the loss arising, Project Co shall put forth a claim under such property insurance at the option and for the benefit of the City, and in that case the City shall pay the direct costs associated with making the claim and the proceeds from such claim must be applied by Project Co to repair, reinstate and replace each part or parts of the New Infrastructure damaged.

SECTION N FORCE MAJEURE

N1. Force Majeure During Construction Period

- N1.1 This Section N1 shall apply to any Force Majeure Event that occurs during the Construction Period, notwithstanding any other provision of this Project Agreement.
- N1.2 To the extent that and for so long as either Party is prevented by the Force Majeure Event from performing all or a material part of its obligations under this Project Agreement, that Party is relieved from performance of such obligations.
- N1.3 If, during the Construction Period, a Force Majeure Event wholly or substantially prevents Project Co from proceeding with the Design and Construction for a period of at least 15 days (measured on a critical path basis having regard to Project Co's Design and Construction Schedule), then, subject to this Section N,
- (a) Project Co's Design and Construction Schedule, including the Scheduled Substantial Completion Date, the Early Access Deadline, if applicable, and the dates in Section F9 shall be adjusted, proportionately to the period during which Project Co is prevented by the Force Majeure Event from proceeding with the Design and Construction measured on a critical path basis;
 - (b) if the Parties agree that Project Co should accelerate the Design and Construction to compensate for the delay caused by the Force Majeure Event, the City shall compensate Project Co as would place Project Co in no better and no worse position than it would have been in had the relevant Force Majeure Event not occurred;
 - (c) the City shall commence payment of the Capital Payments that would have been payable to Project Co had Substantial Completion been achieved on the original Scheduled Substantial Completion Date, in accordance with Schedule 14 – Payment Mechanism on the date that is the day of the original Scheduled Substantial Completion Date; and
 - (d) if the Force Majeure Event results in an adjustment to the Scheduled Substantial Completion Date, on the Substantial Completion Date and provided that neither the City nor Project Co has terminated the Project Agreement for a Force Majeure Termination, the City shall pay to Project Co an amount equal to the incremental interest costs related only to any short-term debt to be repaid at Substantial Completion accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, pursuant to the Lending Agreements, which, but for the relevant Force Majeure Event, would not have been paid by Project Co to the Lenders.
- N1.4 The compensation payable to Project Co pursuant to Section N1.3 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty,

shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

- N1.5 Subject to Section N4, no non-performance of any obligation under this Project Agreement shall give rise to a Termination Event, to the extent that and for so long as performance of the obligation is prevented by the Force Majeure Event.
- N1.6 In the event that the Parties cannot, for the purpose of this Section N, agree on the date that Substantial Completion would have been achieved but for the Force Majeure Event, or the revised date on which Substantial Completion should be scheduled to be achieved following the occurrence of the Force Majeure Event, having used reasonable commercial efforts to resolve their dispute through negotiation, then either Project Co or the City may refer the matter to the Independent Certifier for determination in accordance with Schedule 5 - Review Procedure.
- N1.7 If Project Co anticipates that the Force Majeure Event will delay Substantial Completion, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense.

N2. Force Majeure During OMR Period

- N2.1 This Section N2 shall apply to any Force Majeure Event that occurs during the OMR Period, notwithstanding any other provision of this Project Agreement.
- N2.2 To the extent that and for so long as either Party is prevented by the Force Majeure Event from performing any obligation under this Project Agreement, that Party is relieved from any liability or consequence under this Project Agreement arising from its inability to perform or delay in performing that obligation.
- N2.3 No Deductions shall be applicable in respect of OMR Infrastructure affected by the Force Majeure Event, to the extent that and for so long as the relevant performance was prevented by the Force Majeure Event.
- N2.4 Subject to Section N4, no non-performance of any obligation under this Project Agreement shall give rise to a Termination Event, to the extent that and for so long as performance of the obligation is prevented by the Force Majeure Event.
- N2.5 If and for so long as all or any portion of the OMR Infrastructure is unavailable to the City as a result of the Force Majeure Event, the Parties agree as follows:
- (a) if all of the OMR Infrastructure is unavailable to the City, the City shall not be liable for payment of the OMR Payment, however the Capital Payment shall continue to be payable;
 - (b) subject to Section N2.5(c), if a portion of the OMR Infrastructure is unavailable to the City, the City shall only be liable for the Capital Payment and payment of that portion of the OMR Payment that corresponds to the portion of the OMR Infrastructure that remains available notwithstanding the Force Majeure Event; and

- (c) if Project Co demonstrates to the satisfaction of the City, acting reasonably, that the actual reduction in Project Co's costs of performing the OMR Services is other than in proportion to the area not available, then the proportionate adjustment of the OMR Payment shall be the actual reduction in costs as demonstrated by Project Co to the satisfaction of the City, acting reasonably.

N2.6 At the conclusion of any Force Majeure Event occurring during the OMR Period, and provided that the Project Agreement is not terminated as a result of the Force Majeure Event, the City shall, no later than 30 days following the conclusion of the Force Majeure Event, pay to Project Co the amount of any MMR Payments or portions thereof that were payable but not paid by the City to Project Co during the Force Majeure Event.

N3. Procedure on Force Majeure Event

N3.1 Upon either Party becoming aware of the occurrence of a Force Majeure Event that may prevent that Party from performing any obligation under this Project Agreement, that Party shall in a timely manner give the other Party notice of the Force Majeure Event, including reasonable details of the anticipated effect of the Force Majeure Event upon performance of this Project Agreement, and thereafter the Parties shall on an ongoing basis consult with each other with a view to remedying or mitigating the Force Majeure Event and, if applicable, rebuilding the Project or otherwise addressing the consequences of the Force Majeure Event.

N3.2 Except to the extent that damage caused to the OMR Infrastructure by a Force Majeure Event is insured against or required to be insured against by Project Co in accordance with this Project Agreement, the City shall be responsible for repairing the damage, provided that:

- (a) the City may in its discretion, having regard to the nature and extent of the damage and acting reasonably, decline to repair the damage, and if the City declines to repair the damage it shall provide notice of this decision to Project Co as soon as reasonably practicable;
- (b) if the City, pursuant to Section N3.2(a), declines to repair the damage, then, subject to Section N4 and Section O1, the City's decision to decline to repair the damage shall constitute a Relief Event under Section O1.1(k) (but without prejudice to any termination right arising under Section S6); and
- (c) if the City chooses to repair the damage and it intends to require Project Co to carry out the repairs, then the City will issue a Change Order Directive to Project Co for the necessary repairs in accordance with Schedule 17 - Change Orders.

For clarity, this Section N3.2 applies only in respect of damage that is caused by a Force Majeure Event and shall not apply to damage that is otherwise the responsibility of Project Co pursuant to this Project Agreement.

N4. Termination for Force Majeure Event

N4.1 Where a Force Majeure Event has occurred and continues, or in the opinion of both Parties, is highly likely to continue for a continuous period of at least 120 days during the

Construction Period or at least 180 days during the OMR Period and it has become impossible or impractical for Project Co to carry out all or a substantial part of its obligations under this Project Agreement and, if applicable, the City has exercised its discretion in Section N3.2(a) and declined to repair damage to the affected New Infrastructure, then either Party may, upon notice to the other Party, terminate this Project Agreement. Any compensation payable upon termination in accordance with this Section N4.1 shall be calculated in accordance with Schedule 15 – Termination Payments.

SECTION O RELIEF EVENTS

O1. Relief Events

O1.1 In this Project Agreement, “**Relief Event**” means any of the following events that either (i) affects the Design and Construction so as to cause a delay in the critical path of Project Co’s Design and Construction Schedule, but only to the extent that it delays Project Co from achieving completion of the Stadium Access Works by the Early Access Deadline or Substantial Completion by the Scheduled Substantial Completion Date, or (ii) interferes adversely with, or causes a failure of, Project Co’s performance of the OMR Services or (iii) in respect of Sections O1.1(a), O1.1(b), O1.1(c), O1.1(e), O1.1(g), O1.1(h) and O1.1(j) only, causes an increase in the cost of the Design and Construction or the OMR Services:

- (a) breach of any provision of this Project Agreement by the City, including any delay by the City in giving access to the Lands or the Stage 1 Lands pursuant to Section E1;
- (b) in the circumstances specified in Section F8.2, a stop work order issued by the City;
- (c) a Designated Change in Law coming into effect after March 24, 2016;
- (d) any Environmental Damage or Degradation for which the City is responsible pursuant to Section E4;
- (e) the presence in, under or on the Lands, of Heritage Finds, which presence was not described in or readily inferable from the Project Background Information at the time of submission of Project Co’s Proposal;
- (f) an order granted by a Court directly resulting from a third party claim of an interest in the Lands, the Stage 1 Lands or a portion thereof;
- (g) in the circumstances specified in Section S1.3(a), any Remedial Action taken by the City that does not arise as a result of any breach by Project Co of its obligations under this Project Agreement or by any act or omission of Project Co or any Project Co Party;
- (h) if, despite Project Co taking all commercially reasonable measures to mitigate any cost, delay or inconvenience (including providing the City with timely notice of the cost, delay or inconvenience encountered), Project Co incurs increased costs or the Design and Construction or OMR Services are delayed or

prevented as a result of any encumbrances on the Lands or the Stage 1 Lands, other than Identified Encumbrances;

- (i) protest action at the Lands, the New Infrastructure or the Existing Infrastructure;
- (j) the presence on the Lands or the Stage 1 Lands of animal or plant species protected by Applicable Law, which presence was not described in or readily inferable from the Project Background Information at the time of submission of Project Co's Proposal;
- (k) in the circumstances specified in Section N3, a failure by the City to repair, within a timeframe that is reasonable having regard to the circumstances, damage caused by a Force Majeure Event;
- (l) any environmental assessment process or environmental impact assessment report directed under Applicable Law in respect of the Project, except where such direction arises as a result of activities or actions (whether planned or actually carried out) by Project Co or any Project Co Party in circumstances where:
 - (i) it was reasonably foreseeable that such activities or actions could lead to such assessment process or report being directed; and
 - (ii) having regard to Project Co's Design, Project Co could reasonably have carried out the Project without such activities or actions;
- (m) a stop work order issued by a Governmental Authority, provided that such order was not issued as a result of an event of Force Majeure;
- (n) during the Construction Period, a general strike or other labour disruption in Manitoba that is applicable to the road construction industry in Manitoba or is directed at the City;
- (o) during the OMR Period, a general strike or other labour disruption in Manitoba that is directed at the OMR Infrastructure;
- (p) a claim of aboriginal title or treaty rights by any person in respect of all or any part of the Lands or the Stage 1 Lands;
- (q) during the Construction Period, in the circumstances specified in Section F22.2 with respect to non-performance by Manitoba Hydro;
- (r) during the Construction Period, in the circumstances specified in Section F23.2 with respect to non-performance by CN Rail;
- (s) compliance by Project Co with an order or direction of police, fire or other public officials having the legal authority to make such order or give such direction in relation to the Lands, the Stage 1 Lands, the New Infrastructure or the Existing Infrastructure;

- (t) during the Construction Period, a general strike or other labour disruption in Manitoba directed at CN Rail or Manitoba Hydro, provided that Project Co is not otherwise entitled to a Relief Event pursuant to Sections O1.1(q) or O1.1(r), as applicable;
- (u) the presence of Unknown Utilities, provided Project Co has taken commercially reasonable efforts to identify all Utility Infrastructure on the Lands; and
- (v) a flood event in the City of Winnipeg where the event causes Red River water to overtop the City of Winnipeg primary diking system to cause flooding of all or substantially all of the Lands for a period greater than 10 days. For clarity, a flood event does not include flooding from any other source, including the Lot 16 Drain.

O1.2 For clarity, none of the events or circumstances listed in Section O1.1 shall be Relief Events to the extent that the event or circumstance is caused by any act or omission of Project Co or any Project Co Party or by a breach of this Project Agreement by Project Co or any Project Co Party.

O2. Relief Event During Construction Period

O2.1 This Section O2 shall apply to a Relief Event that occurs during the Construction Period only.

O2.2 If,

- (a) a Relief Event wholly or substantially delays Project Co from performing the Design and Construction where such delay is for a period of at least 10 continuous days; or
- (b) if multiple Relief Events, when taken together, wholly or substantially delay Project Co from performing the Design and Construction, where such delay is for a period of at least 10 days in the aggregate and each such Relief Event wholly or substantially delays Project Co from performing the Design and Construction, where such delay is for a period of at least two continuous days,

then, each of the following dates shall be adjusted proportionately to the period during which Project Co is prevented by the Relief Event from performing the Design and Construction:

- (i) the Scheduled Substantial Completion Date;
- (ii) the dates in Section F9;
- (iii) the Early Access Deadline, if applicable; and
- (iv) the date specified for adjustment in Sections S2.1(g) and S2.1(h).

For clarity, the thresholds in Section O2.2(a) and O2.2(b) shall not apply to a Relief Event under Section O1.1(q).

- O2.3 Subject to Sections O2.4, O2.7, O2.8 and O5, Project Co shall be entitled to such compensation from the City as would place Project Co in no better and no worse position than it would have been in had the relevant Relief Event not occurred. For greater certainty, such compensation will include amounts which, but for the Relief Event, would have been paid by the City to Project Co and will exclude amounts otherwise paid by the City in accordance with the Project Agreement to Project Co in relation to the event giving rise to the Relief Event. Project Co shall promptly provide the City with any information the City Representative may require in order to determine the amount of such compensation.
- O2.4 Project Co shall only be entitled to compensation pursuant to Section O2.3 if a Relief Event, either individually or aggregated with the effect of any other Relief Event not previously claimed for by Project Co, increases Project Co's cost of carrying out the Project by at least \$50,000.
- O2.5 All periods of delay pursuant to this Section O2 shall be measured on a critical path basis having regard to Project Co's Design and Construction Schedule.
- O2.6 In the event that the Parties cannot agree on the date that Substantial Completion would have been achieved but for the Relief Event, or the revised date on which Substantial Completion should be scheduled to be achieved following the occurrence of the Relief Event, having used reasonable commercial efforts to resolve their dispute, then either Project Co or the City may refer the matter to the Independent Certifier for determination in accordance with the procedure set out in Schedule 5 - Review Procedure.
- O2.7 With respect to compensation arising from the Relief Event set out in Section O1.1(q), subject to Section O2.4, Project Co's right to compensation shall be limited to the following, without double counting:
- (a) Project Co shall be entitled to 50% of the compensation calculated in accordance with Section O2.3 for delay costs; and
 - (b) Project Co shall be entitled to reimbursements in accordance with Section F17 for increases in Specified Utility Costs.
- O2.8 With respect to compensation arising from the Relief Event set out in Section O1.1(r), Project Co's right to compensation shall be limited to 50% of the compensation calculated in accordance with Section O2.3.

O3. Relief Event During OMR Period

- O3.1 This Section O3 shall apply to a Relief Event that occurs during the OMR Period.
- O3.2 Subject to Sections O4 and O5, if a Relief Event occurs,
- (a) any failure by Project Co to perform, and any poor performance of, any affected OMR Services shall not constitute a breach of this Project Agreement by Project Co;
 - (b) Project Co shall be relieved of its obligations to perform such OMR Services for the duration and to the extent prevented by such Relief Event; and

- (c) no Deductions shall be applicable, to the extent that and for so long as the relevant performance was prevented by the Relief Event.
- O3.3 In addition to the relief set out in Section O3.2, subject to Section O3.4 and O5, if a Relief Event occurs, Project Co shall be entitled to such compensation from the City as would place Project Co in no better and no worse position than it would have been in had the relevant Relief Event not occurred. For greater certainty, such compensation will include amounts which, but for the Relief Event, would have been paid by the City to Project Co. Project Co shall promptly provide the City with any information the City Representative may require in order to determine the amount of such compensation.
- O3.4 Project Co shall only be entitled to compensation pursuant to Section O3.3 if a Relief Event, when, either individually or aggregated with the effect of any other Relief Event or Relief Events occurring during the OMR Period and not previously claimed for by Project Co, increases Project Co's cost of carrying out the Project by at least \$20,000.

O4. General Provisions Relating to Relief Events

- O4.1 Immediately upon Project Co becoming aware of the occurrence of an event that is or may be or is likely to become a Relief Event, Project Co shall give the City notice of the Relief Event, including reasonable details of the anticipated effect of the Relief Event upon Project Co's performance of this Project Agreement (a "**Relief Event Notice**"). The Relief Event Notice shall be in a form acceptable to the City, acting reasonably. Following delivery of a Relief Event Notice, the Parties shall, on an ongoing, basis communicate and consult with each other with a view to monitoring, remedying, mitigating or otherwise addressing the consequences of the Relief Event. Project Co shall only be entitled to claim relief or compensation in accordance with Section O2 or Section O3 if Project Co has delivered a Relief Event Notice as set out in this Section O4.1. Project Co shall provide any additional information requested by the City in relation to a Relief Event.
- O4.2 Subject to Section O5, no non-performance of any obligation of Project Co under this Project Agreement shall give rise to a Termination Event, to the extent that, and for so long as performance of the obligation, is prevented by a Relief Event.
- O4.3 For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Relief Event.
- O4.4 The compensation payable to Project Co pursuant to Sections O2.3 and O3.3 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

O5. Mitigation

- O5.1 If Project Co is (or claims to be) affected by a Relief Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:

- (a) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
- (b) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Relief Event; and
- (c) to resume performance of its obligations under this Project Agreement affected by the Relief Event as soon as practicable.

O5.2 To the extent that Project Co does not comply with its obligations under this Section O5, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to Section O2.2, compensation pursuant to Section O2.3 or Section O3.3 or relief pursuant to Section O3.2.

SECTION P REPRESENTATIONS AND WARRANTIES

P1. Project Co's Representations and Warranties

P1.1 Project Co represents and warrants to the City that, as of the date of this Project Agreement:

- (a) Project Co is [REDACTED] is in good standing with the Registrar of Corporations under the Partnership Act (Alberta) and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (b) Plenary Roads [REDACTED] and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as general partner of Project Co;
- (c) PCL [REDACTED] and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as general partner of Project Co;
- (d) Plenary [REDACTED], has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (e) PCL [REDACTED], has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (f) the execution and delivery of this Project Agreement has been duly authorized by all necessary partnership action on the part of Project Co and corporate action on the part of [REDACTED], Plenary [REDACTED] and PCL [REDACTED], and upon its execution and delivery constitutes a legal, valid and binding obligation of Project Co, Plenary [REDACTED] and PCL [REDACTED] enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization and other laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (g) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, operation and maintenance of projects that are similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Design and Construction and the OMR Services in a timely and professional manner as set out in this Project Agreement;
- (h) Project Co is a "special purpose vehicle" that has not carried on business other than directly in relation to, in anticipation of, and for the purposes of this Project Agreement;
- (i) All partnership interests in Project Co, all direct shareholdings and ownership interests in the general partners of Project Co, details of the indirect ownership interests in each of such general partners, and the nature of the ultimate ownership of each such general partners, at the time of Financial Close have been disclosed to the City;
- (j) Project Co is relying only on its own investigation and due diligence in relation to the risks assumed by it under the provisions of this Project Agreement, and is not relying on any information received from or representation made by the City, with the exception only of the City's representations in Section P2;
- (k) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co, [REDACTED]
[REDACTED], to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co, [REDACTED] or in any impairment of Project Co's ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;

- (l) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Design and Construction in accordance with this Project Agreement; and
- (m) the Assigned Intellectual Property, the Station Look and Feel (other than any Station Look and Feel that was supplied by the City) and the Project Co Intellectual Property licensed to the City hereunder and their use by or on behalf of the City do not and will not infringe the Intellectual Property of any third party.

P2. The City's Representations and Warranties

P2.1 The City represents and warrants to Project Co, as of the date of execution of this Project Agreement, that:

- (a) the City has the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (b) the execution and delivery of this Project Agreement and all documents, instruments and agreements required to be executed and delivered by the City pursuant to this Project Agreement, and the completion of the transactions contemplated by this Project Agreement have been duly authorized on behalf of the City, and upon execution and delivery constitutes a legal, valid and binding obligation of the City;
- (c) the entering into of the Project Agreement will not result in a breach or violation of *The City of Winnipeg Charter*, S.M. 2002, c.39, as amended;
- (d) the City has obtained all necessary approvals to enter into this Project Agreement; and
- (e) except as set out in Section A2 of Schedule 12 – Lands and Identified Encumbrances, the City is the owner of an estate in fee simple of the Lands and the Stage 1 Lands or a holder of a valid and effective easement, right of way or other instrument or agreement which permits the grant of access and use for the purposes contemplated under this Project Agreement, subject to the terms and conditions of this Project Agreement.

SECTION Q REPORTING, INSPECTION AND TESTING

Q1. Reporting Requirements

Q1.1 In addition to all specific reports and notices required by the Technical Requirements, Project Co shall provide the following reports to the City:

- (a) during the Construction Period, reports on the progress of the Project monthly, including but not limited to a report of any material events, developments or circumstances arising in relation to the Project since the last report, all in a form

and format prescribed or approved from time to time by the City, acting reasonably;

- (b) during the OMR Period, reports noting all circumstances known to Project Co that trigger or, if continued, will trigger a Payment Adjustment and any other events, developments or circumstances material to Project Co's performance of the OMR Services and the OMR Requirements monthly, and an annual report summarizing Project Co's expenditures on major rehabilitation of the New Infrastructure, all in a form and format prescribed or approved from time to time by the City, acting reasonably;
- (c) throughout both the Construction Period and the OMR Period, copies of its unaudited quarterly financial statements and audited annual financial statements (each of which may be delivered in confidence), in each case prepared in accordance with generally accepted accounting principles;
- (d) copies of all financial reporting (in addition to the reporting under Section Q1.1(c) provided from time to time to any lender providing all or any part of the Project Financing;
- (e) such other periodic reports as the City may from time to time reasonably require; and
- (f) throughout both the Construction Period and the OMR Period, a response delivered in a timely manner to any inquiry reasonably made by the City Representative in relation to any aspect of the business of Project Co, the Project, the Technical Requirements, the OMR Service, the OMR Requirements, or this Project Agreement.

Q2. Records

- Q2.1 Project Co shall, following execution of this Project Agreement and for a period of two years following expiry of the Project Term or earlier termination of this Project Agreement,
- (a) maintain in an appropriate form full accounting and other records in respect of performance by it of its obligations under this Project Agreement, and
 - (b) keep those records available for inspection by any Governmental Authority at all reasonable times upon reasonable notice, for the purpose of determining Project Co's compliance with this Project Agreement
- Q2.2 Upon expiry of the Project Term, Project Co shall, upon request by the City and at no cost to the City, hand over to the City copies of all records that relate to Project Co's performance of the OMR Services that are of a kind or nature that the City, acting reasonably, indicates will be of utility to the City, or any City Party assuming responsibility for performing the OMR Services.

Q3. Access, Inspection and Testing

Q3.1 Project Co acknowledges and agrees that, at all times until the end of the Project Term, the City shall have full and free access to:

- (a) the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure; and
- (b) on reasonable prior notice, any site occupied by Project Co or to which Project Co has access, where materials to be used in the Design and Construction or the OMR Service are fabricated or stored;

for the purpose of inspecting the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure or materials to be used in the Design and Construction or the OMR Services so as to be able to determine compliance by Project Co with the terms of this Project Agreement; and such access shall not of itself be construed as constituting disturbance or interference with Project Co's uninterrupted access to the Lands, the Stage 1 Lands, the New Infrastructure and the Existing Infrastructure; provided however that Project Co may exercise reasonable control over such access for reasons of safety and operational efficiency. For the purpose of such inspection, the City may at all reasonable times and subject to the reasonable requirements of third party suppliers, perform any measurement, test or other observation or investigation. Project Co shall provide reasonable cooperation (but without obligation to incur material expense) to facilitate any such measurements, tests or other observations or investigations. The City shall conduct all such measurements, tests, observations and investigations in a manner that will not materially disturb, interfere with or disrupt the Design and Construction of the OMR Services.

SECTION R INDEMNITIES AND LIMITATION OF LIABILITY

R1. Project Co's Indemnity

R1.1 Subject to Section R3, Project Co shall indemnify and hold harmless the City Indemnified Parties against all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:

- (a) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (b) the negligence, other tortious conduct or willful misconduct of Project Co, any Project Co Party or their respective directors, officers, employees, agents or subcontractors in relation to the Design and Construction or the OMR Services;
- (c) any loss or damage of a third party arising from the Design and Construction or OMR Services, including any infringement by Project Co or any Project Co Party of Intellectual Property of third parties, death, personal injury and any physical loss or damage to property or assets of any third party and any claim that the Assigned Intellectual Property, the Station Look and Feel (other than any Station Look and Feel that was supplied by the City) and the Project Co Intellectual Property licensed to the City hereunder or their use by or on behalf of the City infringes the Intellectual Property of any third party;

- (d) any physical loss or damage to all or any part of the Lands, the Stage 1 Lands, the New Infrastructure or the Existing Infrastructure, or to any equipment, assets or other property related thereto which is the responsibility of Project Co pursuant to this Project Agreement;
- (e) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or the requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Permits, Licences and Approvals required for the Project;
- (f) any claims arising under or in relation to Environmental Damage or Degradation for which Project Co is responsible pursuant to this Project Agreement;
- (g) as provided for in Section E9.1;
- (h) as provided for in Section F3.1; and
- (i) as provided for in Section S1.3(b),

except, in each case, to the extent caused, or contributed to, by the breach of this Project Agreement by the City or any negligence or wilful misconduct of the City.

R1.2 Subject to Section R3 but without limiting Section R1.1(e), Project Co shall indemnify and hold harmless the City Indemnified Parties against all legal consequences, including all legal costs and expenses and any fines or penalties imposed by a Governmental Authority, incurred by the City in connection with the non-compliance with Applicable Law or any Permits, Licences and Approvals by Project Co and any Project Co Party, except, in each case, to the extent caused, or contributed to, by the breach of this Project Agreement by the City or any negligence or wilful misconduct of the City.

R1.3 Project Co's obligations in Sections R1.1(c), R1.1(d) and R1.1(e), shall, in each case, relate to claims arising directly or indirectly out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party.

R2. City's Indemnity

R2.1 Subject to Section R3, the City shall indemnify and hold harmless Project Co and its directors, officers and employees against all Direct Losses arising from the City's breach of any provision of this Project Agreement or arising from the negligence or wilful misconduct of the City or any employee, councillor or agent of the City in relation to the subject matter of this Project Agreement, except to the extent that such Direct Losses are caused or contributed to, by the breach of this Project Agreement by Project Co or by any negligence or wilful misconduct of Project Co or any Project Co Party.

R3. Calculation of and Limitation on Claims

R3.1 Where any provision of this Project Agreement entitles a Party to recover damages or losses from the other Party, except as otherwise expressly indicated, the intent is to

afford such Party the equivalent of the ordinary contractual measure of damages, that is, that such recovery will place such Party in the same position it would have been in but for the occurrence of the specified event that gives rise to the right to recover damages or losses from the other Party, subject to such Party's obligation to take all commercially reasonable measures to mitigate its damages.

R3.2 Notwithstanding Section R3.1, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that loss claimed by either Party is:

- (a) for punitive, exemplary or aggravated damages;
- (b) for loss of profit (but does not include the Parties' rights to payments expressly provided for in this Project Agreement, including a claim by Project Co for damages under Section B7.1(b) of Schedule 15 – Termination Payments), loss of use, loss of production, loss of business, claims of customers or loss of business opportunity; or
- (c) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, "**Indirect Losses**").

R3.3 With respect to the indemnity in Section R1.1(a) only, the exceptions in Sections R3.2(b) and R3.2(c) shall not apply as a result of, or in relation to, the City's loss of use of the New Infrastructure or any portion thereof, which for the purposes of Section R1.1(a) shall not be Indirect Losses.

R3.4 Subject to Section R3.5 and R3.6, the maximum aggregate liability of,

- (a) Project Co in respect of all claims under Section R1 shall not exceed \$ [REDACTED] and
- (b) the City in respect of all claims under Section R2 shall not exceed \$ [REDACTED].

R3.5 Project Co's maximum aggregate liability in respect of all claims under Section R1.1(a) shall not exceed \$ [REDACTED].

R3.6 The limits set out in R3.4,

- (a) shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 11 (Insurance Requirements) or which would have been received if the City or Project Co had complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement; and
- (b) shall not apply in cases of willful misconduct or deliberate acts of wrongdoing.

R4. Exclusivity of Specified Remedies

R4.1 Subject to:

- (a) any other rights of the City provided for in this Project Agreement;
- (b) the City's right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co, except to the extent that the same has already been recovered by the City pursuant to this Project Agreement or has been taken into account to reduce compensation payable by the City in accordance with Schedule 15 – Termination Payments;
- (c) the City's right to seek injunctive relief or a decree of specific performance or other discretionary remedies of a Court,

the sole remedy of the City in respect of Project Co's failure to perform the OMR Services in accordance with this Project Agreement shall be the operation of Schedule 14 – Payment Mechanism and related provisions of this Project Agreement.

R4.2 Project Co shall not be entitled to damages or indemnification in respect of any breach by the City under this Project Agreement that would duplicate compensation to Project Co under Section O arising from a Relief Event.

R4.3 Every right to claim damages or indemnification or reimbursement or to set off or hold back any amount under this Project Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Agreement, and shall not be construed in such manner as would allow a Party to recover the same loss or amount twice.

R5. Conduct of Indemnified Claims

R5.1 Where either Party to this Project Agreement is entitled to indemnification under this Project Agreement ("**Indemnified Party**") and determines that an event has occurred giving rise or that may give rise to a right of indemnification in favor of the Indemnified Party (an "**Indemnity Claim**"), the Indemnified Party shall promptly notify the Party obligated to provide indemnification (the "**Indemnifying Party**") of such Indemnity Claim (a "**Claim Notice**") describing in reasonable detail the facts giving rise to the claim for indemnification, and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such Indemnity Claim; provided that the failure of an Indemnified Party to give timely notice thereof shall not affect any of its rights to indemnification nor relieve the Indemnifying Party from any of its indemnification obligations except to the extent the Indemnifying Party is materially prejudiced by such failure.

R5.2 Any obligation to provide indemnification under this Project Agreement shall be subject to the following terms and conditions:

- (a) upon receipt of a Claim Notice the Indemnifying Party shall, at its cost and expense and upon notice to the Indemnified Party within 30 days of its receipt

of such Claim Notice (or such shorter time period as the circumstances warrant), assume and control the defence, investigation, compromise and settlement of such Indemnity Claim, including the management of any proceeding relating thereto, and shall employ and engage legal counsel reasonably acceptable to the Indemnified Party; provided that if there exists a material conflict of interest (other than one of a monetary nature) or if the Indemnified Party has been advised by counsel that there may be one or more legal or equitable defences available to it that are different from or additional to those available to the Indemnifying Party that in either case, would make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Party, then the Indemnified Party shall be entitled to retain its own counsel at the cost and expense of the Indemnifying Party (except that the Indemnifying Party shall not be obligated to pay the fees and expenses of more than one separate counsel, other than local counsel, for all Indemnified Parties, taken together);

- (b) the Indemnified Party may, at its own cost and expense, participate in the defence of the Indemnity Claim, and shall cooperate with the Indemnifying Party in such efforts and make available to the Indemnifying Party all witnesses, records, materials and information in the Indemnified Party's possession, under its control or to which it may have access as may be reasonably required by the Indemnifying Party. The Indemnifying Party will keep the Indemnified Party reasonably informed of the progress of the defence of the Indemnity Claim. If the Indemnifying Party, contrary to clause (a), fails to assume the defence and investigation of the Indemnity Claim, then:
 - (i) the Indemnified Party shall have the right to undertake the defence, investigation, compromise and settlement of the Indemnity Claim on behalf of, and at the cost and expense of and for the account and risk of the Indemnifying Party;
 - (ii) the Indemnifying Party shall cooperate with the Indemnified Party in such efforts; and
 - (iii) the Indemnified Party will keep the Indemnifying Party reasonably informed of the progress of the defence of the Indemnity Claim.
- (c) The Indemnifying Party shall not, without the written consent of the Indemnified Party:
 - (i) settle or compromise any Indemnity Claim or consent to any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release or releases from all liability in respect of such Indemnity Claim of all Indemnified Parties affected by such Indemnity Claim; or
 - (ii) settle or compromise any Indemnity Claim if the settlement imposes equitable remedies or material obligations on the Indemnified Party other than financial obligations for which such Indemnified Party will be indemnified hereunder.

No Indemnity Claim that is being defended in good faith by the Indemnifying Party shall be settled or compromised by the Indemnified Party without the written consent of the Indemnifying Party.

SECTION 5 DEFAULT AND TERMINATION

S1. City's Step-in Rights

S1.1 The City may exercise all rights set out in this Section S1 in relation to the circumstances set out in Section S1.1(a) at any time during the Construction Period and all of the rights set out in this Section S1 at any time during the OMR Period:

- (a) if the City reasonably believes that it needs to take action in relation to the Design and Construction or OMR Services:
 - (i) because a serious risk exists to public security or to the environment or in the case of an emergency;
 - (ii) in order to discharge a statutory duty or enable performance by any other person of a statutory duty;
 - (iii) if necessary in order to prevent Project Co or any Project Co Parties from excluding or limiting use of the New Infrastructure (other than for purposes expressly contemplated by the OMR Requirements);
 - (iv) because the reputation or integrity of the City, the City's transit system or the New Infrastructure may be or has been compromised;
 - (v) because the City's ability to carry out the City Operations is materially adversely affected (other than for purposes expressly contemplated in the Technical Requirements); or
 - (vi) because a Project Co Default has occurred and Project Co is not diligently pursuing a cure of the Project Co Default, or where the Project Co Default is an Incurable Default, Project Co is not diligently pursuing a course of action designed to mitigate the consequences of the Incurable Default, or because Project Co is not diligently pursuing the Design and Construction and OMR Services; or
- (b) if Project Co accrues, in any one Contract Month, more than:
 - (i) an aggregate of \$ [REDACTED] in Deductions in respect of Availability Failures; or
 - (ii) an aggregate of \$ [REDACTED] in Deductions in respect of Quality Failures and/or Service Failures.
- (c) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the relevant OMR Service; or

- (d) the City has received a notice under the OMR Provider's Direct Agreement that entitles the City to exercise step-in rights thereunder.

S1.2 Upon the occurrence of any of the events set out in Section S1.1, the City may, upon notice to Project Co (which notice shall specify all pertinent details of the intended action) take such action (the "**Remedial Action**") in relation to the Design and Construction and OMR Services as the City reasonably considers necessary under the circumstances to mitigate the risk, conduct the City Operations, ensure that the New Infrastructure is available for use by the City and City Parties, remedy a Project Co Default or otherwise advance the Project.

S1.3 The City shall carry out any Remedial Action as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Project Agreement;

- (a) if the need for the Remedial Action does not arise as a result of any breach by Project Co of its obligations under this Project Agreement or by any act or omission of Project Co or any Project Co Party, then the Remedial Action shall, subject to Section O1, constitute a Relief Event under Section O1.1(g); and
- (b) to the extent that the need for the Remedial Action arises as a result of any breach by Project Co of its obligations under this Project Agreement or by any act or omission of Project Co or any Project Co Party, then Project Co shall indemnify the City against all costs and expenses reasonably incurred by the City in carrying out the Remedial Action.

S2. Termination Events

S2.1 Subject to Section S2.2, the following shall constitute Termination Events,

- (a) if Project Co is declared or adjudged a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any legislation in force for,
 - (i) protection against creditors;
 - (ii) orderly payment of debts; or
 - (iii) winding up or liquidation;
- (b) if a receiver or receiver-manager is appointed for the business of Project Co (other than by one or more Lenders or any trustee or representative on behalf of such Lender or Lenders of any of the Project Financing), unless the appointment is canceled within 21 days;
- (c) if any material part of the property of Project Co is seized or attached and such seizure or attachment is not successfully contested by Project Co within 21 days;
- (d) if Project Co ceases active business operations;

- (e) if Project Co carries on any business unrelated to the subject matter of this Project Agreement and does not cease to carry on such business within two Business Days of receiving notice to do so from the City, provided that, neither any lending between Project Co, its general partners and any of their shareholders or partners or any subsidiaries of their shareholders or partners, nor any other non-arm's length financial transactions, shall be considered to be carrying on a business unrelated to the subject matter of this Project Agreement;
- (f) if, having regard to Project Co's Design and Construction Schedule, during the Construction Period, Project Co abandons the Project;
- (g) if Project Co fails to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**") unless the Longstop Date is otherwise adjusted by this Project Agreement;
- (h) Project Co either:
 - (i) failing to deliver a Project Co Schedule Remediation Plan under Section F9.2;
 - (ii) delivering a Project Co Schedule Remediation Plan which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (iii) delivering a Project Co Schedule Remediation Plan that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section F9.2.
- (i) if during the OMR Period, Project Co abandons the business of carrying out the OMR Services;
- (j) during the OMR Period,
 - (i) Project Co incurring a total of \$ [REDACTED] or more Deductions in any rolling 3 Contract Months during the OMR Period;
 - (ii) Project Co incurring a total of \$ [REDACTED] or more Deductions in any rolling 6 Contract Months during the OMR Period;
 - (iii) Project Co incurring a total of \$ [REDACTED] or more Deductions in any rolling 12 Contract Months during the OMR Period;
- (k) if after Substantial Completion, Project Co or any Project Co Party, other than:
 - (i) for purposes expressly contemplated by Schedule 18 - Technical Requirements; or
 - (ii) for reasons of public security and safety, exercised on a temporary basis;

takes any steps to exclude or limit the City or any City Party from using the New Infrastructure or the Existing Infrastructure or accessing the Lands or the Stage 1 Lands; or

- (l) if Project Co, upon receiving a Notice of Default from the City where the specified Project Co Default has a Material Adverse Effect, fails to:
 - (i) cure the Project Co Default within 21 days; or
 - (ii) where the Project Co Default cannot by reasonable commercial efforts be cured within 21 days, communicate to the City and initiate within that 21 days a commercially reasonable course of action designed to cure the Project Co Default, and thereafter diligently pursue that course of action until the Project Co Default is cured; or
 - (iii) where the Project Co Default is an Incurable Default, within 21 days communicate to the City and initiate a commercially reasonable course of action designed to mitigate the consequences of the Incurable Default to the maximum extent practicable, and thereafter diligently pursue that course of action until the consequences of the Incurable Default have been so mitigated.

S2.2 An event listed in Section S2.1 shall not constitute a Termination Event where such event is caused directly and specifically by a material breach of the Project Agreement by the City, as finally determined in accordance with the Dispute Resolution Procedure.

S3. Lenders' Agreement

S3.1 All rights to terminate this Project Agreement, and all Termination Payments required to be made under Section T, are in every case subject to the provisions of the Lenders' Direct Agreement.

S4. Termination by City

S4.1 The City may terminate this Project Agreement by notice to Project Co:

- (a) upon the occurrence of a Termination Event set out in Sections S2.1(d), S2.1(e), S2.1(f), S2.1(h), S2.1(i), S2.1(j) or S2.1(l), following the expiration of the time periods set out in Section B11.1 of the Lenders' Direct Agreement;
- (b) upon the occurrence of a Termination Event set out in Sections S2.1(a), S2.1(b), S2.1(c), S2.1(g) and S2.1(k), following expiration of the notice period in Section B11.2 of the Lenders' Direct Agreement;
- (c) at any time, in the absolute and unfettered discretion of the City and for any reason whatsoever or for no reason at all, and at the convenience of the City;
- (d) in accordance with Section S6; or
- (e) during the Construction Period, if a Relief Event has occurred and continues for a continuous period in excess of 360 days and has wholly or substantially

prevented either Party from performing a material part of its obligations under this Project Agreement during that period.

- S4.2 No notice of termination under this Section S4 shall be effective unless, in the case of a notice under Section S4.1(a) and S4.1(b), it specifies the Termination Event relied on, or in the case of a notice under Section S4.1(c), it states that the termination is for convenience.

S5. Termination by Project Co

- S5.1 Project Co may terminate this Project Agreement by notice to the City only:
- (a) if the City has failed to pay any amount due to Project Co under this Project Agreement (except to the extent that such amount is disputed in good faith through the Dispute Resolution Procedure) and the City does not remedy such failure within 30 days of Project Co providing the City with notice to do so;
 - (b) during the Construction Period, if a Relief Event has occurred and continues for a continuous period in excess of 360 days and has wholly or substantially prevented either Party from performing a material part of its obligations under this Project Agreement during that period;
 - (c) in accordance with Section S6; or
 - (d) the City is in breach of Section X6.1 and the City does not cure such breach within 30 days of Project Co providing the City with notice to do so.

S6. Termination Upon Force Majeure

- S6.1 As a result of a Force Majeure Event, either Party may by notice to the other terminate this Project Agreement in accordance with Section N4.

S7. Consequences of Termination

- S7.1 Upon any termination of this Project Agreement under Sections S4, S5 or S6:
- (a) the Monthly Payment (except for, in the case of a termination under Section S6, the Capital Payment) for the month during which the termination occurs shall be prorated according to the number of days in that month up to and including the day when termination occurs;
 - (b) the City shall as soon as practicable:
 - (i) pay to Project Co the amount of the Termination Payment set out in Schedule 15 – Termination Payments together with interest thereon (it being acknowledged and agreed that interest on portions of the Termination Payment paid in advance shall only accrue from the date of termination until the date of the advanced payment) at Prime from the date of the termination until the date of payment (which rate of interest shall be, in the case of a City termination in accordance with Section S4.1(c) or termination by Project Co in accordance with Section S5.1(a),

without prejudice to any right of Project Co to claim damages under Section B7.1(b) of Schedule 15 – Termination Payments); or

- (ii) enter into any alternative arrangement in respect of the Termination Payment that is provided for in the Lenders' Direct Agreement;
- (c) upon the City providing confirmation to Project Co that it is obligated to pay the Termination Payment (or in lieu of such payment to enter into any alternative arrangement provided for in the Lenders' Direct Agreement), then Project Co shall, upon request by the City and at no cost to the City, hand over to the City copies of all records of any kind whatsoever that pertain to Project Co's performance of, or may otherwise facilitate the City or its contractors assuming responsibility for performing, the Technical Requirements (if the termination is prior to Substantial Completion) or the OMR Requirements (if the termination is after Substantial Completion); and
- (d) Project Co shall deliver to the City all infrastructure and documentation prescribed in Schedule 18 – Technical Requirements to be delivered upon termination.
- (e) Project Co shall ensure that all subcontracts with Project Co Parties engaged in the Rail Work are assigned to the City.

S8. Survival of Obligations

S8.1 Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:

- (a) all representations, warranties and indemnities under this Project Agreement; and
- (b) Sections A3, A6, B1, E4, E6, E7, F10, F15, J1, K3, K5, K9, K11, K13-K17, L5, L6.2, Q, R3-R4, S1, S3-S9, T1, U2-U7, W, X1, X7, X9, X11, Schedule 7 – Dispute Resolution Procedure, Schedule 15 – Termination Payments, Schedule 19 – Handback Procedure, and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or are required to give effect to such termination or the consequences of such termination,

all of which shall survive the termination or expiry of this Project Agreement.

S9. Exclusivity of Termination Provisions

S9.1 Neither Party shall have any right to terminate this Project Agreement except as expressly set out in Sections S4, S5 or S6; and without limiting the generality of the foregoing neither Party shall in any event be entitled to terminate this Project Agreement on the basis of fundamental breach.

SECTION T TERMINATION PAYMENTS

T1. Termination Payments

T1.1 The City's obligations with respect to Termination Payments are set out in Schedule 15 – Termination Payments.

T2. Full and Final Settlement

T2.1 Except as otherwise provided in Section T2.2, Termination Payments paid pursuant to Schedule 15 - Termination Payments, shall be in full and final settlement of any claims, demands and proceedings of Project Co and the City, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and the City shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.

T2.2 Section T2.1 shall be without prejudice to:

- (a) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section K11 or taken into account pursuant to Schedule 15 - Termination Payment in determining or agreeing upon the Termination Payment, provided that Project Co acknowledges and agrees that if the City pays a Termination Payment for a Termination for Convenience in accordance with Section B7 of Schedule 15 – Termination Payments, all of the City's liability to Project Co in relation to such Termination for Convenience shall have been taken into account in the Termination Payment;
- (b) any liabilities arising under or in respect of any breach by either Party of their obligations under Section S8 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
- (c) any amount owing to the City in relation to:
 - (i) fines, penalties or restitution orders by a court under any Federal or Provincial statute; and
 - (ii) any fraud or other criminal offence committed against the City.

SECTION U ANNOUNCEMENTS, CONFIDENTIALITY AND INTELLECTUAL PROPERTY

U1. Public Announcements and Stakeholder Communications

U1.1 Project Co shall not make, and shall not cause or permit any Project Co Party to make, any public announcement relating to this Project Agreement or the Project except as approved in advance by the City.

- U1.2 Subject to Schedule 24 – Communications Plan, to the extent that Project Co or any Project Co Party undertakes any public communication or community engagement, it shall ensure that it obtains the prior written approval of the City prior to undertaking any such activities or distributing any materials to the public.

U2. Confidential Information

- U2.1 Each Party shall, upon delivering any information to the other that includes information delivered in confidence, identify the information delivered in confidence (the “**Confidential Information**”). Subject to Sections U3 and U4, the receiving Party shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:
- (a) at the time of the disclosure to the receiving Party, was in the public domain;
 - (b) after disclosure to the receiving Party became part of the public domain through no fault of the receiving Party or those for whom it is responsible at law;
 - (c) was in the possession of the receiving Party at the time of disclosure to it, as demonstrated by written records; or
 - (d) was received by the receiving Party from a third party who had a lawful right to disclose the information.

U3. Disclosure of Confidential Information

- U3.1 Neither Party shall disclose Confidential Information delivered by the other except:
- (a) to such of its affiliates, officers, employees, consultants, advisors and contractors (including, in the case of Project Co, its lenders and potential lenders, investors and potential investors, and rating agencies, surety companies and prospective guarantors) who reasonably require access to the Confidential Information for the due performance of this Project Agreement or to further the purposes of this Project Agreement;
 - (b) as required by FIPPA or any other Applicable Law;
 - (c) as required by the Province of Manitoba;
 - (d) as required by PPP Canada (or its successor) in accordance with the City’s obligations to PPP Canada (or its successor); or
 - (e) where the disclosure is consented to by the other Party.

U4. Public Disclosure of Project Agreement and Project Information

- U4.1 Notwithstanding Sections U2 and U3, Project Co acknowledges and agrees that this Project Agreement, including any Schedules and appendices hereto, may be made

available upon request to the City under FIPPA, subject to the applicable provisions of FIPPA.

- U4.2 Project Co agrees that the City will be at liberty to make public disclosure of this Agreement, excepting only any Schedules or portions thereof that Project Co has, prior to signing of this Project Agreement, established to the satisfaction of the City, acting reasonably, would be exempted from disclosure under the provisions of FIPPA with respect to the governing business interests of third parties.
- U4.3 Notwithstanding Section U4.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), Project Co acknowledges and agrees that the City may disclose such information.

U5. Collection, Use and Disclosure of Personal Information

- U5.1 For the purposes of this Section, “**personal information**” has the same definition as that which is found in FIPPA.
- U5.2 Project Co acknowledges that FIPPA applies to information obtained, related, generated, collected or provided for the City under this Project Agreement and agrees to adhere to FIPPA and all City policies and guidelines with respect to the collection, use or disclosure of personal information. Without limiting the generality of the foregoing, Project Co shall comply with all City policies and directions with respect to the retention of personal information, notification and handling of breaches and requests for the correction of personal information, provided that Project Co has access to such policies and directions.
- U5.3 Project Co shall not collect, use or disclose any personal information under this Project Agreement except that which is reasonably required to fulfil its obligations under this Project Agreement, or as otherwise authorized by the City.
- U5.4 Project Co shall protect the personal information it collects under this Project Agreement and shall make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.
- U5.5 Upon request, Project Co shall provide to the City, within seven days, any records that are requested under the access provisions of FIPPA that are in the custody or under the control of Project Co. Should Project Co receive an access request under FIPPA, Project Co shall not respond to it, but shall immediately forward the access request to the City for further handling.
- U5.6 Project Co shall ensure that all Project Co Parties comply with this Section U5.

U6. Naming Rights

- U6.1 Project Co acknowledges that the City has the exclusive right to name the New Infrastructure, the Existing Infrastructure and all related improvements. Project Co shall not name, nor purport to name, the Project, the New Infrastructure, the Existing Infrastructure or any portions thereof. Where the City has named the New Infrastructure

or the Existing Infrastructure, Project Co shall not publicly refer to the New Infrastructure or the Existing Infrastructure except as so named by the City.

U7. Intellectual Property

- U7.1 As between the City and Project Co, the City shall be and remain the sole and exclusive owner of the City Intellectual Property.
- (a) The City hereby grants to Project Co, or will cause the applicable third parties to grant to Project Co, a non-exclusive, royalty-free, fully paid-up license to use, copy, support, maintain and modify, during the Project Term, any of the City Intellectual Property (including a right to grant sub-licenses) solely for the purposes of carrying out the Design and Construction and the OMR Services in accordance with this Project Agreement, provided that Project Co provides the City with reasonable prior notice of any intention to grant a sub-license.
 - (b) Project Co hereby assigns and shall ensure that all Project Co Parties and its and their respective personnel have assigned to the City all right, title and interest including all Intellectual Property in the City Intellectual Property and shall ensure that its and their respective personnel have waived all moral rights in respect of the City Intellectual Property for the benefit of the City and its licensors and their respective successors, assigns and licensees.
- U7.2 As between the City and Project Co, Project Co shall be and remain the sole and exclusive owner of the Project Co Intellectual Property.
- U7.3 Project Co hereby grants to the City, or will cause the Project Co Parties and the applicable third party licensors to grant to the City, a non-exclusive, irrevocable, perpetual, royalty-free, fully paid-up, non-transferable (except in case of a permitted assignment of this Project Agreement) license to use, copy, support, maintain and modify the Project Co Intellectual Property (including the right to grant sub-licenses) that is incorporated or embedded in, or necessary for the use, operation, maintenance or support of, the New Infrastructure or the Assigned Intellectual Property.
- U7.4 Notwithstanding Section U7.1(a), Project Co may, without notice to the City, grant to the Construction Contractor and the OMR Provider, if applicable, sub-licenses of the rights granted in Section U7.1(a) in respect of the City Intellectual Property as are reasonably required for the carrying out of the Design and Construction and the OMR Services in accordance with this Project Agreement.
- U7.5 During the Project Term and following its termination or expiration, Project Co shall not (and shall cause all Project Co Parties to not) develop, produce or create any design, design detail, drawing, specification, prototype, documentation, work, project, deliverable, product or other items materially similar to the Station Look and Feel without the express written consent of the City, which may be withheld by the City in its sole, absolute and unfettered discretion.

SECTION V PROJECT GOVERNANCE

V1. Design and Construction Committee

- V1.1 The Parties shall, within 30 days following Financial Close, establish a committee (the “**Design and Construction Committee**”), which shall operate from Financial Close to Final Completion, consisting of:
- (a) four representatives appointed by the City from time to time, one of whom will be the City Representative; and
 - (b) three representatives appointed by Project Co, one of whom shall be the Project Co Representative and one of whom shall be a representative of the Construction Contractor.
- V1.2 Three representatives of the City (one of whom shall be the City Representative) and the two representatives of Project Co shall constitute a quorum at any meeting of the Design and Construction Committee. A quorum of members may exercise all the powers of the Design and Construction Committee. The members shall not transact business at a meeting of the Design and Construction Committee unless a quorum is present.
- V1.3 The City Representative shall be the chairperson of the Design and Construction Committee.
- V1.4 The Design and Construction Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Design and Construction. The Design and Construction Committee shall interface with the OMR Committee as and when required.
- V1.5 The Design and Construction Committee shall not have authority to make decisions with respect to or approve:
- (a) any amendment to or waiver of any provision of this Project Agreement;
 - (b) any change to a major milestone date set out in Project Co’s Design and Construction Schedule, the Scheduled Substantial Completion Date or the Final Completion Date;
 - (c) any Change Order;
 - (d) any change that may materially adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Final Completion Date; or
 - (e) any matter with respect to which the City have a right of consent or in respect of which the City may exercise discretion pursuant to this Project Agreement.
- V1.6 The City shall be entitled to replace any of its representatives on the Design and Construction Committee by written Notice to Project Co. Project Co may replace any of its representatives on the Design and Construction Committee with the prior written consent of the City, not to be unreasonably withheld.

V1.7 The members of the Design and Construction Committee may adopt such procedures and practices for the conduct of the activities of the Design and Construction Committee, including frequency and place of meetings, as they consider appropriate from time to time.

V1.8 The Independent Certifier shall be entitled, but not required, to attend meetings as a non-voting member of the Design and Construction Committee. Members of the Design and Construction Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Design and Construction Committee.

V2. OMR Committee

V2.1 The Parties shall, no later than 90 days prior to the Scheduled Substantial Completion Date, establish a committee (the “**OMR Committee**”) to serve until the Termination Date consisting of:

- (a) three representatives appointed by the City from time to time, one of whom shall be the City Representative; and
- (b) two representatives of Project Co.

V2.2 One of the representatives of the City shall be the chairperson of the OMR Committee.

V2.3 Three representatives of the City (one of whom shall be the City Representative) and the two representatives of Project Co shall constitute a quorum at any meeting of the OMR Committee. A quorum of members may exercise all the powers of the OMR Committee. The members shall not transact business at a meeting of the OMR Committee unless a quorum is present.

V2.4 The OMR Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the OMR Services, both prior to and during the OMR Period. The OMR Committee shall interface with the Design and Construction Committee as and when required.

V2.5 The OMR Committee shall not have authority to make decisions with respect to or approve:

- (a) any amendment to or waiver of any provision of this Project Agreement;
- (b) any Change Order;
- (c) any change that may materially adversely affect Project Co's ability to perform the OMR Services or the performance by the relevant parties of the City Operations; or
- (d) any matter with respect to which the City has a right of consent or in respect of which the City may exercise discretion pursuant to this Project Agreement.

V2.6 The City shall be entitled to replace any of its representatives on the OMR Committee by written notice to Project Co. Project Co may replace any of its representatives on the

OMR Committee with the prior written consent of the City, not to be unreasonably withheld.

- V2.7 The members of the OMR Committee may adopt such procedures and practices for the conduct of the activities of the OMR Committee, including frequency and place of meetings, as they consider appropriate from time to time.

SECTION W DISPUTE RESOLUTION

W1. Dispute Resolution Procedure

- W1.1 Unless otherwise agreed to in writing between the City and Project Co, all disputes in respect of the application or interpretation of any provision of this Project Agreement shall be determined in accordance with the Dispute Resolution Procedure. Either Party may at any time by notice to the other refer any question in respect of the application or interpretation of any provision of this Project Agreement to the Dispute Resolution Procedure. The right to refer disagreements to the Dispute Resolution Procedure shall not be limited to provisions of this Project Agreement that expressly refer to the Dispute Resolution Procedure, and all such express provisions shall be construed as having been included only for greater certainty.

W2. Exception to Dispute Resolution Procedure

- W2.1 Where under the provisions of this Project Agreement a Party has an unfettered discretion to exercise a right or take an action, the decision of that Party to exercise the right or take the action is not subject to review under the Dispute Resolution Procedure; but where any decision or discretion is expressly required to be made or exercised reasonably (or is otherwise qualified), then the reasonableness (or other qualification) of the decision made or the discretion exercised may be referred to the Dispute Resolution Procedure for determination.

W3. Termination and Dispute Resolution Procedure

- W3.1 A Party may refer to the Dispute Resolution Procedure for advance determination the question of whether it has grounds for terminating this Project Agreement (including, whether the circumstances described in Section S2.1(h) have occurred). However, the submission of that question to the Dispute Resolution Procedure shall not prevent either Party from terminating this Project Agreement in accordance with its provisions prior to determination of that question by the Dispute Resolution Procedure. If either Party has purported to terminate this Project Agreement in accordance with its provisions, the other Party may submit to the Dispute Resolution Procedure the question of whether such termination was made in accordance with this Project Agreement, and request either:
- (a) a ruling that this Project Agreement has not been terminated; or
 - (b) an award of damages for wrongful repudiation of this Project Agreement.

W4. No Court Proceedings

W4.1 Neither Party shall, except as may be otherwise expressly permitted by this Project Agreement or permitted by *The Arbitration Act*, 1997 (Manitoba) or with the prior approval of the other, initiate in any Court any proceedings against the other (including but not limited to any application for an injunction) in respect of the application or interpretation of any provision of this Project Agreement or any Disputes related thereto.

W5. Payments Where Amount in Dispute

W5.1 Where the amount of any payment required to be made under this Project Agreement (including the amount of any Termination Payment) is in dispute, the Party required to make the payment shall pay such portion of the payment as it does not dispute in good faith.

SECTION X GENERAL PROVISIONS

X1. Notices

X1.1 Any notice, consent, approval or other communication under any provision of this Project Agreement must be in writing to be effective, and is effective when delivered by any means, including registered mail, email or by hand, (in each case, with a copy always by electronic transmission), to the following respective addresses:

(a) if to the City: The City of Winnipeg
Winnipeg Transit
Asset Management Office
414A Osborne Street
Winnipeg, MB R3L 2A1

Attn: Jesse Crowder, P.Eng., Project Manager
Email: jcrowder@winnipeg.ca

With a copy to: The City of Winnipeg
Winnipeg Transit
Office of the Director
421 Osborne Street
Winnipeg, MB R3L 2A2

Attn: Dave Wardrop, Director
Email: dwardrop@winnipeg.ca

(b) if to Project Co: Plenary Roads [REDACTED]
400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6

Attn: Brian Clark, Senior Vice President
Email: Brian.Clark@plenarygroup.com

With a copy to: PCL Investments Canada Inc.
2085 Hurontario Street

Mississauga, ON L5A 4G1

Attn: Lee Clayton
Email: LClayton@pcl.com

- X1.2 Any communication delivered in accordance with Section X1.1 shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or, if emailed, at the time and date received by the recipient, provided that such day in either event is a Business Day and the communication is so delivered or e-mailed before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

X2. Authority to Give Notices

- X2.1 The Parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Project Agreement:

- (a) in the case of the City:

Jesse Crowder, P.Eng., Project Manager

- (b) in the case of Project Co:

Terry Ostrom

- X2.2 In the absence of any further designation or limitation communicated with reference to this Section X2, each Party may assume that any notice, approval, consent, waiver or other communication under this Project Agreement given by the above individual has been duly authorized and is binding upon the other Party.

X3. Assignment by Project Co

- X3.1 Project Co may not, without the prior consent of the City, which consent shall not be unreasonably withheld, assign this Project Agreement or any right or benefit under this Project Agreement, except that Project Co may assign to a Lender that is a party to the Lenders' Direct Agreement the right to receive the Monthly Payment, Capital Payments, any Termination Payment or other payment due by the City hereunder. Nothing in this Project Agreement restricts Project Co from granting security interests (including any security interest that is nominally structured as an "assignment" but is in essence a security agreement) in its assets as it sees fit. For greater certainty, the City shall not withhold or delay its consent where Project Co has satisfied the City, acting reasonably, that:

- (a) the proposed transferee is of good reputation and has suitable technical, commercial and financial resources; and
- (b) the proposed transferee is not involved in a business or activity incompatible with or inappropriate in relation to the Design and Construction or the OMR Services or the business relationship between the City and Project Co.

X4. Subcontracting by Project Co

X4.1 Project Co may subcontract its obligation to carry out the Project and its obligation to perform the OMR Requirements only to:

- (a) the respective subcontractors identified in Schedule 6 – Subcontractors and Key Individuals; and
- (b) any additional subcontractors approved in advance by the City.

X4.2 Project Co may,

- (a) replace a subcontractor or permit the Construction Contractor to replace a subcontractor identified in Schedule 6 – Subcontractors and Key Individuals;
- (b) engage additional subcontractors; or
- (c) cause the Construction Contractor to engage other “Rail Contractors” in addition to those listed in Schedule 6 – Subcontractors and Key Individuals,

only with the prior consent of the City, such consent not to be unreasonably withheld (having regard to the reputation of and the technical, commercial and financial resources available to the proposed subcontractor). With respect to additional “Rail Contractors”, if Project Co can demonstrate to the City that CN Rail has approved a proposed subcontractor, the City shall provide its consent on this basis. For greater certainty, in this Section X4, “subcontractors” means parties having a direct contractual relationship with Project Co, and except as set out in Schedule 6 – Subcontractors and Key Individuals, excludes subcontractors of such parties.

X4.3 As a condition to the City’s approval pursuant to Section X4.1(b), in the event that Project Co intends to subcontract, to a third party of Project Co and Plenary ■■■, all or substantially all of the OMR Services, Project Co shall,

- (a) and shall ensure that any OMR Provider enters into an OMR Provider’s Direct Agreement concurrently with the execution of such OMR Contract; and
- (b) provide a draft of such OMR Contract to the City for its review.

X5. Change in Ownership

X5.1 Project Co shall not allow or suffer any material change in its ownership (direct or indirect) unless such change has been consented to in advance by the City, such consent not to be unreasonably withheld or delayed. For greater certainty, the City shall not withhold or delay its consent where Project Co has satisfied the City, acting reasonably, that:

- (a) the proposed owner is of good reputation and has suitable technical, commercial and financial resources;

- (b) the proposed owner is not involved in a business or activity incompatible with or inappropriate in relation to the Design and Construction or the OMR Services or the business relationship between the City and Project Co; and
- (c) the change in ownership does not compromise the integrity or reputation of the City, the Project or the City's transit system.

X5.2 For the purposes of this Section X5:

- (a) the issuance by Project Co of non-voting preferred shares or any similar transaction entered into for tax-planning purposes that does not involve voting shares in Project Co;
- (b) internal reorganizations, which do not have the effect of changing the ultimate ownership of Project Co;
- (c) the initial public offering or the issuance of or trading of publicly traded securities of an entity that directly or indirectly holds an interest in Project Co; or
- (d) the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if the City so requires,

shall not be considered to be a material change in the ownership of Project Co.

X6. Assignment by City

X6.1 The City may assign and transfer all of its rights and obligations under this Project Agreement:

- (a) to the Province of Manitoba or any agency of the Province of Manitoba having the legal capacity, power, authority and ability to become a party to this Project Agreement, provided that any such agency has, at the time of assignment, financial creditworthiness equivalent to or better than that of the City at the time of Commercial Close;
- (b) to a transportation agency, authority or similar entity created by the City that is controlled by the City, provided that any such agency has, at the time of assignment, financial creditworthiness equivalent to or better than that of the City at the time of Commercial Close; or
- (c) as may be required to comply with any statute or regulation promulgated by the Province of Manitoba or the Government of Canada,

at any time without the consent of Project Co.

X6.2 The City may assign and transfer all of its rights and obligations under this Project Agreement in circumstances other than those set out in Section X6.1, to any other entity having the legal capacity, power, authority and ability to become a party to this Project

Agreement, including to any successor municipality of the City, with the prior written consent of Project Co, such consent not to be unreasonably withheld or delayed where the City has demonstrated to Project Co that the proposed assignee has the financial capacity to assume the City's obligations under this Project Agreement.

X7. Applicable Law and Jurisdiction

- X7.1 This Project Agreement shall be governed by the laws in force in Manitoba, including the federal laws of Canada applicable therein. Subject to Section W4, Manitoba courts shall have exclusive jurisdiction over all matters arising in relation to this Project Agreement, and each Party accepts the jurisdiction of Manitoba courts.

X8. Amendment and Waiver

- X8.1 No amendment of this Project Agreement is effective unless made in writing and signed by a duly authorized representative of each of the City and Project Co. No waiver of any provision of this Project Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the Parties with respect to the performance of any obligation under this Project Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

X9. Additional Assurances

- X9.1 The City and Project Co each agree to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Project Agreement according to their spirit and intent; but this Section X9 shall not in any event be construed as obligating the City to amend or enact any by-law or regulation.

X10. Counterparts

- X10.1 This Project Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax transmission shall constitute good delivery.

X11. Joint and Several

- X11.1 Where two or more persons execute this Project Agreement as Project Co, the liability under this Project Agreement of such persons executing this Project Agreement shall be joint and several.
- X11.2 The Parties have therefore signed this Project Agreement, by their respective duly authorized officers, on the respective dates shown below.

X12. Entire Agreement

- X12.1 This Project Agreement is the entire agreement between the City and Project Co regarding the subject matter of this Project Agreement, and supersedes any previous agreements, discussions, negotiations and understandings. There are no agreements,

representations, warranties, terms, conditions or commitments regarding the subject matter of this Project Agreement except as expressed in this Project Agreement.

X13. Currency

X13.1 In this Project Agreement, all references to dollar amounts are in Canadian currency.

X14. Liquidated Damages

X14.1 Where any provision of this Project Agreement specifies or otherwise indicates an amount as liquidated damages, both the City and Project Co agree that such amount represents their genuine mutual pre-estimate of the particular damages arising from the particular event.

X15. No Agency, Joint Venture, Partnership, Lease or Loan

X15.1 This Project Agreement is not intended to and does not:

- (a) constitute either Party as the agent of the other for any purpose, or otherwise create any relationship of agency;
- (b) constitute or create any joint venture;
- (c) constitute or create any partnership;
- (d) constitute the relationship of landlord and tenant; or
- (e) constitute the relationship of lender and borrower,

and neither Party shall allege or assert for any purpose that this Project Agreement constitutes or creates a relationship of agency, joint venture, partnership, landlord and tenant, or lender and borrower.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Project Agreement as of the date first above written.

THE CITY OF WINNIPEG

Per:



Name: Brian Bowman, J.D, B.A. (Adv), CPA
(Hon.), CGA (Hon)

Title: Mayor

Per:



Name: Richard Kachur

Title: City Clerk

We have authority to bind the City.

Approved as to Financial Details:



Michael Ruta, FCA
Chief Financial Officer

Approved:



Douglas D. McNeil, P.Eng.
Chief Administrative Officer

Certified as to Contract Details:



Dave Wardrop, CPA, CMA, P.Eng.
Director of Transit

Certified as to Contract Details:



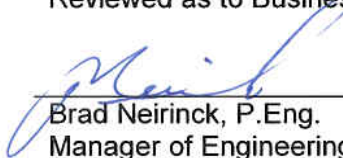
Lester Deane, P.Eng.
Director of Public Works

Reviewed as to Business Terms:



Scott Payne
Project Manager
Manager, Asset Management Office
Winnipeg Transit

Reviewed as to Business Terms:



Brad Neirinck, P.Eng.
Manager of Engineering
Public Works Department

Legally Reviewed and Certified as to Form:



Lisa R. Rowswell, Solicitor
for Director of Legal Services and City Solicitor

PLENARY ROADS

Per:

Name:

Title:

Per:

Name:

Title:

We have authority to bind the corporation.

PCL

Per:

Name: Lee Clayton

Title: Director

I have authority to bind the corporation.

