

SHARE PURCHASE AGREEMENT

AMONG

1346292 ONTARIO INC.

AND

**THE CROWN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTER WITHOUT PORTFOLIO
WITH RESPONSIBILITY FOR PRIVATIZATION**

AND

**SNC-LAVALIN INC.,
GRUPO FERROVIAL, S.A. and CINTRA CONCESIONES de
INFRAESTRUCTURAS de TRANSPORTE, S.A.**

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SHARE PURCHASE AGREEMENT

THIS AGREEMENT is made 12th day of April, 1999,

AMONG:

1346292 ONTARIO INC., a corporation incorporated under the laws of Ontario
(the "Purchaser")

- and -

THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE
MINISTER WITHOUT PORTFOLIO WITH RESPONSIBILITY FOR
PRIVATIZATION

(the "Vendor")

- and -

SNC-LAVALIN INC. ("SNC"), a corporation incorporated under the laws of
Canada, GRUPO FERROVIAL, S.A. ("Ferrovial"), a corporation incorporated
under the laws of Spain and CINTRA CONCESIONES de
INFRAESTRUCTURAS de TRANSPORTE, S.A., ("Cintra"), a corporation
incorporated under the laws of Spain

(individually an "Equity Participant" and collectively the "Equity
Participants")

WHEREAS Ontario Transportation Capital Corporation ("OTCC") was a
corporation without share capital incorporated pursuant to the *Capital Investment Plan Act, 1993*
(Ontario);

AND WHEREAS the Highway 407 Act authorized the Vendor to continue
OTCC under the OBCA as a corporation with share capital;

AND WHEREAS OTCC was continued as 407 ETR Concession Company
Limited (the "Company") under the OBCA by certificate of continuance dated April 6, 1999;

AND WHEREAS the Vendor is the registered and beneficial owner of all of the
issued and outstanding shares of the Company;

AND WHEREAS the Vendor wishes to sell to the Purchaser and the Purchaser wishes to purchase from the Vendor all of the issued and outstanding shares in the capital of the Company pursuant to section 3(5) of the Highway 407 Act;

AND WHEREAS the Equity Participants are, directly or indirectly, the only beneficial owners of shares carrying or representing at least 20% of the voting power and/or equity of the Purchaser;

NOW THEREFORE in consideration of the premises and the mutual covenants and agreements herein contained and of other consideration (the receipt and sufficiency of which are acknowledged by each of the Parties hereto), the Parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, or in any amendments hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings, respectively:

- (a) **"Accounts Receivable"** means all accounts receivable of the Company;
- (b) **"Adjustment Date"** means the tenth Business Day after the calculation of the Closing Working Capital is delivered to each Party;
- (c) **"Agreement"** means this share purchase agreement and the recitals hereto and includes all Schedules set out in Section 1.4 hereto, as the same may be supplemented, amended, restated or replaced from time to time;
- (d) **"Applicable Law"** means any Canadian provincial or federal statute, law, regulation, by-law or Order that applies to the Vendor, the Purchaser or the Company;
- (e) **"Approved Bank"** means a Schedule I Canadian chartered bank having assets in excess of \$150 billion;
- (f) **"Arm's Length"** shall have the meaning ascribed thereto in the Tax Act and the related jurisprudence;
- (g) **"Articles"** means the articles of continuance set forth in the Certificate of Continuance of the Company dated April 6, 1999 issued under the OBCA;
- (h) **"Assets"** means the assets, real and personal, tangible and intangible, and undertaking of the Company at the Time of Closing, described in the Pro-Forma Balance Sheet including (i) the Highway Improvements and (ii) all buildings, fixtures, erections and structures forming part of or located in or on the Highway 407 Lands, the Operations Centre Lands,

and the Patrol Yard Lands but expressly excluding the fee simple interest in and to the Highway 407 Lands, the Operations Centre Lands and the Patrol Yard Lands;

- (i) "Authorization" means any approval, certificate of approval, consent, waiver, exemption, order, licence, filing, registration, permit, or other authorization or requirement of any Canadian Governmental Authority;
- (j) "Bank Rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to the Banks listed in Schedule I to the *Bank Act* (Canada);
- (k) "Bid Process" means the sale process for Highway 407 set forth in the Request for Expressions of Interest - Sale of Highway 407 Express Toll Route dated October 26, 1998 and the CIM;
- (l) "Books and Records" means the books of income and expenses and other financial records relating to the Business including the revenue sub ledger, the accounts payable sub ledger and the general ledger, sales and purchase records, lists of suppliers and customers of the Company and data related to the sales of transponders;
- (m) "Business" means the business of developing, designing, building, operating, managing, maintaining, rehabilitating and tolling Highway 407 Central, which is presently carried on by the Company;
- (n) "Business Day" means a day other than a Saturday, Sunday or any other day on which the principal commercial banks located in the City of Toronto, Ontario are not open for business during normal banking hours;
- (o) "By-laws" means the by-laws of the Company enacted since the Continuance Date;
- (p) "CIM" means the Confidential Information Memorandum for the Sale of Highway 407 Express Toll Route dated December 23, 1998, together with all appendices and addenda thereto;
- (q) "Claim" means any demand, action, cause of action, suit, proceeding, claim, assessment, Order or settlement or compromise relating thereto which may give rise to a right to indemnification under Sections 7.1 and 7.2;
- (r) "Closing" means the completion of the transactions contemplated by this Agreement;
- (s) "Closing Date" or "Date of Closing" means May 5, 1999 or such other date as the Purchaser and the Vendor may agree upon in writing;
- (t) "Closing Document" means any document delivered at or subsequent to the Time of Closing as provided in or pursuant to, this Agreement;

- (u) **"Closing Working Capital"** means an amount equal to the total of Current Assets minus the total of Current Liabilities as at the Time of Closing, calculated pursuant to Section 2.3;
- (v) **"Company"** means 407 ETR Concession Company Limited, (formerly Ontario Transportation Capital Corporation), a corporation continued under the laws of the Province of Ontario;
- (w) **"Competition Act Approval"** means either:
 - (i) the issuance of an advance ruling certificate by the Director under Section 102(1) of the *Competition Act* (Canada) to the effect that he is satisfied that he would not have sufficient grounds upon which to apply to the Competition Tribunal for an order under Section 92 of the *Competition Act* (Canada) with respect to the transactions contemplated by this Agreement, without such certificate having been withdrawn; or
 - (ii) the expiry of the waiting period under Section 123 of the *Competition Act* (Canada) in circumstances in which neither the Purchaser nor the Vendor shall have been advised in writing by the Director that:
 - (A) the Director has determined to make an application for an Order under Section 92 or 100 of the *Competition Act* (Canada) in respect of the transactions contemplated by this Agreement or to commence an inquiry in respect of such transactions under Section 10 of the *Competition Act* (Canada); or
 - (B) an application under Section 9 of the *Competition Act* (Canada) has been made to the Director in respect of the transactions contemplated by this Agreement which, in the reasonable opinion of the Vendor, would have a material adverse effect on the Business.
- (x) **"Concession Agreement"** has the meaning set out in Section 6.1.3;
- (y) **"Confidentiality Agreements"** means the confidentiality agreements executed and delivered to the Vendor by the Purchaser and each Equity Participant as part of the Bid Process;
- (z) **"Consents"** means all material consents or approvals from any Person necessary to permit the completion of the transactions contemplated by this Agreement;
- (aa) **"Continuance Date"** means April 6, 1999, the date upon which the certificate of continuance was issued under the OBCA, continuing OTCC as a corporation under the OBCA;
- (ab) **"Current Assets"** means, at any given time, cash, Accounts Receivable, pre-paid expenses and any other asset of the Company that would be classified as a current asset in

accordance with generally accepted accounting principles, consistently applied, provided that a pre-paid expense of the Company shall only be a current asset to the extent the Company would receive the benefit of such pre-paid expense after the Closing;

- (ac) "Current Liabilities" means, at any given time, liabilities and accruals of the Company which would be classified as current liabilities in accordance with generally accepted accounting principles consistently applied, including amounts due and payable to trade creditors, and pursuant to the contracts listed in Schedule 4.1(ad) and the lease listed in Schedule 4.1(w), but does not include any contingent liability of the Company;
- (ad) "DDB Agreement" means the Development and Design Build Agreement made as of the 11th day of May 1994 among the OTCC, Canadian Highways International Corporation, Monenco Agra Inc., Dufferin Construction Company, a division of St. Lawrence Cement Inc., The Foundation Company Inc. and Armbro Holdings Inc., as the same may be supplemented, amended, restated or replaced from time to time;
- (ae) "Deposit" means the sum of \$250,000,000 paid by the Purchaser to the Vendor on the Execution Date;
- (af) "Direct Claim" means any Claim by an Indemnified Party against an Indemnifier which does not result from a Third Party Claim;
- (ag) "Director" means the Director of Investigation and Research appointed under the *Competition Act* (Canada);
- (ah) "Encumbrance" shall include any mortgage, deed of trust, lien, hypothec, pledge, charge, security interest, restriction, claim, encumbrance, deemed trust, right to use or acquire, ownership interest, action or demand of any nature whatsoever affecting the Assets or the Purchased Shares;
- (ai) "Environmental Laws" means all Applicable Laws relating in whole or in part to the protection of the environment and public health and safety, and includes those Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Substances;
- (aj) "ETA" means Part IX of the *Excise Tax Act* (Canada);
- (ak) "Execution Date" means the date on which the last Party has executed this Agreement;
- (al) "Equity Participants" means those Persons, other than the Vendor and the Purchaser, listed as parties to this Agreement and who have signed this Agreement;
- (am) "Ex-Juris Party" shall have the meaning ascribed thereto in Section 9.7;
- (an) "Governmental Authority" means any Canadian government whether federal, provincial, or municipal and any foreign government, whether national, federal, state,

provincial or municipal, any court and any governmental agency, governmental authority, governmental tribunal or governmental commission of any kind whatever;

- (ao) "GST" means all goods and services taxes levied, assessed, rated or charged by the Government of Canada pursuant to the ETA upon the Company;
- (ap) "Hazardous Substance" means any pollutant, contaminant, waste, hazardous substance, hazardous material, toxic substance, dangerous substance or dangerous good as defined or identified in any Environmental Law;
- (aq) "Highway 407 Act" means the *Highway 407 Act, 1998 S. O. 1998, c. 28*, passed by the Legislature of the Province of Ontario on December 10, 1998 and which received Royal Assent on December 18, 1998;
- (ar) "Highway 407 Central" means that portion of Highway 407 from Highway 48 to the junction with Highway 403 in the vicinity of the boundary between Mississauga and Oakville, as more particularly described in Schedule 1.1(ar);
- (as) "Highway 407 East Partial" "Highway 407 East Completion" and Highway 407 West" have the respective meanings assigned to those terms by the CIM;
- (at) "Highway 407 Lands" means the "Highway 407 lands" referred to in the Highway 407 Act and as defined by O. Regulation 217/99 and as may be further defined by regulation under the Highway 407 Act;
- (au) "Highway Improvements" means all improvements, paving, landscaping, signage (including all toll road entry and exit signage), chattels, materials, supplies, appurtenances and fixtures forming part of or located in, on, under or upon the Highway 407 Lands and including all buildings, erections and structures, whether temporary or permanent, erected or located in, on or under the Highway 407 Lands, including any weigh scale sites and tangible property comprising part of the tolling system and related equipment forming a part thereof, as at the Time of Closing;
- (av) "Indemnifier" means any Party obligated to provide indemnification under this Agreement;
- (aw) "Indemnified Party" means any Party entitled to indemnification under this Agreement;
- (ax) "Indemnity Payment" means any amount of Loss required to be paid pursuant to Sections 7.1 and 7.2;
- (ay) "Intellectual Property" means:
 - (i) the rights of the Company under the Trade Mark Licence Agreement;
 - (ii) all copyright of the Company, whether registered or not;
 - (iii) all trade secrets and confidential information of the Company;

- (iv) all computer software owned by or licensed to the Company;
 - (v) all information of a scientific, technical or business nature whether in oral, written, graphic, machine readable, electronic or physical form owned by or licensed to the Company; and
 - (vi) all patterns, plans, designs, research data, research plans, trade secrets and the proprietary know-how, processes, formulas, drawings, technology, computer software and related manuals, unpatented blue prints, flow sheets, equipment and parts lists, instructions, manuals, records and procedures owned by or licensed to the Company;
- (az) "Loss" means any and all loss, liability, damage, cost, penalty, charge or expense actually suffered or incurred by a Party resulting from the subject matter of any Claim, including the costs and expenses of any action, suit, proceeding, arbitration, demand, assessment, reassessment, Order, settlement or compromise relating thereto, but
- (i) excluding special, indirect and consequential damages and excluding any contingent liability until it becomes actual;
 - (ii) reduced by any net Tax benefit to the Indemnified Party; and
 - (iii) reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person;
- (ba) "OBCA" means the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended and the regulations thereunder and unless otherwise specified means such Act and such regulations as hereafter amended or restated and any successor legislation of comparable effect;
- (bb) "Operations Centre" means the building located at 6300 Steeles Avenue West in the Town of Vaughan, Ontario used primarily for activities relating to (i) the control, management or monitoring of Highway 407 Central; and (ii) the electronic tolling system on Highway 407 Central;
- (bc) "Operations Centre Licence" means the licence of the Operations Centre Lands dated as of April 7, 1997, granted by the Company to Canadian Highways Management Corporation;
- (bd) "Operations Centre Lands" means that part of Lot 1 Concession 9 in the Town of Vaughan, Region of York, designated as parts 1, 2 and 3 of Reference Plan 65R-16967 and any other lands upon which an Operations Centre is constructed;
- (be) "Order" means any order, judgment, injunction, decree, award or writ of any court, tribunal arbitrator, Governmental Authority, or other Person having jurisdiction;

- (bf) "OTCC" means Ontario Transportation Capital Corporation, the predecessor to the Company, which was incorporated pursuant to the *Capital Investment Plan Act, 1993 S. O. 1993 c.23*;
- (bg) "Party" means a party to this Agreement and "Parties" means all of them;
- (bh) "Patrol Yard Lands" means that part of Lot 1, Concession 9 in the Town of Vaughan, Region of York on which a patrol yard is situated and that part of Lot 10, Concession 9 in the Town of Milton, Regional Municipality of Halton on which a patrol yard is situated, and any other lands on which a patrol yard is situated;
- (bi) "Patrol Yard Licence" means the licence of the Patrol Yard Lands dated as April 7, 1997 granted by the Company to Canadian Highways Management Corporation;
- (bj) "Permitted Encumbrances" means:
- (i) inchoate or statutory liens for Taxes or utility rates or charges not at the time overdue;
 - (ii) inchoate or statutory liens for overdue Taxes or utility rates or charges the validity or amount of which the Company is contesting in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens;
 - (iii) statutory liens incurred or deposits made in the ordinary course of the Business in connection with worker's compensation, employment insurance and similar legislation;
 - (iv) security given by the Company to a public utility or any Governmental Authority when required in the ordinary course of operating the Business;
 - (v) construction or repair or storage liens arising in the ordinary course of the Business for sums which are not overdue or the validity or amount of which the Company is contesting in good faith but only for so long as such contestation effectively postpones enforcement of any such liens;
 - (vi) easements and any registered restrictions or covenants that run with the Highway 407 Lands, the Operations Centre Lands or the Patrol Yard Lands provided they have been complied with and do not in the aggregate materially and adversely affect the ability of the Company to use the affected land in accordance with the provisions of the Concession Agreement;
 - (vii) easements, rights of way for, or reservations or rights of others relating to, sewers, water lines, gas lines, pipelines, electric lines, cable television, telegraph and telephone lines, telecommunications services and other similar products or services, provided that they do not in the aggregate materially and adversely affect the ability of the Company to use the affected land in accordance with the provisions of the Concession Agreement;

- (viii) zoning by-laws, ordinances or the restrictions as to the use of real property, and agreements with other Persons registered against title to the Highway 407 Lands, the Operations Centre Lands or the Patrol Yard Lands, provided that they do not materially and adversely affect the ability of the Company to use the affected land in accordance with the provisions of the Concession Agreement;
- (ix) any discrepancies or encroachments that up-to-date surveys of the Highway 407 Lands might reveal so long as they do not have a material adverse effect on the ability of the Company to use the affected land in accordance with the provisions of the Concession Agreement; and
- (x) the Operations Centre Licence and the Patrol Yard Licence;
- (bk) "Person" includes an individual, corporation, partnership, joint venture, association, trustee, trust, unincorporated association, organization, syndicate, executor, administrator, the Crown, any Governmental Authority, or other legal or personal representative and pronouns have a similarly extended meaning;
- (bl) "Pro-Forma Balance Sheet" means the pro forma balance sheet of the Company as at December 31, 1998 set out in Schedule 1.1(b1);
- (bm) "Pro Forma Working Capital" means the total of Current Assets as shown on the Pro Forma Balance Sheet minus the total of Current Liabilities shown on the Pro Forma Balance Sheet;
- (bn) "Purchased Employees" means the employees listed in Schedule 4.1(af);
- (bo) "Purchased Shares" means all of the issued and outstanding shares in the capital of the Company;
- (bp) "Purchase Price" shall have the meaning ascribed thereto in Section 2.2;
- (bq) "Purchaser" means 1346292 Ontario Inc.;
- (br) "Qualifying Loss" means any Loss in excess of \$10,000 arising as a result of any particular misrepresentation or breach of warranty by any Party;
- (bs) "Representative" means each director, officer, minister, employee, agent, solicitor, accountant, professional advisor and other representative of an Indemnified Party;
- (bt) "Restriction on Transfer Agreement" means the agreement in the form of Schedule 1.1(bt) between the Vendor, the Company, the Purchaser and the Equity Participants;
- (bu) "Systems" has the meaning ascribed thereto in Section 7.1.2;
- (bv) "Tax" means all governmental taxes, levies, duties, assessments, reassessments and other charges of any nature whatsoever, whether direct or indirect, including income tax, profits tax, gross receipts tax, corporation tax, commodity tax, sales and use tax, wage tax,

payroll tax, worker's compensation levy, employer health tax, capital tax, stamp duty, real and personal property tax, land transfer tax, customs or excise duty, excise tax, GST, turnover or value added tax on goods sold or services rendered, withholding tax, Canada pension plan, social security and employment insurance charges or retirement contributions, and any interest, fines, additions to tax and penalties thereon;

- (bw) "Tax Act" means the *Income Tax Act* (Canada) R.S.C. 1985, Fifth Supplement and the regulations thereunder, as amended;
- (bx) "Team Member" has the meaning set forth in the CIM;
- (by) "Third Party Claim" means any Claim asserted against an Indemnified Party by any Person who is not a Party or an affiliate of such a Party and includes any Claims in respect of the contingent liabilities set out in Schedule 4.1(ae);
- (bz) "Time of Closing" means 11:00 a.m. on the Closing Date or such other time on that date as the Parties agree in writing that the Closing shall take place;
- (ca) "Toll System" means the tolling system and related equipment for Highway 407 Central located in, on, under and upon the Highway 407 Lands and the Operation Centre Lands on the Closing Date;
- (cb) "Trade Mark Licence Agreement" means the trademark licence agreement dated April 6, 1999, between the Company and The Crown in Right of Ontario as represented by the Minister of Transportation respecting, *inter alia*, the trade mark "ETR" and the "ETR" logo;
- (cc) "TSSA" means collectively, the toll system supply agreement made as of August 31, 1995, as amended, among OTCC, Canadian Highways International Corporation, Hughes Aircraft of Canada Limited, Hughes Aircraft Company, Bell Canada and Bell Sygma and the Mark IV electronic toll equipment supply agreement made as of August 31, 1995, as amended, among OTCC, Mark IV Industries Ltd., Hughes Aircraft of Canada Ltd. and Canadian Highways International Corporation; and
- (cd) "Y2K Ready" has the meaning ascribed thereto in Section 7.1.2.

1.2 Construction

In this Agreement:

- (a) words in the singular include the plural and vice versa, and words in one gender include all genders;
- (b) the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation", respectively and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list;

- (c) the words "hereto", "herein", "hereof", "hereby" and "hereunder" and similar expressions refer to this Agreement and not to any particular section or portion of it;
- (d) references to "ordinary course" when used in relation to the conduct of the Business means any transaction which constitutes an ordinary day-to-day business activity of the Company conducted in a commercially reasonable and businesslike manner consistent with the Company's past practices;
- (e) references to an Article, Section, Subsection or Schedule refer to the applicable articles, section, subsection or schedule of this Agreement;
- (f) unless specified otherwise, any reference in this Agreement to a statute refers to that statute as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto, and a reference to a statute shall be deemed to include any regulations made thereunder;
- (g) the division of this Agreement into Articles, sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and they shall not to be considered a part of this Agreement;
- (h) all dollar amounts are expressed in Canadian funds;
- (i) any tender of documents under this Agreement may be made by and upon the Parties or their respective counsel;
- (j) any tender of money under this Agreement shall be made upon the Parties or their respective counsel and shall be tendered by bank draft drawn upon an Approved Bank or by wire transfer of immediately available funds payable at par in Canadian funds in Toronto, Ontario;
- (k) if any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day;
- (l) a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Toronto time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall terminate at 5:00 p.m. (Toronto time) on the next Business Day; and
- (m) a reference in this Agreement to any agreement or document (including, for avoidance of doubt, this Agreement) refers (subject to all relevant approvals) to that agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

1.3 Accounting Principles

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be the Canadian generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants (or any successor institute) applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, unless otherwise expressly provided. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with generally accepted accounting principles.

1.4 Schedules

The following are the Schedules annexed hereto, incorporated by reference herein and deemed to be part of this Agreement:

Schedule 1.1(ar)	Description of Highway 407 Central
Schedule 1.1(bl)	Pro-Forma Balance Sheet
Schedule 1.1(bt)	Restriction on Transfer Agreement
Schedule 4.1(i)	Consents
Schedule 4.1(o)(i)	Historical Traffic Data
Schedule 4.1(o)(ii)	Historical Revenue Data
Schedule 4.1(w)	Lease of Real Property
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Schedule 6.1.3	Form of Concession Agreement
Schedule 6.1.4	Legal Opinion of Counsel to Vendor
Schedule 6.3.4	Legal Opinion of Counsel to Purchaser and Equity Participants
Schedule 8.5	Rules of Procedure for Arbitration

ARTICLE 2 PURCHASE AND SALE OF PURCHASED SHARES

2.1 Purchase and Sale of Purchased Shares

Subject to the terms and conditions of this Agreement, but effective at the Time of Closing, the Vendor shall sell the Purchased Shares to the Purchaser, and the Purchaser shall purchase the Purchased Shares from the Vendor.

2.2 Consideration

Subject to any adjustments to be made pursuant to Section 2.4, the consideration to be paid by the Purchaser for the Purchased Shares shall be Three Billion One Hundred and

Seven Million Dollars (\$3,107,000,000) (the "Purchase Price"). Subject to Section 2.4, the Purchaser shall pay the Purchase Price to the Vendor at the Time of Closing in full satisfaction of the Purchase Price. All interest earned on the Deposit pursuant to Section 2.5 shall be applied by the Vendor for the benefit of the Purchaser, against the amount of the Purchase Price if the Closing occurs.

2.3 Post Closing Audit

- (a) Forthwith following the Closing, the Vendor, at the Vendor's expense, shall cause its accounting advisors, KPMG LLP, to calculate the Closing Working Capital in accordance with generally accepted accounting principles, applied in a consistent manner and taking into account the assumptions and methods used in the preparation of the Pro Forma Balance Sheet. The value of the Accounts Receivable at the Time of Closing shall be the face amount thereof, less a reasonable allowance for uncollectability determined in accordance with generally accepted accounting principles, consistently applied.
- (b) The Vendor shall ensure that its accounting advisors reasonably cooperate with the Purchaser's auditor in making such calculation and that copies of all working papers of the Vendor's accounting advisors are promptly given to the Purchaser's auditor for review and that representatives of the Purchaser or the Purchaser's auditors are permitted to be present at and to participate in any inventory counts and any other procedures used in calculating the Closing Working Capital, provided such representatives or auditors of the Purchaser make themselves reasonably available. A copy of the calculation of Closing Working Capital resulting from such audit shall be delivered to each Party within sixty (60) days of the Closing Date. A draft of such calculation of Closing Working Capital shall be delivered to the Purchaser and its auditor at least fifteen (15) days prior to the end of such sixty (60) day period and the Vendor shall, and shall cause its accounting advisors to, if so requested by the Purchaser, meet with the Purchaser and the Purchaser's auditor at reasonable time or times forthwith thereafter to review such calculation of Closing Working Capital as soon as reasonably possible within such period.

2.4 Purchase Price Adjustment

On the Adjustment Date, the Purchase Price shall be adjusted by adding to the Purchase Price the excess, if any, of the Closing Working Capital over the Pro Forma Working Capital or by deducting from the Purchase Price the excess, if any, of the Pro Forma Working Capital over the Closing Working Capital, all on a dollar for dollar basis. Any amount to be paid by one Party to the other as an increase to or a reduction of the Purchase Price shall be paid on the Adjustment Date together with interest at the Bank Rate from the Closing Date to the date of payment.

2.5 Deposit

The Vendor acknowledges receipt from the Purchaser of the Deposit to be held by the Vendor in accordance with the terms of this Agreement. The Vendor shall place the Deposit in an interest-bearing trust account pending Closing. If the Closing does not occur on the Closing Date because

- (i) any condition set forth Section 6.3 or Section 6.4 is not satisfied; and
- (ii) the Vendor terminates this Agreement pursuant to Section 6.6; and
- (iii) the Purchaser is not released from its obligations hereunder pursuant to Section 6.6(b),

then the Vendor shall be entitled to retain the Deposit and all interest earned thereon, without prejudice to any other rights or remedies which the Vendor may have against the Purchaser under this Agreement. Otherwise, the Purchaser shall be entitled to the return of the Deposit and all interest earned thereon.

2.6 Disputes

If either the Vendor or the Purchaser disputes any item in the calculation of Closing Working Capital which could result in an adjustment to the Purchase Price, it shall give notice to the other of such dispute on or before the Adjustment Date. In such event, the matter in dispute shall be referred to the dispute resolution procedure set forth in Article 8 and payment of the respective balance due, if any, will be made forthwith after completion of such procedure. Interest shall accrue on any net amount to be paid pursuant to Section 2.4 from the Closing Date until the date of payment at the Bank Rate.

ARTICLE 3 CLOSING ARRANGEMENTS

3.1 Place of Closing

The closing shall take place at the Time of Closing at the offices of Goodman Phillips & Vineberg, 250 Yonge Street, Suite 2400, Toronto, Ontario M5B 2M6, or at such other place as may be agreed upon in writing by the Purchaser and the Vendor.

3.2 Delivery of Certificates

At the Time of Closing, the Vendor shall transfer and deliver to the Purchaser share certificates representing the Purchased Shares duly endorsed in blank for transfer or accompanied by irrevocable security transfer powers of attorney duly executed in blank and shall take such steps as shall be necessary to cause the Company to approve the transfer of the Purchased Shares from the Vendor to the Purchaser, to enter the Purchaser upon the books of the Company as the holder of all of the Purchased Shares and to issue one share certificate to the Purchaser representing the Purchased Shares.

3.3 Closing Payment

Subject to Sections 2.4 and 2.5, at the Time of Closing the Purchaser shall pay to the Vendor the Purchase Price in full satisfaction of the Purchase Price, all in accordance with instructions provided by the Vendor and in accordance with Section 1.2(j).

3.4 Delivery of Documents

At the Time of Closing, the Vendor shall deliver to the Purchaser, and the Purchaser and the Equity Participants shall deliver to the Vendor, all agreements, documents, certificates and opinions contemplated by this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Vendor

The Vendor represents and warrants to the Purchaser as set out in the following subsections of this Section (and acknowledges that the Purchaser is relying on such representations and warranties in completing the transactions contemplated hereby).

- (a) **Company's Corporate Matters** - The Company is a corporation duly continued under the OBCA and validly subsisting under the laws of the Province of Ontario and has all necessary corporate power and capacity to own, lease or dispose of its property and assets and to carry on the Business as now conducted by it.
- (b) **Vendor's Matters** - The Vendor has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations hereunder.
- (c) **Private Company** - The Company is a private company (as that term is defined in the *Securities Act* (Ontario)). Neither the nature of the Business nor the location or character of the assets owned or leased by the Company requires the Company to be registered, licensed or otherwise qualified in any jurisdiction other than Ontario.
- (d) **Authorization of Agreement** - This Agreement has been duly authorized, executed and delivered by the Vendor, and constitutes a legal, valid and binding obligation of the Vendor, enforceable against it in accordance with its terms (subject, however, to limitations with respect to the enforcement of remedies, to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally and to the availability of equitable remedies such as specific performance and injunction and to limitations of general application respecting the enforcement of claims against The Crown in Right of Ontario).

- (e) **Constatng Documents** - A true copy of the Articles and the By-laws have been delivered or made available to the Purchaser by the Vendor on or before the Execution Date. The Articles and the By-laws constitute all of the constating documents and by-laws of the Company enacted since the Continuance Date.
- (f) **Corporate Records** - The original or true copies of all corporate records of the Company from the Continuance Date have been delivered or made available to the Purchaser's solicitors for review prior to the Execution Date. Such corporate records contain complete and accurate:
 - (i) minutes of all meetings of the directors, any committee thereof and the shareholder of the Company held from the Continuance Date to the Execution Date under the OBCA;
 - (ii) originals of all resolutions of the directors, any committee thereof and the shareholder of the Company held from the Continuance Date to the Execution Date under the OBCA; and
 - (iii) all waivers, notices and other documents required by law to be contained therein, and reflect all actions taken and resolutions passed by the directors and the shareholder of the Company since held from the Continuance Date to the Execution Date under the OBCA;

All resolutions contained in such records have been duly passed and all such meetings have been duly called and held. The share certificate books, register of shareholders and register of transfer of the Company are complete and accurate in all material respects.

- (g) **Books and Records** - True copies of the Books and Records have been delivered or made available to the Purchaser's Representatives for review. All material financial transactions relating to the Business have been recorded in such Books and Records.
- (h) **Validity of Transactions** - The execution and delivery of this Agreement by the Vendor, the consummation of the transactions contemplated hereby and the fulfilment by the Vendor of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Company under
 - (i) Applicable Law;
 - (ii) any Order of any Governmental Authority, court, tribunal, instrumentality or arbitrator, which is presently applicable to the Company; or
 - (iii) the Articles or the By-laws; or

- (iv) any material agreement, instrument or document to which the Company is a party or by which it is bound.
- (i) **Consents** - Except as set out in Schedule 4.1(i), no Consent is required to be obtained by the Vendor prior to the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.
- (j) **Authorized and Issued Capital** - The authorized share capital of the Company consists of an unlimited number of one class of shares without par value designated as common shares under the Articles, of which 1,000,001 common shares are issued and outstanding. The issued and outstanding shares in the capital of the Company have been duly and validly issued, and are issued and outstanding as fully paid and non-assessable shares. There are no outstanding securities convertible into or exchangeable or exercisable for any shares of the capital stock of the Company. There are no outstanding rights to subscribe for or to purchase, or any options for the purchase of, or any agreements providing for the issuance of, any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of the Company's capital stock. The Purchased Shares constitute all of the issued and outstanding shares in the capital of the Company.
- (k) **Ownership of Shares** - The Vendor is the sole legal and beneficial owner of and has good title to the Purchased Shares, free and clear of all Encumbrances (other than the rights of the Purchaser hereunder). There is no agreement, contract, option, commitment, right of privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Vendor to sell, transfer, assign, pledge, subject to lien, charge, grant a security interest in, mortgage or in any other way dispose of or encumber any of the Purchased Shares, other than pursuant to this Agreement.
- (l) **No Subsidiaries** - The Company has no subsidiaries and does not own or have any interest in any shares of any other corporation.
- (m) **Compliance with Law** - The Company has conducted and is conducting the Business in compliance, in all material respects, with all material Applicable Laws and the Company is not in breach of any material Applicable Law which would have a material adverse effect on the Business.
- (n) **Pro Forma Balance Sheet** - The Pro Forma Balance Sheet, when read in conjunction with the balance sheet of the Company at March 31, 1998 and the balance sheet of the Company at December 31, 1998, presents fairly, in all material respects, the assets and the liabilities of the Company as at the date thereof after giving effect to the proposed transactions described in note 2 to the Pro Forma Balance Sheet, in accordance with generally accepted accounting principles, it being understood that certain contingent liabilities are disclosed in notes to the Pro Forma Balance Sheet as opposed to being recorded as liabilities.

(o) **Historical Traffic and Revenue Data -**

- (i) the traffic reports attached hereto as Schedule 4.1(o)(i) present fairly, in all material respects, the traffic volumes of Highway 407 Central for the period from October, 1997 to February 28, 1999; and
- (ii) the revenue reports attached hereto as Schedule 4.1(o)(ii) present fairly, in all material respects, the revenues associated with Highway 407 Central for the period from October, 1997 to February 28, 1999.

(p) **Absence of Undisclosed Liabilities -** As at the Time of Closing, except for liabilities owed to trade creditors payable in the ordinary course of business and liabilities set out in the Pro-Forma Balance Sheet, liabilities for Taxes incurred in the ordinary course of business and those liabilities described in the Schedules hereto or in the agreements, and other documents referred to in such Schedules, the Company does not have any material liabilities.

(q) **Absence of Changes -** Between the date of the Pro Forma Balance Sheet and the Execution Date, there has not been:

- (i) any material adverse change in the financial condition, assets, liabilities, operations, or earnings of the Company other than changes in the ordinary course of business; or
- (ii) any damage, destruction or loss, which has had a material adverse affect on the Business or the Assets, other than those which occurred in the ordinary course of business.

(r) **Absence of Guarantees -** The Company has not given or agreed to give, nor is a party to or bound by, any guarantee of indebtedness, indemnity, bond or suretyship or other obligation of any Person.

(s) **Title to Assets -** The Company has, or at Time of Closing shall have, good title to all of its Assets, free and clear from all Encumbrances other than Permitted Encumbrances. There is no agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Company to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or encumber any of the Assets.

(t) **Highway Improvements -** Highway 407 Central was designed and constructed by Canadian Highways International Corporation pursuant to the DDB Agreement with quality control and quality assurance audit provided by Delcan Corporation, an independent agent appointed pursuant to the DDB Agreement by the Company. All material reports and certificates of Delcan Corporation to the Company with respect to Highway 407 Central have been made available to the Purchaser or its

Representatives for review. The Vendor has no reason to believe that the information contained in such reports or certificates is incorrect in any material respect.

- (u) **Toll System** - The Toll System was supplied pursuant to the TSSA. The Company has received daily reports from Advanced Toll Management Corp. as to the operation of the Toll System. Copies of all reports issued since January 1, 1998 have been provided to or made available to the Purchaser for review. The Vendor has no reason to believe that such reports contain information that is incorrect in any material respect.
- (v) **Real Property** -
 - (i) The Lieutenant Governor in Council has defined the Highway 407 Lands pursuant to Ontario Regulation 217/99 passed pursuant to Section 1(2) of the 407 Act.
 - (ii) The Vendor has the right and authority to lease the Highway 407 Lands, the Operations Centre Lands and the Patrol Yard Lands pursuant to the Concession Agreement.
 - (iii) Other than the Concession Agreement, the Operations Centre Licence and the Patrol Yard Licence, and the lease referred to in Schedule 4.1(w), the Company is not and will not at the Time of Closing be a party to or bound by any lease, license or other arrangement relating to real property which is material to the operation of the Business. The Company has not entered into any other arrangement relating to real property.
- (w) **Lease** - All interests held by the Company under the lease referred to in Schedule 4.1(w) are free and clear from all Encumbrances other than Permitted Encumbrances.
 - (i) The lease referred to in Schedule 4.1(w) is in good standing and in full force and effect in all material respects without amendment (except as set out therein), and the Company is entitled to all benefits, rights and privileges thereunder.
 - (ii) All material amounts of rent and other amounts payable under the lease referred to in Schedule 4.1(w) have been paid when due and adequate provision has been made by the Company for all amounts of rent and other payments payable under the lease referred to in Schedule 4.1(w) accrued to the date hereof.
 - (iii) The Company is not in breach of its material obligations under the lease referred to in Schedule 4.1(w), and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, in each case except as set out in Schedule 4.1(w).

- (x) **Authorizations.** The Company has all Authorizations necessary to conduct the Business in material compliance with all material Applicable Laws and the Vendor is not aware of any reason why such Authorizations could be terminated or materially adversely amended as a result of the conduct of the Business as it has been and is now conducted or by reason of the sale of the Purchased Shares to the Purchaser.
- (y) **Environmental Matters.** The Company has conducted and is conducting the Business in material compliance with all material Environmental Laws. To the knowledge of the Vendor, on the date hereof, there is no material amount of any Hazardous Substances in, on or under the Highway 407 Lands which form part of Highway 407 Central, Highway 407 West and Highway 407 East Partial, the Operations Centre Lands or the Patrol Yard Lands, except for Hazardous Substances (i) arising in the normal course of the construction, maintenance and operation of a controlled access highway in Ontario and (ii) Hazardous Substances discovered during the construction of Highway 407 Central near the Woodbine interchange which were permitted pursuant to applicable Environmental Laws, to be disposed of on Highway 407 Central.
- (z) **No Expropriation.** The Company has not received any notice of expropriation of all or any of the Assets and there are no expropriation proceedings pending or threatened against or adversely affecting the Assets nor is the Vendor aware of any discussions or negotiations which could lead to any such expropriation.
- (aa) **Leases of Personal Property -** There are no leases of personal property that are material to the operation of the Business; except for leases of transponders arising in the ordinary course of business.
- (ab) **Insurance -** The Company has insured the Business and the Assets of the Company as set forth in Schedule 4.1(ab). Such insurance coverage shall be continued in full force and effect (with all premiums paid) up to and including the Closing Date. The Company is not in default, whether as to the payment of premiums or otherwise, under the provisions contained in any insurance policy identified in Schedule 4.1(ab) and has not failed to give any notice or present any claim under any such insurance policy in due and timely fashion. Nothing has been done or omitted to be done by the Company which could make any policy of insurance void or voidable.
- (ac) **Intellectual Property -**
 - (i) All registrations and filings necessary to preserve the rights of the Company in and to the Intellectual Property have been made.
 - (ii) There has been no material infringement, passing-off, interference with or violation of the Company's rights in and to the Intellectual Property, nor any claim of adverse ownership, invalidity or other opposition to or conflict with any of the Intellectual Property.

- (ad) **Material Contracts** - Except for the lease, licenses of occupation and agreements referred to in Schedule 4.1(ad) and Schedule 4.1(w), the Company is not a party to or bound by any contract, agreement, lease or commitment, whether oral or written which is material to the operation of the Business. Each such agreement referred to in Schedule 4.1(ad) is in full force and effect in all material respects without amendment except as described in such Schedules. True copies of such agreements have been made available for review by the Purchaser or its Representatives. Except as stated in Schedule 4.1(ad) or Schedule 4.1(w),
- (i) the Company is not in material breach of its obligations under any such agreement or lease, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof; and
 - (ii) to the knowledge of the Vendor no other party to any such agreement or lease is in material breach of its obligations under any such agreement or lease, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would constitute a material breach thereof.
- (ae) **Litigation** - Except as set out in Schedule 4.1(ae), there is no material claim, suit, action, cause of action, dispute, civil or criminal litigation, arbitration, legal, administrative or other proceeding, Order or governmental investigation, including appeals and applications for review, in progress, or to the knowledge of the Vendor, pending or threatened, against the Company or relating to the Business, the Purchased Shares or the Assets.
- (af) **Employees** - The only employees of the Company at the Time of Closing will be those employees listed on Schedule 4.1(af) (the "Purchased Employees"). The terms of employment of the Purchased Employees are set forth on Schedule 4.1(af). Except as set forth in such schedule, the Company will at the Time of Closing have no obligations of any kind to any individual with respect to employment by the Company or the Vendor.
- (ag) **Brokers** - Neither the Purchaser nor the Equity Participants will be liable for any brokerage commission, finder's fee or other similar payment in connection with the transaction contemplated by this Agreement because of any agreement or understanding reached by the Vendor or the Company.
- (ah) **Tax Status.** - The Vendor is not a non-resident of Canada within the meaning of the Tax Act.

4.2 Representations and Warranties of the Purchaser and Equity Participants

4.2.1 The Purchaser and the Equity Participants hereby jointly and severally represent and warrant to the Vendor with respect to any matters relating to the Purchaser in this Section 4.2.1 and severally represent and warrant with respect to any matters relating to themselves (and

acknowledge that the Vendor is relying on such representations and warranties in completing the transactions contemplated hereby) as follows.

- (a) **Corporate Matters** - Each of the Equity Participants and the Purchaser is a corporation duly incorporated and organized and is validly subsisting under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, and has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder. The Equity Participants are, directly or indirectly, the only beneficial owners of shares carrying or representing at least 20% of the Voting Power (as that term is defined in the Restriction on Transfer Agreement) of the Purchaser as follows:

SNC 26.92%

Cintra 58.46%

Ferrovial 14.62% directly and a portion of Cintra's 58.46%, indirectly through its ownership of shares of Cintra carrying a majority of the Voting Power of Cintra;

- (b) **Authorization of Agreement** - This Agreement has been duly authorized, executed and delivered by the Purchaser and each of the Equity Participants and constitutes a legal, valid and binding obligation of the Purchaser and each of the Equity Participants enforceable against it in accordance with its terms (subject, however, to limitations with respect to the enforcement of remedies, to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction).
- (c) **Validity of Transactions** - The execution and delivery of this Agreement by the Purchaser and each of the Equity Participants, the consummation of the transactions contemplated hereby and the fulfilment by the Purchaser and each of the Equity Participants of the terms, conditions and provisions hereof has not and will not contravene or violate or result in the breach (with or without the giving of notice or lapse of time, or both) or acceleration of any obligations of the Purchaser and each of the Equity Participants under:
- (i) the laws applicable to the Purchaser and each of the Equity Participants, as applicable;
 - (ii) any Order of any court, tribunal, instrumentality or arbitrator which is presently applicable to the Purchaser and each of the Equity Participants, as applicable;
 - (iii) the articles, by-laws of the Purchaser and each of the Equity Participants, as applicable; or

- (iv) the provisions of any material agreement, instrument or document to which the Purchaser or an Equity Participant, as applicable, is a party or by which it is bound.
- (d) **Approvals of Governmental Authorities** - Except for the Competition Act Approval, no approval or authorization of any applicable regulatory authority or Governmental Authority is required to be obtained by the Purchaser or the Equity Participants prior to the consummation of the transactions contemplated hereby.
- (e) **Bid Process** - Each of the Equity Participants and the Purchaser has complied in all respects with the terms and provisions of the Bid Process and the Confidentiality Agreements and all information provided by the Purchaser and the Equity Participants to the Vendor pursuant to or in connection with the Bid Process is complete and accurate.
- (f) **Brokers** - The Vendor will not be liable for any brokerage commission or finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any agreement or understanding reached by the Purchaser or any Equity Participant.
- (g) **Consents** - Except for the Competition Act Approval, no Consent is required to be obtained by the Purchaser or by any Equity Participant prior to the consummation of the transactions contemplated hereby.

4.2.2 The Purchaser represents and warrants to the Vendor (and acknowledges that the Vendor is relying on such representation and warranty in entering into this Agreement and completing the transactions contemplated hereby) that the Purchaser has arranged financing, subject to normal commercial conditions, to permit it to pay the Purchase Price in full on Closing.

4.3 Non-Waiver

Subject to the provisions of Section 4.4, no investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Parties herein or pursuant hereto. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

4.4 Qualification of Representations and Warranties

The representations and warranties of the Vendor set forth in Sections 4.1(g), (h)(iv), (o), (t), (y), (ac), and (ad) are qualified by information known by or disclosed to the Purchaser or the Equity Participants prior to the Execution Date or disclosed to the Purchaser or the Equity Participants in this Agreement or in any document or agreement referred to in this Agreement. Any disclosure of information in this Agreement or in any document or agreement referred to in this Agreement by a Party, including by way of cross-reference to other documents, shall qualify all of the representations and warranties of such Party in this Agreement, even if such disclosure is made in respect of a particular representation or warranty.

4.5 Survival of Vendor's Representations and Warranties

The representations and warranties of the Vendor contained in this Agreement shall survive the Closing and continue in full force and effect for the benefit of the Purchaser and each Equity Participant as follows:

- (a) as to the representations and warranties contained in Subsection 4.1(j) (k) and (s) of this Agreement, without time limit; and
- (b) as to all other matters, for a period of two years following the Closing unless a *bona fide* notice of a Claim shall have been given, in writing in accordance with Section 7.4 or 7.8, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

4.6 Survival of Purchaser's Representations and Warranties

The representations and warranties of the Purchaser and the Equity Participants contained in this Agreement shall survive the Closing and continue in full force and effect for the benefit of the Vendor for a period of two years following the Closing unless a *bona fide* notice of a Claim shall have been given, in writing in accordance with Section 7.4 or 7.8, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

4.7 Survival for Fraud, etc.

A Claim by a Party for any breach of any of the representations and warranties contained in this Agreement involving fraud or fraudulent misrepresentation may be made any time following the Closing Date, subject only to applicable limitation periods imposed by law.

4.8 Knowledge of the Seller

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the actual "knowledge", "awareness" or "belief" of the Vendor, it shall be deemed to refer only to the knowledge, awareness or belief of the chief executive officer of the Company, without him having made any special enquiry into the subject matter of such representation or warranty.

ARTICLE 5 COVENANTS

5.1 Operations before Closing

Save as otherwise provided in this Agreement or the CIM, after the Execution Date and prior to the Time of Closing, the Vendor shall cause the Business and the affairs of the Company to be carried on in the ordinary course of business and shall use all reasonable efforts to preserve the goodwill of the Business and to maintain good business relationships with its customers. The Vendor shall ensure that the Company does not enter into any new contractual commitments of a material nature, agree to any amendments to existing contracts of a material nature or authorize any material capital expenditures without the approval of the Purchaser.

5.2 Pro Forma Balance Sheet

Except in respect of Current Assets and Current Liabilities (an adjustment for which is provided for in Section 2.4 of this Agreement), the Vendor shall cause such things to be done to ensure that, at the Time of Closing, the Pro Forma Balance Sheet presents fairly, in all material respects, the assets (other than Current Assets) and the liabilities of the Company (other than Current Liabilities and contingent liabilities not known to the Vendor on the Execution Date).

5.3 Continue Insurance

The Vendor shall continue in force all policies of insurance maintained by the Vendor or the Company in respect of the Company and shall present all claims of the Company under such policies in a due and timely manner up to the Time of Closing. On the Closing, all such policies of insurance shall terminate and the Purchaser shall be responsible for obtaining insurance for the Company and the Assets.

5.4 Compliance with Laws

Up to the Time of Closing, the Vendor shall cause the Company to comply in all material respects with the Authorizations and all material Applicable Laws affecting the Company and the operation of the Business, where the failure to so comply would have a material adverse effect on the Business.

5.5 Co-operation

The Parties shall co-operate with each other from the Execution Date up to the Time of Closing in order to permit the Closing to be consummated on the Closing Date.

5.6 Disclosure of Changes

Prior to the Closing Date:

- (a) the Vendor shall immediately disclose in writing to the Purchaser and the Equity Participants; and
- (b) the Purchaser and each Equity Participant shall immediately disclose to the Vendor;

any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties contained in Article 4. No such disclosure, however, shall cure any misrepresentation or breach of warranty for the purposes of Article 6.

5.7 Injunctions

If any court or tribunal having jurisdiction over any of the Parties issues an injunction, decree or similar order before the Time of Closing which would prohibit or materially restrict or hinder the Closing, the Parties shall use their respective reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated as promptly as possible and, in any event, prior to the Time of Closing.

5.8 Restriction on Transfer Agreement

Each Party shall enter into the Restriction on Transfer Agreement concurrent with the execution of this Agreement.

5.9 Directors and Officers of Company

At the Time of Closing, the Vendor shall cause all directors and officers of the Company to submit:

- (a) a resignation from all positions with the Company; and
- (b) a release of all claims against the Company up to the Time of Closing except for any matters for which such director is entitled to indemnity under the by-laws of the Company and any insurance related thereto.

5.10 Competition Act Approval

The Vendor shall have principal responsibility for dealing with the Director and the Competition Bureau with respect to the Competition Act Approval but all filing fees shall be the responsibility of the Purchaser and shall be forthwith reimbursed by the Purchaser to the Vendor should the Vendor pay any such fees. The Purchaser shall co-operate fully with the Vendor, but at the Purchaser's expense so that the Competition Act Approval can be obtained as soon as possible after the Execution Date. The Purchaser and the Vendor agree that they shall apply for and shall make reasonable efforts to diligently pursue an advance ruling certificate pursuant to

Section 102 of the *Competition Act* (Canada) in respect of the transactions contemplated by this Agreement. The Purchaser hereby irrevocably constitutes and appoints the Vendor as its attorney to prepare, execute and file all documents on behalf of the Purchaser with the Director in connection with the Competition Act Approval save and except for any documents and information which the Purchaser deems to be confidential in nature and which the Purchaser shall prepare, execute and file independently.

5.11 Access for Investigation

The Vendor shall permit the Purchaser and its Representatives, between the Execution Date and the Time of Closing, without interference to the ordinary conduct of the Business, to have access during normal business hours to the Public Service Employees, the Highway 407 Lands, the Operations Centre and the Patrol Yard Lands, to all the Books and Records and to the other material Assets of the Company and to furnish to the Purchaser such financial and operating data and other information as the Purchaser shall from time to time reasonably request to enable confirmation of the matters warranted in Section 4.1. Subject to the foregoing, the accounting representatives of the Purchaser shall be afforded ample opportunity to make a full investigation of all aspects of the financial affairs of the Company.

5.12 Confidentiality

After the Closing, except as otherwise required by Applicable Law including the *Freedom of Information Act* (Ontario) or in connection with any review of this Agreement and the transactions contemplated hereby by any public body or Governmental Authority or by the provincial auditor, the Vendor shall keep confidential all information relating to the Company, except information which:

- (i) is or becomes generally available to the public; or
- (ii) the Vendor received after Closing from an third party, who had obtained the information lawfully and was under no obligation of secrecy.

5.13 Tax Returns

The Vendor shall have the right to prepare and file all Tax returns of the Company in respect of the period of time from the Execution Date to and including the Closing Date, and the Purchaser shall co-operate with the Vendor so that such Tax returns are signed and filed by the Company on a timely basis.

5.14 Description of Highway 407 Lands

The Vendor shall provide to the Company and the Purchaser as soon as a registrable description of such lands becomes available, a description of the Highway 407 Lands, which will permit registration of the Concession Agreement against title to that part of the Highway 407 Lands on which Highway 407 Central is situate and a description of the Highway 407 Lands which will permit registration of the Concession Agreement against title to that part of the Highway 407 Lands which constitute Highway 407 West and Highway 407 East Partial. The Vendor shall at its expense have a registrable description of such lands prepared as soon as

practicable at its expense and the Vendor shall pay all land transfer tax with respect to any such registrations.

ARTICLE 6 PRE-CONDITIONS TO CLOSING

6.1 Conditions for the Benefit of the Purchaser

The Purchaser shall be obliged to complete the Closing only if each of the conditions precedent set out in the following subsections of this Section 6.1 and 6.4 have been satisfied in full at or before the Time of Closing. Each of the conditions precedent set forth in Section 6.1 is for the exclusive benefit of the Purchaser and the Purchaser may waive any of them in whole or in part in writing.

6.1.1 Representations and Warranties

The representations and warranties of the Vendor set forth in Sections 4.1(a) to (f) inclusive, (j) to (l) inclusive, (s), (ab) and (ah) in this Agreement will be true and correct in all material respects at and as of the Time of Closing with the same force and effect as if made at and as of such time and date, and the Vendor will deliver to the Purchaser at the Time of Closing a certificate, dated the Closing Date and duly executed by a senior official of the Vendor, in a form acceptable to the Purchaser, acting reasonably; to such effect.

6.1.2 Performance of Covenant

The Vendor shall not be in material breach of its covenant set forth in Section 5.9 and the Vendor shall deliver to the Purchaser at the Time of Closing a certificate, dated the Closing Date, and duly executed by a senior official of the Vendor, in a form acceptable to the Purchaser, acting reasonably, to such effect.

6.1.3 Concession Agreement

The Highway 407 Concession and Ground Lease Agreement, in the form set out in Schedule 6.1.3 to this Agreement, as such may be amended by an amending agreement respecting Highway 407 East Completion, and as further amended by amendments contained in addenda issued pursuant to the process therefor set out in the CIM, (all of which, together with all agreements set out in the schedules thereto, are herein collectively referred to as the "Concession Agreement") shall have been executed by all parties thereto and shall be in full force and effect and the Company will be entitled to all benefits, rights and privileges thereunder.

6.1.4 Opinion of Counsel for Vendor

The Purchaser shall have received a legal opinion dated the Closing Date from the Vendors' counsel substantially in the form set forth in Schedule 6.1.4. In giving such opinion, counsel to the Vendor may rely on certificates of senior officials of the Vendor as to factual matters.

6.1.5 Consents

The Vendor shall have obtained the Consents listed on Schedule 4.1(i) and the Highway 407 Act shall be fully proclaimed in force.

6.2 Acknowledgement

The Purchaser and the Equity Participants acknowledge that arranging financing to pay the Purchase Price is not a pre-condition to Closing.

6.3 Conditions for the Benefit of the Vendor

The Vendor shall be obliged to complete the Closing only if each of the conditions precedent set out in the following Subsections of this Section 6.3 and Section 6.4 have been satisfied in full at or before the Time of Closing. Each of the conditions precedent set forth in this Section 6.3 is for the exclusive benefit of the Vendor and the Vendor may waive any of them in whole or in part in writing.

6.3.1 Representations and Warranties

All representations and warranties of the Purchaser and each Equity Participant in this Agreement shall be true and correct in all material respects at and as of the Time of Closing with the same force and effect as if made at and as of such time and date, and the Purchaser and each Equity Participant shall deliver to the Vendor at the Time of Closing a certificate, dated the Closing Date, under corporate seal and duly executed by a senior officer of the Purchaser and each Equity Participant acceptable to the Vendor, acting reasonably, to such effect.

6.3.2 Performance of Covenants

The Purchaser and each Equity Participant shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Purchaser or such Equity Participant at or prior to the Time of Closing and the Purchaser and each Equity Participant shall deliver to the Vendor at the Time of Closing a certificate, dated the Closing Date, and duly executed by a senior officer of the Purchaser and each Equity Participant in a form acceptable to the Vendor, acting reasonably, to such effect.

6.3.3 Consents, Authorizations and Registrations

All Consents of any Governmental Authorities (or registrations, declarations, filings or recordings with any of them), required for the Purchaser or the Equity Participants to consummate the transactions contemplated herein (other than routine post-closing notifications or filings), shall have been obtained or made on or before the Time of Closing except for any Consent, approval or authorization of a lender to or investor in the Purchaser.

6.3.4 Opinion of Counsel for Purchaser and Equity Participants

The Vendor shall have received a legal opinion dated the Closing Date from the Purchaser's and each of the Equity Participants' counsel substantially in the forms set forth in

Schedule 6.3.4. In giving such opinion, counsel to the Purchaser and the Equity Participants may rely on certificates of senior officers of the Purchaser and the Equity Participants as to factual matters.

6.4 Mutual Conditions

The Vendor and the Purchaser shall be obliged to complete the Closing only if each of the conditions precedent set out in the following Subsections of this Section 6.4 have been satisfied in full at or before the Time of Closing. Each of the conditions precedent is for the mutual benefit of the Parties and may only be waived by both of them.

6.4.1 Injunction

There shall be no injunction or restraining order issued by a court or tribunal of competent jurisdiction enjoining or preventing the consummation of the transactions contemplated in this Agreement.

6.4.2 Competition Act

The Competition Act Approval shall have been obtained without any condition that would have a material adverse effect on the value of the Business.

6.5 Waiver

Any Party may waive, by written notice to the other Parties, any condition set forth in this Article 6 which is for its benefit. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

6.6 Failure to Satisfy Conditions

If any condition set forth in Sections 6.1, 6.3 or 6.4 is not satisfied at the Time of Closing, a Party entitled to the benefit of such condition (the "First Party") may terminate this Agreement by notice in writing to the other Party and in such event:

- (a) unless the other Party can show that the condition or conditions which have not been satisfied and for which the First Party has terminated this Agreement are reasonably capable of being performed or caused to be performed by the First Party or have not been satisfied by reason of a default by the First Party hereunder, then the First Party shall be released from all obligations hereunder; and
- (b) unless the First Party can show that the condition or conditions which have not been satisfied and for which the First Party has terminated this Agreement are reasonably capable of being performed or caused to be performed by the other Party or have not been satisfied by reason of a default by the other Party hereunder, then the other Party shall also be released from all obligations hereunder.

6.7 Remedies of Purchaser

If the Closing occurs and at the Time of Closing,

- (a) a representation and warranty of the Vendor contained in Section 4.1, other than any of those listed in Section 6.1.1, excluding Section 4.1(s), is incorrect; or
- (b) any covenant of the Vendor contained in this Agreement, other than the one listed in Section 6.1.2, which is to be performed by the Vendor at or before the Time of Closing is not performed,

the remedies of the Purchaser under Article 7 of this Agreement with respect to the incorrectness of such representation and warranty or the non-performance of such covenant, shall not be affected by the Closing.

ARTICLE 7 INDEMNIFICATION

7.1 Indemnification by Vendor

7.1.1 Subject to any limits set forth in Section 7.12, the Vendor shall indemnify and save harmless the Purchaser and each of its Representatives from and against any and all Loss suffered or incurred by them, as a result of:

- (a) subject to Section 4.5, any misrepresentation or breach of warranty made or given by the Vendor in this Agreement;
- (b) any failure by the Vendor to observe or perform any covenant or obligation contained in this Agreement to be observed or performed by it;
- (c) any Taxes assessed against the Company in relation to a period of time ending on or prior to the Time of Closing; and
- (d) the contingent liabilities associated with the matters listed in Schedule 4:1(ae) (other than those matters relating to Taxes) to the extent not covered by insurance in favour of the Company.

7.1.2 Y2K Indemnification by Vendor

The Vendor shall indemnify and save harmless the Purchaser and each of its Representatives from and against any and all Loss suffered or incurred by them during the nine month period commencing January 1, 2000 as a result of the computer hardware or software (including embedded systems) either forming part of the Toll System (including any transponders used in conjunction therewith) or used by the Ministry of Transportation of the Province of Ontario to operate, maintain and access the database of information products which are to be provided under the Authorized Requester Electronic Data Transfer Agreement made on the 6th

day of April, 1999 between The Crown in Right of Ontario as represented by the Minister of Transportation and the Company (collectively, the "Systems") not being Y2K Ready, other than any such Loss that is suffered or incurred as a result of any change made to the Tolling System by the Purchaser or those for whom the Purchaser is in law responsible that results in the Systems not being Y2K Ready. For purposes of this Section 7.1.2, Loss shall include the cost of remediation of a System to render it Y2K Ready but not the cost of replacement of a System.

After the Closing, the Purchaser shall take such measures as a prudent Person would take in comparable circumstances to identify whether or not the Systems are Y2K Ready and, if necessary, to remedy any deficiency in the Systems to make the Systems Y2K Ready.

For purposes of this Section 7.1.2, a System shall be considered to be Y2K Ready if (i) the occurrence in or use by such System of dates on or after January 1, 2000 will not adversely affect the performance of such System in dealing with date-dependent data, computations or other functions, including calculating (including leap year calculations), comparing and sequencing, and (ii) on or after January 1, 2000 such System will create, store, process and output date-dependent data in a consistent manner which does not create any ambiguity as to the century. For greater certainty, (a) the unavailability to a System of power and other essential third party-provided utilities and services, or (b) the improper functioning of other computer systems (other than a System) with which a System exchanges data shall not result in a System not being considered Y2K Ready.

No Claim may be made by the Purchaser against the Vendor under this Section 7.1.2 in respect of any such Loss unless (i) the aggregate of all such Losses suffered or incurred by the Purchaser exceeds Five Million Dollars (\$5,000,000), in which event the amount of all such Losses in excess of such amount, up to a maximum aggregate amount of Fifty Million Dollars (\$50,000,000) may be recovered by the Purchaser, and (ii) such Claim is made prior to April 1, 2001.

7.2 Indemnification by the Purchaser and Equity Participants

7.2.1 The Purchaser shall indemnify and save harmless the Vendor and each of its Representatives from and against any and all Loss suffered or incurred by them, as a result of:

- (a) subject to Section 4.6, any misrepresentation or breach of warranty made or given by the Purchaser in this Agreement; and
- (b) any failure by the Purchaser to observe or perform any covenant or obligation contained in this Agreement to be observed or performed by it.

7.2.2 Each Equity Participant shall indemnify and save harmless the Vendor each of its Representatives from and against any and all Loss suffered or incurred by them, as a result of,

- (a) subject to Section 4.6, any misrepresentation or breach of warranty made or given by such Equity Participant in this Agreement; and

- (b) any failure by such Equity Participant to observe or perform any covenant or obligation contained in this Agreement to be observed or performed by it.

7.3 Agency for Representatives

Each Indemnified Party agrees that it accepts each indemnity in favour of any of its Representatives as agent and trustee of that Representative. Each Party agrees that an Indemnified Party may enforce an indemnity in favour of any of that Party's Representatives on behalf of that Representative.

7.4 Notice of Third Party Claim

If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt written notice thereof, but in any event no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

7.5 Defence of Third Party Claim

The Indemnifier may participate in or assume the defence of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the "Notice Period"). The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defence. The Indemnified Party shall co-operate in good faith in the defence of each Third Party Claim, even if the defence has been assumed by the Indemnifier and may participate in such defence assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defence of such Third Party Claim, the Indemnified Party may assume such defence, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

7.6 Assistance for Third Party Claims

The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the "Defending Party"),

- (a) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim; and
- (b) all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim;

and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

7.7 Settlement of Third Party Claims

If an Indemnifier elects to assume the defence of any Third Party Claim as provided in Section 7.5, the Indemnifier shall not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defence of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 days after receiving notice from the Indemnified Party that the Indemnified Party *bona fide* believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defence of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any liability to the Indemnifier.

7.8 Direct Claims

Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt written notice thereof, but in any event not later than 60 days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of 30 days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such 30 day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 8.

7.9 Failure to Give Timely Notice

A failure to give timely notice as provided in this Article 7 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this Section 7.9 shall have no effect whatever on the survival provisions set out in Section 4.5 and 4.6 and the rights of the Parties with respect thereto.

7.10 Reductions and Subrogation

If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an Indemnity Payment is reduced by:

- (a) any net tax benefit to the Indemnified Party; or

- (b) any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person.

the amount of such reduction (less any costs, expenses (including taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier. Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party's rights against such third party.

7.11 Payment and Interest

All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to Section 7.1.2 or in respect of a Qualifying Loss for which the Indemnifier is liable to make payment pursuant to Section 7.12, to the date of payment by the Indemnifier to the Indemnified Party.

7.12 Limitation

No Claim may be made by the Purchaser against the Vendor under Section 7.1.1(a) in respect of any Loss arising in connection with any misrepresentation or breach of warranty made or given by the Vendor in this Agreement unless:

- (a) the Loss is a Qualifying Loss; and
- (b) the aggregate of all Qualifying Losses suffered or incurred by the Purchaser in respect of all such misrepresentations or breaches of warranty, exceeds Ten Million Dollars (\$10,000,000) in the aggregate, in which event the amount of all such Qualifying Losses in excess of such amount may be recovered by the Purchaser.

The maximum aggregate liability of the Vendor to the Purchaser for Qualifying Losses hereunder shall not exceed 25% of the Purchase Price.

7.13 Exclusive Remedy

Subject to Section 6.6, the rights of indemnity set forth in this Article 7 are the sole and exclusive remedy of each Party in respect of any misrepresentation, breach of warranty or breach of covenant by the other Party hereunder. This Article 7 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or

otherwise) by any Party of its representations, warranties or covenants hereunder or under any Closing Document or by any termination or rescission of this Agreement by any Party hereof.

7.14 Duty to Mitigate

Nothing in this Agreement shall in any way restrict or limit the general obligation at law of an Indemnified Party to mitigate any Loss which it may suffer or incur by reason of the breach by any Indemnifier of any representation, warranty or covenant of the Indemnifier hereunder or any Loss referred to in Section 7.1.2 which it may suffer or incur. If any Loss (including any Loss referred to in Section 7.1.2) can be reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the Indemnified Party shall take all appropriate steps to enforce such recovery, settlement or payment.

7.15 General Limitations

A Party shall have no liability to any other Party hereunder or otherwise:

- (a) for any liability which arises solely by reason of a proposed or actual enactment or change of any applicable tax legislation or any proposed or actual change in the interpretation or administration of such legislation after the date hereof;
- (b) for any liability that arises as a result of any legislation of general application not in force on the date hereof which takes effect retrospectively or occurs as a consequence of a change in the interpretation of the law after the date hereof;
- (c) in respect of any matter of thing done or omitted to be done by or at the direction or with the written consent of such other Party;
- (d) in respect of more than one representation, warranty or covenant that relates to the same matter or thing;
- (e) to the extent that provision or reserve in respect of the matter giving rise to such liability is made in the Pro-Forma Balance Sheet; and
- (f) to the extent that such liability has been adequately compensated pursuant to any Purchase Price adjustment made pursuant to Section 2.4.

Sections 7.15(a) and (b) shall not apply to any such liability that arises as result of any of the matters referred to in Sections 7.15(a) or (b) which are within the control of the Vendor and solely affect the Business or the interests of the Purchaser or the Company therein. Section 7.15(a) shall not apply with respect to any GST assessed against the Company with respect to a period of time ending on or prior to the Time of Closing as a result of any change in the interpretation or administration of the ETA as it exists on the date hereof.

ARTICLE 8 DISPUTE RESOLUTION

8.1 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Vendor, the Purchaser and/or an Equity Participant under or relating in any way to this Agreement or the Restriction on Transfer Agreement, such dispute shall, in the first instance, by notice from either Party to the other requiring the dispute to be resolved, be referred to the person designated as the "Senior Responsible Official" by the Vendor as "Grantor" under the Concession Agreement and the chief operating officer of the Purchaser for resolution. If the dispute is not resolved to the mutual satisfaction of the Parties within fifteen (15) Business Days (or such longer period as the Parties may agree) following such notice, the dispute shall, by notice from either Party to the other requiring the dispute to be resolved at a higher level, be referred to the then chief executive officer of the Purchaser and the then responsible Minister of the Vendor or such Minister's designee. If the dispute is not resolved to the mutual satisfaction of the Parties within thirty (30) Business Days following such notice, either Party may by notice to the other require that the dispute be resolved by mediation as set out in Section 8.2.

8.2 Mediation

If the negotiation described in Section 8.1 does not result in an agreement, any Party may by notice to the other require that the dispute be resolved by mediation as described below. The mediation shall be held within thirty (30) days following the end of the thirty (30) day negotiation period. Within seven (7) days following the end of such thirty (30) day negotiation period, the Parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the Parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the Parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the Parties and shall be binding on them. If the Parties fail to agree on a mediator or the dispute is not resolved to the mutual satisfaction of the Parties within thirty (30) days following the date of receipt of the notice of mediation, any Party may by notice to the others require the dispute to be resolved by arbitration as set out in Sections 8.3 to 8.5.

8.3 Location of Arbitration

Any arbitration hereunder shall be held at Toronto, Ontario unless the Parties otherwise agree.

8.4 Laws of Ontario

The law to be applied in connection with the arbitration shall be the law of Ontario, including its conflict of law rules.

8.5 Arbitration Act, 1991

The arbitration shall be governed by the Rules of Procedure set out in Schedule 8.5. It shall be a condition precedent to the bringing of any legal proceedings that are contemplated by the Rules that the Parties will have concluded the arbitration process as provided by the Rules. The provisions of the *Arbitration Act, 1991* (Ontario) shall apply to the extent that they are not inconsistent with this Article or with such Rules of Procedure.

ARTICLE 9 GENERAL

9.1 Public Notice

All public notices to third parties and all other publicity made by the Purchaser or the Equity Participants concerning the transactions contemplated by this Agreement shall be jointly planned and coordinated by the Vendor and the Purchaser and neither the Purchaser nor the Equity Participants shall act unilaterally in this regard without the prior written approval of the Vendor, such approval not to be unreasonably withheld or delayed, unless otherwise required by law and if otherwise required by law, all such public notices will be made by the Purchaser or the Equity Participants, as the case may be, only after consultation and co-ordination with the Vendor to the extent practicable in the circumstances.

9.2 Expenses

Each of the Vendor, the Purchaser and the Equity Participants shall be responsible for its own fees, costs and expenses (including the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby. For greater certainty, the Vendor shall not charge to the Company any fees, costs or expenses relating to the negotiation and execution of this Agreement or the completion of the transactions contemplated hereby. The Purchaser and the Equity Participants are solely responsible for obtaining their own independent legal, financing, accounting, engineering and technical advice.

9.3 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties including the Request for Expressions of Interest - Sale of Highway 407 Express Toll Route dated October 26, 1998 and the CIM and any statements, representations or warranties made by or on behalf of the Vendor or the Company by Merrill Lynch Canada Inc., RBC Dominion Securities Inc. or their respective affiliates or any other provincial advisor and its affiliates. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement, or which induced any Party to enter into this Agreement or on which reliance is place by any Party, except as specifically set forth in this Agreement. Save for the express representations and warranties made by the Vendor in this Agreement, the Purchaser and the Equity Participants are not relying upon any information, documentation or advice provided by the Company or the Vendor in connection with the Business or in connection with the carrying out of the purchase of the Purchased Shares, including any information,

documentation or advice in the Reference Documents (as defined in the Concession Agreement) and the Vendor shall not be responsible for any loss, liability, cost or expense that may arise as a result of or in relation to any inaccuracy or deficiency in any such information, documentation or advice whether in the Reference Documents or otherwise.

9.4 Further Assurances

The Parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether prior to or following the Closing.

9.5 Notices

All payments and communications which may be or are required to be given by any Party to any other Party, shall be in writing and (a) delivered personally, (b) sent by prepaid courier service or by registered mail, or (c) sent by prepaid telecopier or other similar means of electronic communication to the Parties at their following respective address:

For the Purchaser:

1346292 Ontario Inc.
c/o SNC – LAVALIN Group Inc.
2200 Lake Shore Blvd. West
Toronto, Ontario
M8V 1A4

Attention: President

Telecopier: (416) 231-5356

Attention: Chief Financial Officer

Telecopier: (416) 231-5356

with a copy to:

Fraser Milner
1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1B2

Attention: Douglas H. Scott

Telecopier: (416) 863-4592

and a copy to each of the Equity Participants as follows:

SNC – LAVALIN Inc.
455 René Lévesque Blvd. West
Montréal, Québec
H2Z 1Z3

Attention: Vice President and Managing Director
SNC – LAVALIN Equity

Telecopier: (514) 398-9952

with a copy to:

Senior Vice President, Law and General Counsel

Telecopier: (514) 866-5057

Grupo Ferrovial, S.A.
Plaza Manuel Gómez Moreno, 2
Planta 14
Edificio Alfredo Mahou
E-28020 Madrid
Spain

Attention: José Maria Lopez de Fuentes

Telecopier: 34-915-551-241

with a copy to:

Legal Counsel Director
Secretary of the Board

Telecopier: 34-915-556-786

Cintra Concesiones de Infraestructuras de
Transporte, S.A.
Plaza Manuel Gómez Moreno, 2
Planta 14
Edificio Alfredo Mahou
E-28020 Madrid
Spain

Attention: José Maria Lopez de Fuentes

Telecopier: 34-915-551-241

with a copy to:

Legal Counsel Director
Secretary of the Board

Telecopier: 34-915-556-786

For SNC -- LAVALIN Inc.:

as set out earlier in this section

For Grupo Ferrovial, S.A.:

as set out earlier in this section

For Cintra Concesiones de Infraestructuras de
Transporte, S.A.:

as set out earlier in this section

For the Vendor:

Privatization Secretariat
56 Wellesley Street
Suite 600
Toronto, Ontario
M7A 1C1

Attention: Chief Executive Officer

Telecopier: (416) 325-8851

with a copy to:

Goodman Phillips & Vineberg
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Donald G. Pierce

Telecopier: (416) 979-1234

- and -

Fasken Campbell Godfrey
Suite 3700
Toronto Dominion Bank Tower
66 Wellington Street West
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Attention: W. Thomas Barlow

Telecopier: (416) 364-7813

Any such notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telecopier or other electronic communication or on the second Business Day following the sending thereof by private courier or on the fifth Business Day following the sending thereof by registered mail. Any Party may from time to time change its address hereinbefore set forth by notice to the other Parties in accordance with this Section.

9.6 Governing Law

This Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario (but without giving effect to the conflict of laws rules thereof) and the laws of Canada applicable therein. The Parties agree that the courts of the Province of Ontario shall have non-exclusive jurisdiction to entertain any action or other legal proceedings based on any provision of this Agreement. Each Party does hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

9.7 Service

If any Party is or becomes a Party on which service or legal process with respect to an action commenced in the Province of Ontario must be served out of the jurisdiction of the

Province of Ontario (an "Ex-Juris Party"), the Ex-Juris Party shall, in writing to the other Party, designate, appoint and empower a Party or agent within the Province of Ontario to receive for and on behalf of the Ex-Juris Party service of process in the Province of Ontario in any legal action or proceeding with respect to this Agreement, which agent shall undertake to enter an unconditional appearance within 30 days after such service. A copy of such process served on the agent will promptly be forwarded by mail by the Party initiating such proceedings to the Ex-Juris Party at the address hereinafter referred to. Failure of the Ex-Juris Party to receive such copy shall not affect in any way the service of such process on the Ex-Juris Party by service upon its agent for service as designated above. Each Party agrees that if it becomes an Ex-Juris Party and it fails to maintain such a duly appointed agent for service of process, it irrevocably consents to the service of process out of any court of the Province of Ontario by mailing all copies of such process by registered or certified mail, postage prepaid to the last address designated for delivery of notice to such Ex-Juris Party under the terms of Section 9.5 of this Agreement, such service to be effective 30 days after such mailing. The mailing to such Ex-Juris Party at such address shall be deemed personal service and acceptance of service by such Ex-Juris Party in any legal action or proceeding with respect to any matter relating to this Agreement. Service in accordance with the foregoing provisions shall not preclude any other manner of service permitted by Ontario law.

9.8 Assignment

This Agreement and the Vendor's rights hereunder may be assigned by the Vendor in its sole discretion provided that no such assignment shall release the Vendor from its obligations or liabilities under this Agreement. Neither this Agreement nor any rights or obligations hereunder shall be assignable by the Purchaser or the Equity Participants without the prior written consent of the Vendor, which consent may be unreasonably withheld, except that each of the Purchaser or the Equity Participants may assign and reassign this Agreement as security to any *bona fide* Arm's Length lender in connection with any financing transaction (including any refinancing, extension or replacement thereof) incurred with respect to payment of the Purchase Price or the ongoing need for financing in connection with any construction contemplated by the Concession Agreement or the operation of the Business.

9.9 Benefit of the Agreement

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

9.10 Time of the Essence

Time is of the essence to every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

9.11 Amendment

This Agreement may be amended, modified or supplemented only by written agreement of the Vendor, the Purchaser and the Equity Participants. Each Party acknowledges that it shall have no right to rely upon any amendment, promise, modification, statement or

representation made or occurring subsequent to the execution of this Agreement unless the same is in writing and executed by the Purchaser, each Equity Participant and the Vendor.

9.12 Waiver

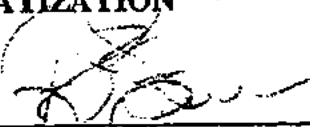
The failure of any Party to enforce at any time any of the provisions of this Agreement or any of its rights with respect thereto or to insist upon strict adherence to any term of this Agreement shall not be considered to be a waiver of such provision, right or term or in any way to affect the validity of this Agreement or deprive the applicable Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. The exercise by any Party of any of its rights under this Agreement shall not preclude or prejudice such Party from exercising any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder. Any waiver by any Party of the performance of any of the provisions of this Agreement shall be effective only if in writing and signed by a duly authorized representative of such Party.

9.13 Counterparts

This Agreement may be executed by the Parties in separate counterparts (by original or facsimile signature) each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

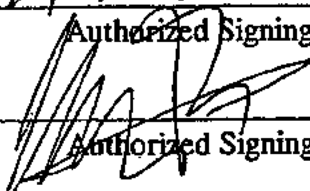
IN WITNESS WHEREOF the Parties have hereunto duly executed this Agreement on the date first above written.

**THE CROWN IN RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER WITHOUT
PORTFOLIO WITH RESPONSIBILITY FOR
PRIVATIZATION**

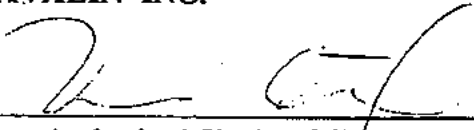
Per:  _____ c/s
Authorized Signing Representative

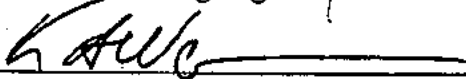
1346292 ONTARIO INC.

Per:  _____ c/s
Authorized Signing Officer

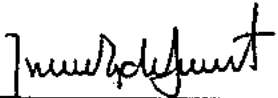
Per:  _____
Authorized Signing Officer

SNC-LAVALIN INC.

Per:  c/s
Authorized Signing Officer

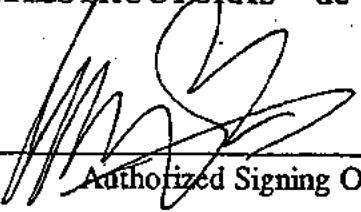
Per: 
Authorized Signing Officer

GRUPO-FERROVIAL, S.A.

Per:  c/s
Authorized Signing Officer

Per: _____
Authorized Signing Officer

**CINTRA CONCESIONES de
INFRAESTRUCTURAS de TRANSPORTE,
S.A.**

Per:  c/s
Authorized Signing Officer

Per: _____
Authorized Signing Officer

SCHEDULES TO THE SHARE PURCHASE AGREEMENT

INDEX

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Schedule 1.1(ar) - Description of Highway 407 Central

	Central
Length	• 69 km
Paved Lanes	• 4 from Hwy 403 to Hwy 410
	• 6 from Hwy 410 to McCowan Rd
	• 4 from McCowan Rd to Hwy 48 (Markham Rd)
	• Expandable to 10
Shoulders	Fully paved
Cross-section	Urban
Interchanges	28 constructed
Grade separations/structures/crossings	127 bridges, culverts, other structures
Illumination	• High mast, full - Hwy 401 to Hwy 48
	• High mast, full - Hwy 403/407 interchange
	• Partial - Derry Rd interchange
	• Decision points
Other	• None at this time

Constructed works for Highway 407 Central are described in the As Constructed Record Drawings [listed under Section 3.2.1.8 of the Sale Data Room - Catalogue of Available Documents].

Schedule 1.1(b) - Pro-Forma Balance Sheet

SEE ATTACHED

ConcessionCo
Notes to Revised Pro Forma Balance Sheet
As at December 31, 1998
(Unaudited - in thousands of dollars)

1. Basis of presentation

The accompanying pro forma balance sheet is unaudited and has been prepared based on the December 31, 1998 balance sheet of the Ontario Transportation Capital Corporation ("OTCC" or the "Corporation"), after giving effect to the pro forma adjustments required to reflect a series of transactions to be undertaken prior to the divestiture of the shares of ConcessionCo by the Province of Ontario. These transactions and assumptions are outlined in note 2 below. The pro forma adjustments have been estimated using the most recent available information. However, the actual adjustments to reflect the closing of the transactions may vary with the passage of time and as more complete information becomes available.

2. Proposed transactions and pro forma adjustments

The pro forma balance sheet has been prepared as if the following transactions had been completed as of the balance sheet date:

- i. OTCC transferred all of its land to the Province of Ontario (the "Province");
- ii. ConcessionCo leased back the Highway 407 lands, the operations centre lands and the patrol yard lands for 99 years from the Province and ConcessionCo will pay ground rent of one dollar per annum. The Province transferred title to all improvements on Highway 407 Central and Highway 407 West to ConcessionCo;
- iii. The Province of Ontario converted \$1,505,246 of ConcessionCo notes payable and long term debentures, \$46,479 in accounts payable, \$17,808 of accounts receivable and \$12,972 in related deferred financing costs into an equity investment, which conversion ConcessionCo reflected in contributed surplus;
- iv. Deferred revenue of \$201,909, representing the contribution of highway structures (bridge and interchange work in process) from the Province, was converted into contributed surplus;
- v. The Province contributed \$38,000 in highway structures related to Highway 407 West to OTCC; and
- vi. OTCC is converted from an agency of the Province into a share capital corporation named ConcessionCo wholly owned by the Province and the contributed surplus of the corporation is converted into capital stock.

3. Summary of significant accounting policies

The pro forma balance sheet reflects the following significant policies:

- Toll highway under construction is stated at cost and includes direct construction or development costs (such as material and labour), interest and administration costs directly attributable to the construction or development activity, net of toll revenues, and income from leases during the construction phase. Capitalization of interest and administration costs, net of toll revenues during construction ceased on April 1, 1998, at which time the highway project was substantially complete;

Schedule 1.1(bt) - Restriction on Transfer Agreement

SEE ATTACHED

3. Concurrent with the execution of the share purchase agreement, the Company, the Purchaser and the Equity Participants have agreed to enter into this agreement with the Vendor because the Vendor, as a matter of public policy, does not want the ownership of the shares of the Company to be transferred prior to the fifth anniversary of the Closing Date and accordingly wishes to prevent:
 - (a) the Company, directly or indirectly, from disposing of (i) all or any of its assets or (ii) its future revenues, to a third party; and
 - (b) the Purchaser from disposing of any voting securities of the Company either (i) directly, or (ii) indirectly through a change of control of the Purchaser or an Equity Participant.

IN CONSIDERATION of the premises and the mutual agreements in this Agreement, and of other consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

1. In this Agreement,

"Affiliate", when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such specified Person;

"Call Option" has the meaning set forth in Section 7;

"Change of Control" means with respect to an Equity Participant which is not a Publicly Traded Equity Participant, any occurrence whereby a majority of the Voting Power relating to such Equity Participant is Disposed of to a Person or Persons (other than to an Affiliate of such Equity Participant) who do not have a majority of the Voting Power relating to such Equity Participant on the date hereof;

"Control" means, with respect to any Person, the ownership, control or direction, directly or indirectly, of a majority of the Voting Power of such Person and **"Controlled"** and **"Controls"** shall have a similarly extended meaning;

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement between the Vendor and the Company made as of the 6th day of April, 1999;

"Concessionaire's Interest" has the meaning ascribed to that term by the Concession Agreement;

"Default" means with respect to an Equity Participant or the Purchaser, the taking of any action or suffering or permitting any action to be taken on the part of such Equity Participant or the Purchaser which would result in a breach of its obligations under this Agreement and includes the negotiation of any proposed Disposition of Securities and in

- (iii) the enforcement of the rights of an encumbrancer under a *bona fide* Permitted Encumbrance and such enforcement is not terminated or permanently stayed within 90 days.

"Permitted Encumbrance" means any Encumbrance on Securities of the Company and/or the Purchaser in favour of a bona fide lender, in respect of indebtedness incurred in connection with the financing of the purchase of the Shares by the Purchaser or the construction of the Project by the Company or the operation of the Business, and any extension, renewal or refinancing of such indebtedness.

"Project" has the meaning ascribed to that term in the Concession Agreement;

"Publicly Traded Equity Participant" means any Equity Participant whose Voting Securities are listed on a recognized stock exchange, if more than a majority of the Voting Power attached to such Voting Securities is held by Persons who are not Affiliates of such Equity Participant;

"Restricted Period" means the period commencing on the date hereof and ending on the fifth anniversary of the Closing Date;

"Securities" means Voting Securities and Equity Securities;

"Shares" means the 1,000,001 issued common shares of the Company sold by the Vendor to the Purchaser pursuant to the SPA;

"SPA" means the share purchase agreement dated April 12, 1999 among the parties pursuant to which the Vendor agreed to sell all of the Shares to the Purchaser;

"Transfer" means any sale, assignment, lease, sublease, gift, exchange, transfer or other disposition, and the entry into any merger, amalgamation, consolidation or reorganization by an entity shall be deemed to be a "Transfer" for the purposes of this Agreement;

"Voting Power" means, with respect to outstanding Voting Securities, the highest number of votes that the holders of all such outstanding Voting Securities would be entitled to cast for the election of directors or, in the case of an entity which is not a body corporate, other persons who exercise management responsibilities similar to directors, assuming for purposes of this computation, the conversion of or exchange into Voting Securities of all securities which are convertible into or exchangeable for Voting Securities and the exercise of all rights attached to securities which entitle the holder thereof to purchase Voting Securities, to the full extent that any such action would increase the number of such votes; and

"Voting Securities" means

- (i) the common shares of a body corporate and all other securities of such body corporate of any kind or class having power to vote for the election of directors either under all circumstances or in certain circumstances or in

then such Securities may be Disposed of by the holder of a Permitted Encumbrance in realizing on the security constituted by such Permitted Encumbrance, free of the restrictions of this Section 3.

4. No Disposition of Securities of Purchaser

Each Equity Participant shall not, directly or indirectly, Dispose of any Securities of the Purchaser, during the Restricted Period.

No Encumbrance on or of the Securities of the Purchaser shall be created or permitted by an Equity Participant during the Restricted Period except for a Permitted Encumbrance. No Permitted Encumbrance on or of such Securities shall be created or permitted by an Equity Participant during the Restricted Period unless the encumbrancer agrees in writing with the Vendor to be bound by the provisions of this Agreement.

The Equity Participants shall cause the Purchaser not to issue any Securities of the Purchaser to any Person, other than the Equity Participants during the Restricted Period.

Notwithstanding anything else contained in this Agreement or the Concession Agreement, if an Insolvency Event has occurred and is continuing with respect to the Company, then Securities of the Purchaser which are subject to a Permitted Encumbrance may be Disposed of by the holder of a Permitted Encumbrance in realizing on the security constituted by such Permitted Encumbrance, free of the restrictions of this Section 4.

5. Change of Control of an Equity Participant

No Change of Control with respect to an Equity Participant shall occur within the Restricted Period, provided that (subject to the restriction provided hereafter), this Section 5 shall not apply to an Equity Participant unless its investment in the Purchaser represents more than 50% of the book value of the assets of such Equity Participant as at the date of the Change of Control. Such determination shall be based on a balance sheet of the Equity Participant prepared in accordance with Canadian generally accepted accounting principles, consistently applied. Equity Participants who do not individually have an investment in the Purchaser of more than 50% of the book value of their assets, shall not, acting jointly or in concert, or in one or a series of transactions, undergo a Change of Control if as a result, the same Person or group of Persons indirectly acquires Control of the Purchaser.

6. Certain Exceptions

The provisions of Sections 3, 4 and 5 hereof shall not apply to

- (i) any amalgamation of the Purchaser and/or the Company with each other and/or another Person or Persons, so long as after such amalgamation, the amalgamated entity continues to be Controlled, directly or indirectly, by one or more of the Equity Participants, to at least the same extent as the Company and the Purchaser are Controlled by the Equity Participants at the Time of Closing and the amalgamated corporation agrees to become a party to and to be bound by the provisions of this Agreement applicable to the Purchaser and the Company; or

Securities purchased pursuant to such Call Option, shall take place at the place specified in the Exercise Notice on the 20th Business Day after the Exercise Notice was given. On the closing, the Defaulting Party shall deliver to the Vendor certificates evidencing the Securities sold duly endorsed in blank for transfer and shall deliver to the Vendor a duly executed representation and warranty stating that the Defaulting Party has good and marketable title to such Securities free and clear of all Encumbrances (except for Permitted Encumbrances) and the Vendor shall pay the purchase price for such Securities to the Defaulting Party by bank draft or certified cheque. The Call Option shall expire, if unexercised, on the first anniversary of the Effective Date.

7.4 Assignment. - The Call Option and the rights of the Vendor under this Agreement which relate thereto, are transferable by the Vendor to any Person after the Effective Date, without the consent of the Company, the Purchaser or the Equity Participant.

8. Share Certificate Legend

All certificates representing Securities of the Company or the Purchaser shall bear the following legend:

"The securities represented by this certificate are subject to the provisions of an agreement made the 12th day of April, 1999 which contains restrictions on the right to transfer, pledge and otherwise deal with such securities. Notice of such restrictions and of the other provisions of such agreement is hereby given."

9. Right to Injunctive Relief and Specific Performance

Each Equity Participant, the Purchaser and the Company acknowledge that a breach of any of the covenants or provisions contained herein would cause the Vendor to suffer loss which could not be adequately compensated for by damages and that the Vendor may, in addition to any other remedy or relief, enforce the performance of this agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage to the Vendor.

10. Notices

All communications which may be or are required to be given by any party to any other party, shall be in writing and (a) delivered personally, (b) sent by prepaid courier service or by registered mail, or (c) sent by prepaid telecopier or other similar means of electronic communication to the parties at their following respective address:

with a copy to:

Senior Vice President, Law and General Counsel
Telecopier: (514) 866-5057

Grupo Ferrovial, S.A.
Plaza Manuel Gómez Moreno, 2
Planta 14
Edificio Alfredo Mahou
E-28020 Madrid
Spain

Attention: José Maria Lopez de Fuentes

Telecopier: 34-915-551-241

with a copy to:

Legal Counsel Director
Secretary of the Board
Telecopier: 34-915-556-786

Cintra Concesiones de Infraestructuras de
Transporte, S.A.
Plaza Manuel Gómez Moreno, 2
Planta 14
Edificio Alfredo Mahou
E-28020 Madrid
Spain

Attention: José Maria Lopez de Fuentes

Telecopier: 34-915-551-241

with a copy to:

Legal Counsel Director
Secretary of the Board
Telecopier: 34-915-556-786

For SNC – LAVALIN Inc.:

as set out earlier in this section

For Grupo Ferrovial, S.A.:

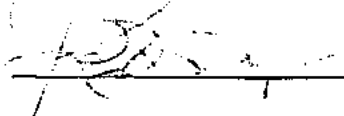
as set out earlier in this section

Any such notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telecopier or other electronic communication or on the second Business Day following the sending thereof by private courier or on the fifth Business Day following the sending thereof by registered mail. Any party may from time to time change its address hereinbefore set forth by notice to the other parties in accordance with this Section.

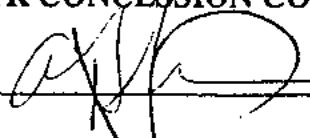
11. General

- 11.1 Invalidity.** - If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed from this Agreement, and the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.
- 11.2 Remedies Cumulative.** - The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such party may be lawfully entitled for the same default or breach.
- 11.3 Provisions of SPA.** - The provisions of Section 1.2 and Sections 9.2, 9.3, 9.4 and 9.6 to 9.13 inclusive of the SPA shall apply to this agreement, *mutatis mutandis*.

**THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER
WITHOUT PORTFOLIO WITH
RESPONSIBILITY FOR PRIVATIZATION**

By:  _____

407 ETR CONCESSION COMPANY LIMITED

By:  _____ c/s

By:  _____

Schedule 4.1(ab) - Insurance

Coverage	Insurer & Policy #	Policy Term	Main Limits	Main Deductible
Property Insurance	Cigna Insurance Company of Canada - 60% Gerling Global General Insurance Company - 40% Policy #12989	June 7, 1998 to June 7, 1999	Blanket Limit \$150,000,000 (applicable to all sections) on Property of Every Description and Gross Profits, subject to various sublimits	All Other Perils \$5,000 except Earthquake 3% of values at insured location subject to minimum deductible of \$100,000 Flood \$25,000 Sewer Back-up \$10,000 Fibre Optics \$25,000
Boiler & Machinery Insurance	Cigna Insurance Company of Canada Policy #SCB100032	June 7, 1998 to June 7, 1999	Property Damage and Business Interruption combined Any one accident for \$50,000,000 subject to various sublimits	Fibre Optics \$25,000 Property Damage 120 Hour Waiting Period (BI) Any Other Object \$1,000 Property Damage 24 Hour Waiting Period (Business Interruption)
Commercial General Liability and Road Liability	Cigna Insurance Company of Canada Policy #CGL034133	June 7, 1998 to June 7, 1999	Bodily Injury and Property Damage Per occurrence for \$5,000,000 Annual Aggregate \$5,000,000 on: 1) Products 2) Completed Operations 3) Limited Pollution 4) Employee Benefits Liability	Bodily Injury and Property Damage \$1,000
Primary Umbrella Liability	Cigna Insurance Company of Canada Policy #XCB602482	June 7, 1998 to June 7, 1999	\$30,000,000 Per occurrence, excess of underlying \$5,000,000 Commercial General Liability, \$5,000,000 Non-Owned Automobile - OPF#6 and \$2,000,000 Automobile Liability	Self-Insured Retention \$10,000
First Excess Umbrella	Liberty International Canada Policy #LQ1-B71-070894-018	June 7, 1998 to June 7, 1999	\$15,000,000 Per occurrence excess of underlying \$35,000,000	Nil

Various (Subscription) Excess Umbrella	Scottish & York/Ian Elliott Special Risks Ltd. Policy #IE 50279 Subscription 60% Zurich Insurance Company Policy # 8827944 Subscription 40% Guardian Insurance Company of Canada Policy #4301227 Subscription 10% Zurich Insurance Company Policy #999 2885 FM6 American Home Assurance Company Policy #8616552 Reliance Insurance Company Policy #TGL 0002551	June 7, 1998 to June 7, 1999 June 7, 1998 to June 7, 1999 June 7, 1995 to June 7, 1999 June 7, 1998 to June 7, 1999 June 7, 1998 to June 7, 1999 June 7, 1998 to June 7, 1999	\$25,000,000 part of \$50,000,000 excess of \$50,000,000 Underlying Coverage \$20,000,000 part of \$50,000,000 excess of \$50,000,000 Underlying Coverage \$5,000,000 part of \$50,000,000 excess of \$50,000,000 Underlying Coverage Third Party Liability \$2,000,000 Accident Benefits - (Statutory) Basis Employee Dishonesty \$5,000,000 Loss Inside Premises \$5,000,000 Loss Outside Premises \$5,000,000 Any one claim \$2,000,000 Annual Aggregate \$2,000,000	Nil Nil Nil Collision or Upset Comprehensive \$500 Per Occurrence \$5,000 Each loss \$50,000
----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

Schedule 6.3.4 – Legal Opinion of Counsel to Purchaser and Equity Participants

SEE ATTACHED

Schedule 6.3.4

Letterhead of Counsel to the Purchaser and SNC-Lavalin Inc. as Equity Participant

May 5, 1999

Privatization Secretariat
56 Wellesley Street
Suite 600
Toronto, Ontario
M7A 1C1

Dear Sirs: **Purchase of Shares of 407 ETR Concession Company Limited**

We have acted as counsel to 1346292 Ontario Inc. (the "Purchaser") and SNC-Lavalin Inc. ("SNC") in connection with the sale by the Privatization Secretariat of the Government of Ontario (the "Vendor") to the Purchaser of all of the issued shares ("Shares") of 407 ETR Concession Company Limited (the "Company") pursuant to a share purchase agreement (the "Purchase Agreement") dated April 12, 1999. This opinion is delivered to you pursuant to Section 6.3.4 of the Purchase Agreement. Terms defined in the Purchase Agreement have the same meaning when used herein, unless the context otherwise requires.

Scope of Enquiry

For the purposes of this opinion, we have reviewed the following:

1. an executed copy of the Purchase Agreement;
2. an executed copy of a restriction on transfer agreement (the "Restriction on Transfer Agreement") dated April 12, 1999 between the Vendor, the Company, the Purchaser and the Equity Participants;
3. [describe the constating documents of the Purchaser] (the "Articles");
4. the by-laws of the Purchaser ("By-laws") passed on •;
5. [describe the constating documents of SNC] (the "SNC Articles");
6. the by-laws of SNC ("SNC By-laws") passed on •;
7. the minute books, share certificate books and share registers of the Purchaser;

8. a certificate of status ("Certificate of Status") dated May 6, 1999 issued in respect of the Purchaser under the Business Corporations Act (Ontario);
9. a certificate of compliance ("Certificate of Compliance") dated May 6, 1999 issued in respect of the SNC under the Canada Business Corporations Act and
10. a certified copy of a resolution of the directors of the Purchaser authorizing the purchase of the Shares and the execution and delivery of the Purchase Agreement and the Restriction on Transfer Agreement.
11. a certified copy of a resolution of the directors of SNC authorizing the the execution and delivery of the Purchase Agreement and the Restriction on Transfer Agreement.

The Purchase Agreement and the Restriction on Transfer Agreement are herein collectively called the "Documents"

We have also considered such questions of law applicable in the Province of Ontario, and such statutes and regulations of the Province of Ontario and of Canada applicable in Ontario (collectively, "Ontario Law"), as we considered necessary as a basis for our opinions.

Assumptions

For the purposes of our opinions, we have made the assumptions listed in Schedule A.

Applicable Law

This opinion is limited to Ontario Law. Accordingly, we do not express any opinion with respect to the laws of any jurisdiction other than Ontario Law in force as at the date of this opinion letter.

Opinions

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. Relying solely on the Certificate of Status, the Purchaser is a corporation incorporated under the laws of Ontario and has not been dissolved. Relying solely on the Certificate of Compliance, SNC is a corporation incorporated under the laws of Canada and has not been dissolved.
2. The Purchaser has the corporate power and capacity to purchase the Shares and to enter into, execute and deliver the Documents and to perform its obligations thereunder. SNC has the corporate power and capacity to enter into, execute and deliver the Documents and to perform its obligations thereunder.

3. Each Document has been duly authorized, executed and delivered by each of the Purchaser and SNC and constitutes a legal, valid and binding obligation of each of the Purchaser and SNC, enforceable against each of them in accordance with its terms.
4. The execution and delivery of each Document by the Purchaser, the consummation of the transactions contemplated thereby and the fulfillment by the Purchaser of the terms, conditions and provisions thereof has not and will not contravene or violate or result in the breach of any provision of the Articles or the By-laws. The execution and delivery of each Document by SNC, the consummation of the transactions contemplated thereby and the fulfillment by SNC of the terms, conditions and provisions thereof has not and will not contravene or violate or result in the breach of any provision of the SNC Articles or the SNC By-laws.

Qualifications

The opinions expressed in this opinion letter are subject to the qualifications listed in Schedule B.

Reliance

This opinion is provided solely for the benefit of the addressees of this opinion in connection with the transactions described herein. This opinion may not be relied upon by or disclosed to anyone else or used for any other purpose without our prior written consent.

Yours Very Truly

SCHEDULE A

ASSUMPTIONS

- (A) all signatures on documents submitted to us are genuine, all documents submitted to us as originals are authentic and complete, and all documents submitted to us as copies conform to authentic original documents;
- (B) all facts set forth in official public records and certificates and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;
- (C) the Certificate of Status is conclusive evidence that the Purchaser is incorporated under the Business Corporations Act (Ontario) and has not been discontinued or dissolved that Act and a similar certificate bearing a current date could be obtained if requested;
- (D) the Certificate of Compliance is conclusive evidence that SNC is incorporated under the Canada Business Corporations Act and has not been discontinued or dissolved under that Act and a similar certificate bearing a current date could be obtained if requested;
- (E) none of the documents, originals or copies of which we have examined has been amended;
- (F) each Document has been duly executed and delivered by each of the parties thereto (other than the Purchaser and SNC) and constitutes legal, valid and binding obligations of each of such parties, enforceable against each of them in accordance with its terms under Ontario Law;

SCHEDULE B
QUALIFICATIONS

Our opinions expressed in this opinion letter are subject to the following qualifications:

- (a) the enforceability of each Document may be limited by any applicable bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other laws affecting creditors' rights generally;
- (b) the enforceability of each Document may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance and injunction), which remedies are only available in the discretion of a court of competent jurisdiction;
- (c) the awarding of costs is in the discretion of a court of competent jurisdiction;
- (d) no opinion is expressed regarding the enforceability of any provision of a Document which purports to provide that any portion thereof which is unenforceable may be severed without affecting the enforceability of the remaining provisions;
- (e) a provision in a Document which purports to restrict, or has the effect of restricting, access to a court may not be enforceable;
- (g) a provision in a Document which purports to waive any statutory rights may not be enforceable;
- (h) the effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law and provisions requiring indemnification or reimbursement may not be enforced by a court to the extent that they relate to the failure of such person to have performed such liability or duty; and
- (i) no opinion is expressed regarding the enforceability of any provision in a Document to the effect that modifications, amendments or waivers of or with respect to such Document that are not in writing will be ineffective;

Schedule 6.3.4

Letterhead of Fraser Milner, Ontario Counsel to Equity Participants

May 5, 1999

Privatization Secretariat
56 Wellesley Street
Suite 600
Toronto, Ontario
M7A 1C1

Dear Sirs: **Purchase of Shares of 407 ETR Concession Company Limited**

We have acted as Ontario counsel to Grupo Ferrovial, S.A. ("Ferrovial") and Cintra Concesiones de Infraestructuras de Transporte, S.A. ("Cintra") (each an "Equity Participant" and collectively the "Equity Participants") in connection with the sale by the Privatization Secretariat of the Government of Ontario (the "Vendor") to 1346292 Ontario Inc. (the "Purchaser") of all of the issued shares ("Shares") of 407 ETR Concession Company Limited (the "Company") pursuant to a share purchase agreement (the "Purchase Agreement") dated April 12, 1999. This opinion is delivered to you pursuant to Section 6.3.4 of the Purchase Agreement. Terms defined in the Purchase Agreement have the same meaning when used herein, unless the context otherwise requires.

Scope of Enquiry

For the purposes of this opinion, we have reviewed the following:

1. an executed copy of the Purchase Agreement;
2. an executed copy of a restriction on transfer agreement (the "Restriction on Transfer Agreement") dated April 12, 1999 between the Vendor, the Company, the Purchaser, SNC Lavalin-Inc and the Equity Participants.

The Purchase Agreement and the Restriction on Transfer Agreement are herein collectively called the "Documents".

We have also considered such questions of law applicable in the Province of Ontario, and such statutes and regulations of the Province of Ontario and of Canada applicable in Ontario (collectively, "Ontario Law"), as we have considered necessary as a basis for our opinions. The Documents by their terms are governed by Ontario Law. In connection with the opinions given in paragraph 1 below we have relied:

- (a) with respect to Ferrovial, on the opinion of • with respect to the laws of Spain;
and

(b) with respect to Cintra, on the opinion of • with respect to the laws of Spain,
(collectively the "Foreign Law Opinions").

Copies of the Foreign Law Opinions are annexed hereto. In our opinion, you and we may rely on the Foreign Law Opinions.

Assumptions

For the purposes of our opinions, we have made the assumptions listed in Schedule A.

Applicable Law

This opinion is limited to Ontario Law. Accordingly, we do not express any opinion with respect to the laws of any jurisdiction other than Ontario Law in force as at the date of this opinion letter.

Opinions

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. Each Document constitutes a legal, valid and binding obligation of each Equity Participant, enforceable against such Equity Participant in accordance with its terms.

Qualifications

The opinions expressed in this opinion letter are subject to the qualifications listed in Schedule B.

Reliance

This opinion is provided solely for the benefit of the addressees of this opinion in connection with the transaction described herein. This opinion may not be relied upon by or disclosed to anyone else or used for any other purpose without our prior written consent.

Yours Very Truly

SCHEDULE A

ASSUMPTIONS

- (A) all signatures on documents submitted to us are genuine, all documents submitted to us as originals are authentic and complete, and all documents submitted to us as copies conform to authentic original documents;
- (B) all facts set forth in official public records and certificates and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;
- (C) none of the documents, originals or copies of which we have examined has been amended; and
- (D) each Document has been duly executed and delivered by each of the parties thereto (other than SNC-Lavalin Inc., the Equity Participants and the Purchaser) and constitutes legal, valid and binding obligations of each of such parties, enforceable against each of them in accordance with its terms under Ontario Law.

SCHEDULE B
QUALIFICATIONS

Our opinions expressed in this opinion letter are subject to the following qualifications:

- (a) the enforceability of each Document may be limited by any applicable bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other laws affecting creditors' rights generally;
- (b) the enforceability of each Document may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance and injunction), which remedies are only available in the discretion of a court of competent jurisdiction;
- (c) the awarding of costs is in the discretion of a court of competent jurisdiction;
- (d) no opinion is expressed regarding the enforceability of any provision of a Document which purports to provide that any portion thereof which is unenforceable may be severed without affecting the enforceability of the remaining provisions;
- (e) a provision in a Document which purports to restrict, or has the effect of restricting, access to a court may not be enforceable;
- (g) a provision in a Document which purports to waive any statutory rights may not be enforceable;
- (h) the effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law and provisions requiring indemnification or reimbursement may not be enforced by a court to the extent that they relate to the failure of such person to have performed such liability or duty; and
- (i) no opinion is expressed regarding the enforceability of any provision in a Document to the effect that modifications, amendments or waivers of or with respect to such Document that are not in writing will be ineffective.

Schedule 6.3.4

Letterhead of Foreign Counsel to Equity Participants

May 5, 1999

Privatization Secretariat
56 Wellesley Street
Suite 600
Toronto, Ontario
M7A 1C1

Dear Sirs: **Purchase of Shares of 407 ETR Concession Company Limited**

We have acted as counsel to • (the "Equity Participant") in connection with the sale by the Privatization Secretariat of the Government of Ontario (the "Vendor") to 1346292 Ontario Inc. (the "Purchaser") of all of the issued shares ("Shares") of 407 ETR Concession Company Limited (the "Company") pursuant to a share purchase agreement (the "Purchase Agreement") dated April 12, 1999. This opinion is delivered to you pursuant to Section 6.3.4 of the Purchase Agreement. Terms defined in the Purchase Agreement have the same meaning when used herein, unless the context otherwise requires.

Scope of Enquiry

For the purposes of this opinion, we have reviewed the following:

1. an executed copy of the Purchase Agreement;
2. an executed copy of a restriction on transfer agreement (the "Restriction on Transfer Agreement") dated April 12, 1999 between the Vendor, the Company, the Purchaser and the Equity Participants;
3. [describe the constating documents of the Equity Participant] (the "Articles");
4. the by-laws of the Equity Participant ("By-laws") passed on •;
5. the minute books, share certificate books and share registers of the Equity Participant;
6. a certificate of [status/compliance] dated May •, 1999 issued in respect of the Equity Participant by •; and

7. a certified copy of a resolution of the directors of the Equity Participant authorizing the execution and delivery of the Purchase Agreement and the Restriction on Transfer Agreement.

The Purchase Agreement and the Restriction on Transfer Agreement are herein collectively called the "Documents". The Documents are by their terms governed by the laws of Ontario and the laws of Canada applicable therein ("Ontario Law").

We have also considered such questions of law applicable in [FOREIGN JURISDICTION], and such statutes and regulations of the [FOREIGN JURISDICTION] applicable in [FOREIGN JURISDICTION], (collectively, "[FOREIGN LAW]"), as we considered necessary as a basis for our opinions.

Assumptions

For the purposes of our opinions, we have made the assumptions listed in Schedule A.

Applicable Law

This opinion is limited to [FOREIGN LAW]. Accordingly, we do not express any opinion with respect to the laws of any jurisdiction other than [FOREIGN LAW] in force as at the date of this opinion letter.

Opinions

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. Relying solely on the Certificate of [Status/Compliance], the Equity Participant is a corporation incorporated under the laws of • and has not been dissolved.
2. The Equity Participant has the corporate power, authority and capacity to purchase the Shares and to enter into, execute and deliver the Documents and to perform its obligations thereunder.
3. Each Document has been duly authorized, executed and delivered by the Equity Participant.
4. The execution and delivery of each Document by the Equity Participant, the consummation of the transactions contemplated thereby and the fulfillment by the Equity Participant of the terms, conditions and provisions thereof has not and will not contravene or violate or result in the breach of any provision of the Articles or the By-laws or [FOREIGN LAW].
5. In the event that a Document is sought to be enforced in any action or proceeding in [FOREIGN JURISDICTION] in accordance with Ontario Law, the courts of

[FOREIGN JURISDICTION] would apply Ontario Law, upon appropriate evidence as to Ontario Law being adduced, provided that none of the provisions of such Document or of Ontario Law are contrary to public policy, as such term is understood under the laws of [FOREIGN JURISDICTION]. A court in the [FOREIGN JURISDICTION] has, however, an inherent power to decline to hear such an action or proceeding if it is contrary to public policy, as such term is understood under the laws of the [FOREIGN JURISDICTION] for it to do so, or if it is not the proper forum to hear such action, or if concurrent proceedings are being brought elsewhere.

None of the terms of the Agreement are contrary to [FOREIGN JURISDICTION] public policy and it would not be contrary to [FOREIGN JURISDICTION] public policy for a [FOREIGN JURISDICTION] court to hear an action or proceeding to enforce the Agreement in [FOREIGN JURISDICTION].

6. The laws of the [FOREIGN JURISDICTION] permit an action to be brought in a court of competent jurisdiction in [FOREIGN JURISDICTION] on any final and conclusive judgment *in personam* against the Equity Participant in respect of a Document by a court in the Province of Ontario, ("Ontario Court") which is not impeachable as void or voidable under Ontario Law, for a sum certain if (i) the court rendering judgment had jurisdiction over the Equity Participant, as recognized by the courts of the [FOREIGN JURISDICTION], (ii) such judgment was not obtained by fraud or in a manner contrary to natural justice and the enforcement thereof would not be inconsistent with public policy, as such term is understood under the laws of the [FOREIGN JURISDICTION], and (iii) the enforcement of such judgment award does not constitute, directly or indirectly, the enforcement of foreign revenue or penal laws.
7. If an action or proceeding were brought in a [FOREIGN JURISDICTION] court to enforce a Document and such court were to apply the laws of [FOREIGN JURISDICTION] to govern and interpret the Agreement (either because the court finds that [FOREIGN JURISDICTION] law is the proper law of the Agreement contrary to its express provisions which stipulate that it will be governed and interpreted by Ontario Law or because such laws are not proven to the court in such actions), the Document would constitute a legal, valid and binding obligation of such Equity Participant enforceable against it in accordance with its terms.

Reliance

This opinion is provided solely for the benefit of the addressees of this opinion in connection with the transaction described herein. This opinion may not be relied upon by or disclosed to anyone else or used for any other purpose without our prior written consent.

Yours Very Truly

SCHEDULE A
ASSUMPTIONS

- (A) all signatures on documents submitted to us are genuine, all documents submitted to us as originals are authentic and complete, and all documents submitted to us as copies conform to authentic original documents;
- (B) all facts set forth in official public records and certificates and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;
- (C) the Certificate of [Status/Compliance] is conclusive evidence that the Equity Participant is incorporated under • and has not been discontinued or dissolved under • and a similar certificate bearing a current date could be obtained if requested;
- (D) none of the documents, originals or copies of which we have examined has been amended; and
- (E) each Document has been duly executed and delivered by each of the parties thereto (other than the Purchaser and the Equity Participants) and constitutes legal, valid and binding obligations of such parties enforceable against each of them in accordance with its terms under Ontario Law.

Schedule 6.1.4 – Legal Opinion of Counsel to Vendor

SEE ATTACHED

Schedule 6.1.4

Letterhead of Counsel to the Vendor

May 5, 1999

1346292 Ontario Inc.
[address]

SNC-Lavalin Inc.
[address]

Grupo Ferrovial, S.A.
[address]

Cintra Concesiones de Infraestructuras de Transporte, S.A.
[address]

Dear Sirs: **Purchase of Shares of 407 ETR Concession Company Limited**

We have acted as special counsel to Her Majesty the Queen in Right of Ontario, as represented by the Minister Without Portfolio with responsibility for Privatization (the "Vendor") in connection with the sale by the Vendor to 1346292 Ontario Inc. ("the Purchaser") of all of the issued shares ("Shares") of 407 ETR Concession Company Limited (the "Company") pursuant to a share purchase agreement (the "Purchase Agreement") dated April 12, 1999. This opinion is delivered to you pursuant to Section 6.1.4 of the Purchase Agreement. Terms defined in the Purchase Agreement have the same meaning when used herein, unless the context otherwise requires.

Scope of Enquiry

For the purposes of this opinion, we have reviewed the following:

1. an executed copy of the Purchase Agreement;
2. the original certificate of continuance of the Company dated April 6, 1999 issued under the OBCA (the "Articles");
3. the by-laws of the Company passed on April 6, 1999 ("By-laws");
3. the minute book, share certificate book and share register of the Company for the period from the date of continuance to the date hereof (the "Corporate Records");

4. a certificate of status dated May •, 1999 issued in respect of the Company by the Director appointed under the OBCA; and
5. the Highway 407 Act, 1998, S. O. 1998 c.28 (the "407 Act");
6. Orders-in-Council Numbers • passed under the 407 Act;
7. Order-in-Council Number • directing the Vendor to transfer the Shares pursuant to Section 3(5) of the 407 Act;
8. the written approval of the Minister of Finance of the Province of Ontario (given on his behalf by the Minister of Privatization) under Section 28 of the Financial Administration Act, R.S.O. 1990, c F-12 as amended, with respect to the Purchase Agreement; and
9. a certified copy of a resolution of the directors of the Company consenting to the transfer of the Shares to the Purchaser.

We have also considered such questions of law applicable in the Province of Ontario, and such statutes and regulations of the Province of Ontario and of Canada applicable in Ontario (collectively, "Ontario Law"), as we considered necessary as a basis for our opinions.

Assumptions

For the purposes of our opinions, we have made the assumptions listed in Schedule A.

Applicable Law

This opinion is limited to Ontario Law in force at the Time of Closing. Accordingly, we do not express any opinion with respect to the laws of any jurisdiction other than Ontario Law in force as at the date of this opinion or respecting the actions of the courts of any jurisdiction other than Ontario.

Opinions

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. The Company is a corporation continued under the laws of the Province of Ontario and has not been dissolved.
2. The Company has the corporate power and capacity to carry on the Business and to own its property and assets.
3. The Vendor has all necessary power, authority and capacity to enter into the Purchase Agreement and to perform its obligations thereunder.

4. The Purchase Agreement has been duly authorized, executed and delivered by the Vendor, and constitutes a legal, valid and binding obligation of the Vendor, enforceable against it in accordance with its terms.
5. All necessary action and proceedings have been taken to permit the transfer of the Shares at the Time of Closing from the Vendor to the Purchaser.
6. The authorized share capital of the Company consists of an unlimited number of one class of shares without par value designated as common shares under the Articles. The Purchased Shares constitute all of the issued and outstanding shares in the capital of the Company and have been duly and validly issued, and are issued and outstanding as fully paid and non-assessable shares.
7. The execution and delivery of the Purchaser Agreement by the Vendor, the consummation of the transactions contemplated thereby and the fulfillment by the Vendor of the terms, conditions and provisions thereof has not and will not contravene or violate or result in the breach of any provisions of the Articles or the By-laws.

Qualifications

Our opinion herein is subject to the qualifications listed in Schedule B.

Reliance

This opinion is provided solely for the benefit of the addressees in connection with the transaction described herein. This opinion may not be relied upon by or disclosed to anyone else or used for any other purpose without our prior written consent.

Yours very truly

SCHEDULE A
ASSUMPTIONS

1. All signatures on documents submitted to us are genuine, all documents submitted to us as originals are authentic and complete, and all documents submitted to us as copies conform to authentic original documents.
2. All facts set forth in official public records and certificates and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate.
3. The Certificate of Status is conclusive evidence that the Company is incorporated under the OBCA and has not been discontinued or dissolved under the OBCA and a similar certificate bearing a current date could be obtained if requested.
4. The Corporate Records are complete and accurate.
5. None of the documents, originals or copies of which we have examined has been amended.
6. The Purchase Agreement has been duly executed and delivered by each of the parties thereto (other than the Vendor) and constitutes a legal, valid and binding obligations of each of the other parties thereto enforceable against each of them in accordance with its terms under Ontario Law.

SCHEDULE B
QUALIFICATIONS

1. The enforceability of the Purchase Agreement may be limited by any applicable bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other laws affecting creditors' rights generally.
2. The enforceability of the Purchase Agreement may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy, which remedies are in the discretion of a court.
3. A judgment of a court obtained against the Vendor is not capable of being enforced by execution or attachment or process in the nature thereof against the property of the Vendor. A court may not make an order for recovery or delivery of real or personal property against the Vendor.
4. A court may not grant relief by way of injunction or specific performance against the Vendor but in lieu thereof may make an order declaratory of the rights of the parties.
5. The awarding of costs is in the discretion of a court.
6. Any provision in the Purchase Agreement which purports to restrict, or has the effect of restricting, access to a court may not be enforceable.
7. A provision in the Purchase Agreement which purports to waive or foreclose resort to any statutory rights may not be enforceable.
8. The effectiveness of any provision which purports to relieve a person from a liability or duty otherwise owed may be limited by law and any provision requiring indemnification or reimbursement may not be enforced by a court to the extent that it relates to the failure of such person to have performed such liability or duty.
9. No opinion is expressed regarding the enforceability of any provision in the Purchase Agreement to the effect that modifications, amendments or waivers of or with respect to the Purchase Agreement that are not in writing will be ineffective.
10. No opinion is expressed as to whether the Company holds all required licences, registrations and permits to carry on the Business and to own property and assets relating thereto.

11. Our opinion in paragraph 6 is based solely on our review of the Corporate Records. No opinion is expressed as to whether the Vendor has any beneficial interest in the Shares.
12. Our opinion on the enforceability of the Purchase Agreement is subject to the overriding power of the Crown to repudiate contracts by specific unambiguous legislation.

**Schedule 6.1.3 - Form of Concession Agreement and
Amendment thereto respecting Highway 407 East Completion**

[SEE ATTACHED]

Schedule 4.1(w) - Leases of Real Property

Offer to Lease dated June 1995 by Sun Life Assurance Company of Canada as landlord to Ontario Transportation Capital Corporation as tenant of certain premises within the building having the municipal address of 200 King Street West, Toronto, Ontario.

Schedule 4.1(o)(ii) - Historical Revenue Data

Actual Revenue - 407ETR

Month	(\$000's)
October 1997	3,297
November 1997	5,497
December 1997	5,466
January 1998	5,446
February 1998	5,065
March 1998	4,475
April 1998	6,760
May 1998	7,972
June 1998	8,220
July 1998	9,207
August 1998	8,916
September 1998	10,988
October 1998	11,800
November 1998	10,877
December 1998	10,557
January 1999	8,915
February 1999	9,339

Schedule 4.1(o)(i) - Historical Traffic Data

		Total Trips	Average Weekday Trips
1997	Oct. (from 14th to 31st)	1,629,946	102,668
	Nov.	2,569,461	105,937
	Dec.	2,638,862	97,958
1998	Jan.	2,692,093	104,361
	Feb.	2,771,513	118,540
	Mar.	3,353,211	130,243
	Apr.	3,652,346	147,467
	May	4,047,875	163,469
	June	4,444,426	173,295
	July	4,584,961	174,726
	Aug.	4,764,788	187,353
	Sept.	5,282,997	209,319
	Oct.	5,548,561	216,507
	Nov.	5,294,802	211,453
	Dec.	5,061,260	198,322
1999	Jan.	4,699,017	193,944
	Feb.	4,819,971	204,840

Schedule 4.1(i) - Consents

1. Direction of the Lieutenant Governor in Council directing the Vendor to transfer the Purchased Shares as provided in Section 3(5) of the Highway 407 Act.
2. Consent to the transfer of the Purchased Shares as required by the Articles.
3. Written approval of the Minister of Finance as required by Section 28 of the *Financial Administration Act* (Ontario), R.S.O. 1990, Chap. F.12.

Schedule 4.1(af) – Employees

APPENDIX A – Benefits under the Association of Management, Administrative and Professional Crown Employees of Ontario Contract

[SEE ATTACHED]

Physician (Doctor): A person who legally practices medicine surgery or both. The physician must be licensed by the licensing authority of the jurisdiction where the treatment is given.

Premium: Money paid to the insurance company for insurance coverage.

Prescription drugs and medicine: Prescription drugs must be:

- necessary;
- prescribed by a physician or dentist for the treatment of an injury or illness (includes in the case of human chorionic gonadotropin injections for treatment of infertility);
- dispensed by a licensed pharmacist, physician, dentist, or surgeon legally allowed to dispense such drugs;
- registered under a Drug Identification Number.

Note: Over-the-counter drugs such as Pepto-Bismol are not covered by this plan, even though they may be prescribed.

Proctored Enrollment or Cost: An entitlement or cost determined by the ratio of your part-time schedule compared to a full-time employee schedule.

Psychiatric treatment: Treatment by a specialist in neurology or psychiatry, as well as treatment by any other legally licensed physician for a condition caused by a nervous disorder.

Reasonable and Customary: Standard medically approved treatments and procedures which are normally applied in the treatment of a particular illness or condition and are provided at costs equivalent to the average charged for such treatment in the location where such treatment is provided.

Retroactive change: A backdated change. For example, if you have an increase in pay in March that is retroactive to January, you will be paid the increase for January and February, as well as all the time after that, provided you worked in January.

Spouse: A spouse is a person who is:

- legally married to the employee; or

• although not legally married to the insured employee, cohabits with the employee as husband and wife or as lesbian or gay partners.

Total disability: Continuous inability, caused by illness or injury, to do the essential duties of:

- the employee's normal job during the first 30 months after the date of the disability;

• any job which the employee is reasonably fitted for by education, training, or experience, after the 30 month period.

To be considered totally disabled, the person must be undergoing treatment by a physician, and must not be employed for wages (except for Rehabilitative Employment, as discussed in Section 8 of this guide).

For Part-time employees, you are covered for the same kinds of benefits as full-time employees however, since you work on a part-time basis (i.e. at less than a full-time employee schedule) there are some differences in the entitlements and procedures related to some of your benefits. See each benefit section for details.

For Seasonal employees, you are covered by the same kinds of benefits as classified employees, but there are some differences. See each benefit section for details.

Waiting period before eligibility for benefits occurs upon joining the OPS, you are eligible for:

Canada Pension Plan (benefits usually begin at age 65 or earlier if you become disabled).

Unemployment Insurance (partial benefits after 10-19 weeks of employment, full benefits after 20 weeks).

Workers' Compensation (benefits begin after the WCB determines that the accident/illness is job-related).

Vacation (credits are earned immediately, though vacation can only be taken after completing six months of continuous service).

Leaves of absence.

For the following plans you must be employed for at least two months of continuous service before coverage begins:

Life Insurance Plans;

Long Term Income Protection;

Supplementary Health and Hospital Plan;

Dental Plan.

Coverage begins on the first of the month coinciding with or following your two months of continuous service.

Other waiting periods:

- * Short-term Sickness: after 20 consecutive days of work;
- * Termination Payments: You must have worked continuously for:
 - at least one (1) full year in order to be eligible for termination pay benefits upon retirement at age 65, disability lay-off or death;
 - five (5) consecutive years to be eligible for termination pay benefits upon termination for any reason other than dismissal for cause or abandonment of position.

Effective date of coverage II III

The effective date of coverage will be delayed until after you have returned to work for at least one full day.

Benefits during a leave of absence

It depends on whether you are on a leave with or without pay. If you are on a leave with pay (vacation, WCB, short-term sickness), your coverage will stay the same. If you are on a leave without pay for one calendar month or more (except when you are on pregnancy or parental leave), you must pay the whole monthly premium yourself to keep your coverage.

How to make a claim

Just fill out a claim form, which is available from your benefits coordinator, and send it with proof of expenditure (explained in the form) to:

Great-West Life Assurance Co.
Toronto Benefit Payments
P.O. Box 4083, Station A
Toronto, Ontario
MSW 1M8

SECTION B: HEALTH INSURANCE BENEFITS

1. Dental Insurance Plan

Overview

Your plan pays:

- 85% of basic dental care costs;
- 50% of denture costs for you and your dependents, with a lifetime maximum of \$3,000;
- 50% of orthodontic costs for children aged 6-18, and up to \$3,000 per child, per lifetime;
- 50% of costs for major restorations, up to \$2,000 a year for you and each dependent.

Premiums for the Dental Plan are paid fully by the OPS. Your coverage is based on the current fee rates set out by the Ontario Dental Association (ODA) for General Practitioners at the time the dental work was done. If your dentist charges more than those rates, you must pay the rest yourself.

Basic Dental Care Services

These include:

- Dental check-ups: complete check-ups every three years, and recall check-ups every six months;
- X-rays: bitewing x-rays every six months; complete full mouth x-rays every two years; panoramic x-rays every three years;
- Preventative services: teeth cleaning and instructions on good dental care every six months; fluoride treatments;

- Restoration: amalgam, silicate, acrylic, and composite fillings; relative pins, in conjunction with minor restorations;
- Surgical work: removal of erupted teeth; surgical removal of teeth;

- Related general services: denture repairs, re-lines and re-bases; in-office drugs and injections; general anaesthesia; professional advice and visits;

- Prosthodontic services and repairs: in-office lab charges;

- Limited endodontic services: pulp capping, pulpotomy, root canal therapy, apexification, periapical services, root amputation; non-section; bleaching; intentional removal and apical filling;

- Limited bridgework: repairs to existing bridgework, not earlier than three months after it was put in;

- Periodontal work: surgical, non-surgical, and related periodontal services.

Denture services

These services include:

- Complete dentures or overdentures, upper and lower, once every three years;
- Partial dentures, once every three years;
- In-office lab charges and diagnostic costs, if related to the work covered by the dental plan.
- Replacement of existing dentures provided the existing dentures are at least three (3) years old.

When To Submit a Treatment Plan

You should submit a treatment plan if the dental work will cost more than \$200 or if you are unsure of the extent of coverage. The insurance company will then consider the Treatment Plan as if it were a claim, and will tell you how much you would be paid. You then will know how much you have to pay for yourself, and can decide whether to go ahead with the treatment. If you do not begin treatment within 90 days after the company has written back to you, you must send in a new Treatment Plan.

Transfer of Dental Records When Changing Dentists:

Make sure you have your dental records transferred when you change your dentist. This can save you money. Remember that time limits apply to some of the dental services covered under the plan (for example, the plan will cover complete check-ups performed once every 36 months). If you have your records transferred, your new dentist can confirm when last you received a particular service and ensure that the same service is not repeated within the applicable time frame.

You are responsible for the full cost of services performed more often than is allowed under the time frames stated in the Dental plan.

End of dental insurance plan coverage

Dental plan insurance ends on the date of your resignation or termination of employment.

2. Supplementary Health and Hospital Plan (SH&H)

Overview

The SH&H covers almost all kinds of expenses not included under OHIP: drugs, hospital care, out-patient treatment, nurse care, psychological treatment, artificial limbs, hospital equipment rentals, ambulance services, hearing aids, glasses and vision care, and more.

If you are no longer insured under OHIP because you do not live in Ontario for at least 183 consecutive days in each calendar year, SH&H will pay your expenses as if you were covered by OHIP.

Amount of drugs covered by SH&H

SH&H will pay 80% of the cost of all necessary drugs prescribed by a doctor, for the treatment of a diagnosed injury or illness, including insulin for diabetes. Drugs and vaccines prescribed for preventative purposes are not covered under the plan.

Expenses covered

- * Hospital care: for private or semi-private room and board, up to \$200 a day over the cost of standard ward care.
- * For employees age 65 and over, charges for private or semi-private room and board in a licensed chronic care or convalescent hospital: up to \$35.00 per day and limited to 120 days per calendar year.
- * Out-patient treatment: charges made by an approved hospital for out-patient treatment and not covered by OHIP (except for doctors, and special nursing fees).
- * Registered nurse care: charges for nursing in your home by a registered nurse or nursing assistant by a person who is not a member of your family. A physician must prescribe this service as being medically necessary and indicate that the minimum level of care required is that of a registered nurse or registered nursing assistant.
- * Being taken by ambulance to the nearest hospital, except what is covered by OHIP, in accordance with the schedule established by the Ontario Medical Association.
- * Diagnostic procedures, radiology, blood transfusions, oxygen and its administration.
- * There is limit of \$25,000, per lifetime for the costs of organ transplants.

- Jobs burn garments when prescribed for burn treatments
- 25% of the cost of Apnea Monitors prescribed for infants who are considered to be at risk from Sudden Infant Death Syndrome provided such monitors are approved under the Assistive Devices Program in Ontario
- Touch Vacuum Constrictors up to a maximum of \$500 during the entire time the person is insured
- One pair of eyeglasses due to an accidental injury
- 75% of the cost of corrective inserts to children's shoes when the growth of feet precludes the availability of specially constructed shoes or orthotic devices
- The following limited expenses are also covered:
 - Chiropractor, osteopath, chiropodist, naturopath, podiatrist, and speech, massage, or physiotherapist: up to \$12 per visit if you have used up your OHIP benefits to cover services from these specialists.
 - OHIP covers part of the costs for services provided by the above mentioned specialists up to an annual maximum. Patients must pay the balance. Insurance companies are prohibited, by law, from paying the costs for such services if part of the cost is being paid for by OHIP. Under the Health Insurance Act, insurance companies can help with a claimant's expenses only after OHIP has paid the annual maximum. Insurance companies can then pay up to the limits set by their policies (e.g. \$12 per visit under the OPS plan with Great-West Life).
- Out-of-hospital psychological treatment: SH&H will cover charges for the services of a psychologist up to \$16 per half hour for individual psychotherapy and/or testing, and \$12 per visit for all other visits.
- Custom-made orthopaedic shoes as prescribed by a physician:
 - 75% of the cost of three pairs of shoes or boots in any calendar year; or

- Off-the-shelf orthopaedic shoes (factory custom) as prescribed by a physician:
 - 75% of the cost of customized stock shoes, modified to accommodate the person's particular medical needs, as prescribed by a doctor (up to three pairs a calendar year).
 - Corrective shoe inserts - 75% of the cost (up to three pairs a calendar year, if necessary and prescribed by a doctor).
 - Podiatry (foot surgery): Surgery performed by a podiatrist in his or her office is covered up to \$100 in a calendar year.
 - Vision (Eye) Care:
 - SH&H will pay up to \$200 per person in a 2 year period, which begins the day you make a purchase. This expense includes the cost of repairs and purchase of prescription sunglasses.
 - If you need contact lenses or glasses after cataract surgery, you will get up to \$50 per eye.
 - If you need glasses due to an injury, SH&H will pay 100% of the first pair.
 - Hearing aids:
 - Some of the cost of hearing aids is covered by the Ministry of Health Assistive Devices program. The rest of the cost is covered by SH&H, with a lifetime limit of \$200. SH&H will pay 100% of the first hearing aid needed due to an injury.
- There is a \$10 deductible each calendar year for vision care and hearing aid coverage. For families, the deductible is \$10 per person, but no more than \$20 altogether. Your employer pays 60% of the monthly premiums for these two benefits, and you pay the other 40% out of your pay. You have to apply for the vision care and hearing aid coverage.

- any drug or item which does not have a drug identification number as defined by Canadian legislation or that is regulated under Division 1D of the Regulations to the Food and Drugs Act, Canada;

• services or supplies needed for sports or recreation.

Limit of coverage

Coverage ends on either:

- the last day of the month in which you cease employment for reasons other than total disability;
- the date you join the armed forces of any country on a full time basis;
- the last day of the month in which you are no longer an employee, as defined;
- the day you are on an approved leave of absence without pay over 30 days and choose not to pay the required premium;
- the day you die.

Total disability when SHGH coverage ends

If you are totally disabled when your SHGH coverage terminates, benefits for such disability will be payable, as long as you remain disabled, up to a maximum period of six months after termination.

If one of your covered dependents is hospitalized when your insurance terminates, benefits will be payable in the same manner as your own, or until your dependent is discharged from the hospital, whichever is earlier.

Payment will be made for pregnancy-related eligible expenses if you or your dependent are pregnant on the date coverage would normally cease, up to the date the baby is delivered.

Extension of your health care benefits will cease if the Policy should terminate.

3. Sick Leave Insurance Plans

Types of sick leave plans

There are two ways to secure coverage:

- Short-Term Sickness Pay (STSP),
- Long-Term Income Protection (LTIP)
- Unemployment Insurance (UI)
- Canada Pension Plan Disability Benefit (CPP)
- Workers' Compensation (WC)

STSP BENEFITS

Sick and unable to work

If you cannot work because of sickness or injury, STSP pays your income for up to six months of time away (continuous or not) for each calendar year. STSP will pay all of your salary for the first six days, and 75% of your salary for the next 124 days.

"Top Up" of the 75% STSP benefit

You can use credits (attendance, vacation, ACO, etc.) to top up your STSP benefit to 100% of your salary. Once LTIP benefits begin, you can stop using your attendance credits. But it may be to your financial advantage to use your credits day by day, and put off the start of the LTIP payments. That way you will be paid at 100% of your pay until your credits are exhausted.

Absence into the next calendar year

You will be paid what is left of your STSP benefits from the last year. You will not be eligible for a full year's benefits until you have worked for 20 consecutive days.

- the scheduled duration of any lay-off or leave of absence including maternity leave. Maternity leave is considered to begin on the earlier of the date agreed upon by you and your employer or the date of birth;

- intentional self-inflicted injuries causing disability, whether you are judged sane or insane at time of such self inflicted injury;
- disability or injury as a result of an act of war, civil commotion, or participation in a riot, unless you are performing the normal duties of your job in accordance with the employer's instructions.

NOTE to female employees: LTP Benefits are not paid for any disability during any period of time in which you are on pregnancy leave and receiving U.I. benefits.

Status of other benefits when receiving LTP benefits

Your other benefits will stay the same, as long as you are totally disabled. You will be refunded any Basic or Supplementary Life premiums you paid between the day you became disabled and the start of LTP benefits.

Affect of other benefits on LTP payments?

The amounts received in disability related benefit payments from the following plans will be deducted from your LTP payments.

- CPP disability benefit payments, including benefits for your dependents but excluding benefits paid directly to such dependents;
- WC benefits, excluding benefits payable for an unrelated disability;
- Public Service Pension Fund benefits;
- early retirement benefits payable from the CPP or the Quebec Pension Plan;

- earnings recovered through legal action against another person or corporation, in accordance with Third Party liability provisions.

Third Party Liability provisions

If you have a cause of action against a Third Party for income lost as a result of your disability, the LTP benefit will be payable as specified. However, prior to the commencement of payments, you will be required to complete a Reimbursement Agreement/Direction form, agreeing to reimburse Great-West Life. The amount to be reimbursed will not exceed the amount of benefits paid by Great-West Life.

Full details concerning terms and calculation of reimbursements are set out in the Agreement.

Please contact your ministry's benefits coordinator for full details and assistance.

Recurrence of disability after LTP benefits end

If your disability comes back within three months, and it is due to the same or a related cause, your benefits will start again right away.

Payment for online rehabilitative work while receiving LTP benefits

It is permitted to receive payment for rehabilitative work and still get some of your LTP benefits provided you were already getting LTP benefits, or were approved to get LTP benefits. But talk to your benefits coordinator, since there are some other rules about this.

End of coverage

Coverage ends on the earliest of the following events:

- on the last day of the month in which you cease employment;
- on the date you join the armed forces of any country on a full time basis;

SECTION D - LEAVES OF ABSENCE

receiving a WC award

If six months, you should make a claim receiving a WC award. The WCB will approved for LTIP, you will not have WCB benefits have expired. However, in the will pay your portion of the premiums for an, SH&H and pension contributions.

Continuous service

The period of absence is included in continuous service.

poses the period of absence after the first day in your continuous service unless you prevent the award.

Illness caused by someone other

called a "Third Party Claim".

If you take the WC award or sue the person you decide to sue, you will not be paid by to seek professional advice before making

and, your employer has the right to sue the if the employer does sue, and wins more extra money will be paid to you. You must can use credits, or OHIP to pay any the accident.

Entitlement on joining the OPS

You are immediately entitled to three types of leaves with pay:

- * Statutory holidays;
- * Bereavement Leave;
- * Special and Compassionate Leave.

Statutory Holidays

There are 11 statutory holidays each year: New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and Boxing Day.

Bereavement Leave

You are allowed up to three days leave with pay after the death of an immediate family member. These are: spouse, mother, father, mother-in-law, father-in-law, son, daughter, step-son, step-daughter, brother, sister, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, ward, or guardian.

You are allowed a one day leave with pay in the event of death and to attend the funeral of an uncle, aunt, niece, or nephew, if you would otherwise have been at work.

If the funeral is 800 or more kilometres from home you are allowed up to two days leave without pay for travel time.

How to apply for Special Or Compassionate Leave

You must send a letter to the Deputy Minister or designee, explaining why you need the leave.

- * You may get a leave with pay for up to three days.
- * In some special cases, you can get a leave with pay for up to six months.

Information on Funds in the Plan

TD Bank will provide you with quarterly statements showing your contributions and interest earned to the statement date.

Payment of monies deferred when taking my leave of absence

The Toronto-Dominion Bank will make bi-weekly direct deposits to your bank/inst company account or you may withdraw the money in a lump sum.

Withdrawal from the Plan

You may withdraw from the Plan only under the following exceptional circumstances:

- extreme financial hardship
- total or permanent disability as defined under the provision for Long-Term Income Protection
- lay off
- death

When withdrawal is approved, TD Bank will refund your contributions and interest earnings after deducting the required taxes.

Employment during leave period

You may work, but not with the O.P.S.

Insured benefits during the leave

If you choose to continue your insured benefits coverage during the leave, your ministry will pay the employer portion of the premiums. However, you must arrange to pay the employee portion of premium payments through your ministry Human Resources Branch.

Earning of pension credit while on leave

Under pension plan rules, you cannot contribute to the pension plan while on unpaid leave. Therefore, you do not earn pension credit for the leave. However, you can arrange to "buy-back" pension credit for the leave once you return to work. Your ministry benefits co-ordinator or Human Resources Branch will help you with the "buy-back" arrangements if you choose this option after you return to work.

Return to the OPS after the leave

Under the Income Tax Act (which provides authority for the leave) you are required to return to the OPS for a period of time equal to the leave period.

Other kinds of leave

Other leaves include:

- **Court witness or Jury Duty leave:** If you are subpoenaed to be a witness in a trial or selected to serve on a jury, you can:
 - keep the money paid you for being a witness or juror and count your time away from work as leave without pay;
 - keep the fee and count the time as vacation or M.C.O.;
 - pay the fee to your employer and count the time away as leave with pay.
- **Foreign/Intergovernmental Employment Leave:** You may be given up to one year, with or without pay, to work in another country, for that government or for the Canadian government. Discuss your benefits coverage during leave with your benefits co-ordinator.
- **Canadian Forces Reserve Training:** You may be given up to one week of leave with pay, and one week without pay during a fiscal year. To find out more, talk to your benefits co-ordinator.

You also have the flexibility to extend your leave. If requested in writing, at least two weeks prior to the expiry of your pregnancy leave, you are entitled to a leave of absence without pay but with accumulation of credit for up to six months (26 weeks). The first 18 weeks of the extended leave will be 'parental leave' (see the section on parental leave for more information).

Nature of pregnancy leave

Pregnancy leave is a "leave without pay". However, Unemployment Insurance (UI) will provide benefits during your leave if you have been working and paying UI premiums for at least 20 weeks. Up to 15 weeks of benefits is payable during this period under UI's pregnancy provision.

In addition, if you qualify for UI benefits, the employer will pay a Supplementary Unemployment Benefit (SUB) allowance.

The SUB Allowance - How it works

This allowance plus the UI benefit will pay you 83% of your weekly salary for each of the 17 weeks of pregnancy leave.

Your employer will pay 83% of your weekly salary for the first two weeks of your leave, before the UI benefits begin. After that, you will get UI benefits for 15 weeks of pregnancy leave and a SUB allowance. The SUB allowance will be added to the UI benefits (and any other earnings you receive) so that the two together make up 83% of your salary.

NOTE: If you receive UI benefits during a taxation year in which your annual income is more than $1\frac{1}{2}$ x the maximum yearly insurable earnings, you must pay back a portion of the UI benefits received to Revenue Canada. This is required under the Federal Government's Unemployment Insurance Act.

This will mostly affect employees who earn high salaries i.e. at least \$55,390 for the 1992 taxation year. Please check with your benefits coordinator for more details and to find out if this UI provision will affect you.

Benefits when on pregnancy leave

Your basic life insurance will be paid as if you were at work, but, if you want, you can choose to stop your supplementary and dependent life insurance benefits.

Income tax and Canada Pension Plan (CPP) contributions will be taken off your cheque, but will be based on the amount of your allowance and not your salary.

The following premiums will be deducted from your SUB allowance as if you were still at work:

- vision care/hearing aid premiums (if you have this coverage);
- LTIP

You will not have to pay unemployment insurance

Let your benefits coordinator know if you want to have deductions made from your cheque to maintain benefits or services e.g. the life insurance options, pension plan contributions, credit union assignments, parking, charitable donations, etc.

Vacation and M.C.D. credits

You continue to earn vacation and M.C.D. credits and service during the 17 weeks of pregnancy leave.

2. Adoption Leave (see also Parental Leave):

Eligibility for adoption leave

Any employee who has worked with the OPS for at least 13 weeks is eligible for adoption leave.

To apply you must send a letter to your supervisor with legal documents proving that you are adopting a child.

NOTE: Unemployment Insurance now refers to adoption leave as "parental leave". This leave is described in more detail in the next section on "Parental Leave".

SECTION 401(a) LIFE INSURANCE PLANS

Kind of plans available through the OPS

There are three kinds of plans available:

- Basic Life Insurance (standard for all OPS employees);
- Supplementary Life Insurance (optional);
- Dependent Life Insurance (optional).

Under all these plans, a benefit is paid in the event of death to the person named as beneficiary. The beneficiary may be changed at any time. If a beneficiary is not named, the money will be paid to your estate.

Please let your benefits coordinator know about any changes that might affect these plans, such as marriage, divorce, birth/adoption of a child, or a death.

1. BASIC LIFE INSURANCE

Benefits provided

This insurance covers you for 100% of your annual earnings from regularly scheduled work. It will not pay less than \$10,000, even if that is more than 100% of your salary.

Commencement of coverage

Coverage begins on the first day of the month coinciding with or following two months of continuous service from the date of your appointment. If you are absent due to illness or injury on the date coverage is to take effect you do not become insured until you return to work on a full-time basis for at least one regular working day.

Payment of insurance premiums

Your employer pays the full amount of the premiums.

Coverage while on leave

If you are on a leave with pay, you will be covered just as if you were working.

If you are on leave without pay (except when you are on pregnancy or parental leave) for more than a calendar month, you may maintain coverage by paying the full premiums yourself.

Status of insurance if totally disabled

If you become totally disabled before your 65th birthday for a continuous period of 6 months, coverage continues until:

- your recovery, the end of the month you turn 65, or death, whichever comes first.

Status of coverage after retirement or age 65

If you are getting a PSPP pension based on at least 10 years of pensionable service, your coverage will be reduced to \$2,000 for the rest of your life.

Conversion of insurance policy on retirement or resignation

If you retire or resign, you can convert your policy to an individual policy with Great-West Life Assurance Company. You will be covered for the amount of your Life Insurance less the \$2,000 you may be eligible for when you retire. You can convert at a premium rate as if you were buying an individual policy, and without needing to prove that you are insurable (in good health), if you apply within 31 days of separation.

Continuation of policy

Upon resignation or retirement, you may convert your insurance coverage to an individual policy providing coverage up to the amount for which you were insured before ending employment (subject to a combined maximum with Basic Life of \$200,000). You do not need to provide proof of insurability. To apply for the conversion you must submit a letter stating your request to the insurance company within 31 days of the end of coverage.

End of coverage

This insurance coverage will end at the earlier of the following:

- (a) the end of the calendar month in which you terminate your employment; or
 - (b) on the first day of October following your 65th birthday, if you continue your employment past that birthday, except where coverage is provided under total disability provisions. See your benefit coordinator for details.
- However, coverage remains in force for a 31-day grace period to give you enough time to set up another life insurance policy.

3. DEPENDENT LIFE INSURANCE

Overview

Like Supplementary Life Insurance this is another optional benefit. You may purchase insurance for dependents in amounts of either:

- \$1,000 on your spouse and/or \$500 on each dependent child; or
- \$2,000 on your spouse and/or \$1000 on each dependent child.

(See Definitions section at the front of this guide for the definition of "dependent child".)

Commencement of coverage

The commencement of coverage is on the same basis as for Supplementary Life Insurance coverage. Refer to that explanation in this section for information.

Premium payment

You pay the full premium. The money is taken off your pay.

Coverage on a leave without pay

If you are on leave for more than one calendar month and want to keep your coverage, you can arrange to pay the premiums. Please see your ministry benefits coordinator for details.

Proof of insurability of spouse or child

If you buy the insurance within 31 days after you are hired, married or birth/adoption of child, you do not need to prove insurability. If you buy the insurance later, you must do so.

Continuation of policy

If you retire, resign, or die, the insurance on your spouse can be converted into an individual policy, just as with Basic Life Insurance. You cannot convert the insurance on your children.

End of dependent life insurance coverage

Coverage ends at the earlier of the following:

- * the end of the calendar month in which you terminate your employment;
- * the first day of October following your 65th birthday, if you continue working past your 65th birthday;
- * the date a dependent ceases to be an eligible dependent.

Schedule 4.1(af) – Employees

**APPENDIX B – Benefits under the Ontario Public Service Employees Unions Contract
[SEE ATTACHED]**

DEFINITIONS

Benefits: Money or services that you have a right to receive from an insurance company or other benefit plan.

Calendar Month: Starting from the first day of the month and ending the last day of the month.

Calendar Year: A year starting from January 1 and ending December 31.

Claim: Demand for money from your insurance company for payment of benefits.

Consecutive months: One month following after another with no breaks in between.

Convert: To change your insurance from a group policy with the OPS into your own individual policy.

Coordination of benefits: A group health insurance policy designed to enable payment of benefits, usually to 100% of cost, when you are insured under two plans; i.e. you and your spouse both have family coverage.

Coverage: Protection by insurance.

Deductible: Amount of money below which the insurance company will not pay. For example, if you have a \$200 deductible, you must pay for anything less than \$200 yourself. If the expense is more than \$200, you pay \$200 and the insurance company pays the rest.

Dentist: A person who legally practices dentistry, dental surgery, or both. The dentist must be licensed by the licensing authority of the jurisdiction where the treatment is given.

Dependant:

The child must

- a natural
- a child of
- a child of
- a child of is your guardian

The child must be a full-time student. Dependant must be under 18 years of age at the time of the child's birthday. Child must be dependent on you full-time up to the age of 18 or self-sustaining.

These benefits

- already in
- foster care
- living in full-time
- working full-time

Eligibility re

Employee:

Modified Orthopaedic Shoes (factory custom): off-the-shelf shoes which have had some additional changes made to fit the employee's particular medical needs as prescribed by a doctor.

Physician (Doctor):

A person who legally practices medicine, surgery, or both.

The physician must be licensed by the licensing authority of the jurisdiction where the treatment is given.

Premium: Money paid to the insurance company for insurance coverage.

Prescription drugs and medicine:

Prescription drugs must be:

- necessary;
- prescribed by a physician or dentist for the treatment of an injury or illness;
- dispensed by a licensed pharmacist, physician, dentist, or surgeon legally allowed to dispense such drugs;
- registered under a Drug Identification Number.

Note: Over-the-counter drugs such as Pepto Bismol are not covered by this plan, even though they may be prescribed.

Pre-rated

Entitlement or Cost: An entitlement or cost determined by the ratio of your part-time schedule compared to a full-time employee schedule.

Psychiatric treatment:

Treatment by a specialist in neurology or psychiatry, as well as treatment by any other legally licensed physician for a condition caused by a nervous disorder.

Retroactive change:

A backdated change. For example, if you have an increase in pay in March that is retroactive to January, you will be paid the increase for January and February, as well as all the time after that, provided you worked in January.

Spouse:

A spouse is a person who is:

- legally married to the employee; or
- although not legally married to the insured employee, cohabits with the employee as husband and wife or as lesbian or gay partners.

Total disability:

Continuous inability, caused by illness or injury, to do the essential duties of:

- the employee's normal job during the first 30 months after the date of the disability;

- any job which the employee is reasonably fitted for by education, training, or experience, after the 30 month period.

To be considered totally disabled, the person must be undergoing treatment by a physician, and must not be employed for wages (except for Rehabilitative Employment, as discussed in Section B of this guide).

For Part-time employees, you are covered for the same kinds of benefits as full-time employees however, since you work on a part-time basis (i.e. at less than a full-time employee schedule) there are some differences in the entitlements and procedures related to some of your benefits. See each benefit section for details.

For Seasonal employees, you are covered by the same kinds of benefits as classified employees in the bargaining unit, but there are some differences. See each benefit section for details.

Which benefits need a waiting period before I am eligible?
For the following plans you must be employed for at least two months of continuous service before coverage begins:

- Life Insurance Plans;
- Long Term Income Protection;
- Supplementary Health and Hospital Plan;
- Dental Plan.

Coverage begins on the first of the month, whether it coincides with or follows your two months of continuous service.

What happens if I am ill when coverage is supposed to take effect?

The effective date of coverage will be delayed until after you have returned to work for at least one full day.

Other waiting periods:

- Short-term Sickness: after 20 consecutive days of work;
- Termination Payments: You must have worked continuously for:
 - at least one (1) full year in order to be eligible for termination pay benefits upon retirement at age 65, disability, lay-off, or death;

- live (5) consecutive years to be eligible for termination pay benefits upon termination for any reason other than dismissal for cause or abandonment of position.

What happens to my benefits when I take a leave of absence?

It depends on whether you are on a leave with or without pay. If you are on a leave with pay (vacation, WCB, short-term sickness), your coverage will stay the same. If you are on a leave without pay for one calendar month or more (except when you are on pregnancy or parental leave), you must pay the whole monthly premium yourself to keep your coverage.

How do I make a claim?

Just fill out a claim form and send it with proof (explained in the form) to the insurance company. The claim forms are available from your benefits coordinator.

For dental claims:

Great West Life Assurance Co.
P.O. Box 4083, Station A
Toronto, Ontario
M5W 1M8

For other claims:

Confederation Life Insurance Co.
321 Bloor Street East
Toronto, Ontario
M4W 1H1

Does it matter how long I wait to make a claim?

There are time limits about when to make a claim. These are:

- by the end of the calendar year following the year of the expense for all health expenses;
- 90 days for SH&H and dental claims, if you ended your coverage (because of resignation, death, transfer from bargaining unit to management, etc.);

SECTION B: HEALTH INSURANCE BENEFITS

1. Dental Insurance Plan

Your plan pays:

- 85% of basic dental care costs;
- 50% of denture costs for you and your dependants, with a lifetime maximum of \$3,000;
- 50% of orthodontic costs for children only (aged 6-18); up to \$3,000 per child, per lifetime;
- 40% of costs for major restorations, up to \$1,000 a year for you and each dependant.

Premiums for the Dental Plan are paid fully by the OPS. Your coverage is based on the current fee rates set out by the Ontario Dental Association (ODA) at the time the dental work was done. If your dentist charges more than those rates, you must pay the rest yourself.

What do Basic Dental Care Services Include?

- Dental check-ups: complete check-ups every three years, and recall check-ups every six months;
- X-rays: bite-wing x-rays every six months; complete full mouth x-rays every two years; panoramic x-rays every three years;
- Preventative services: teeth cleaning, fluoride treatment, and instructions on good dental care every six months;
- Restoration: amalgam, silicate, acrylic, and composite fillings; retentive pins, in conjunction with minor restorations;
- Surgical work: removal of erupted teeth; surgical removal of teeth;

- Related general services: denture repairs, re-linings and rebases; in-office drugs and injections; general anaesthesia; professional advice and visits;
- Prosthodontic services and repairs: in-office lab charges;
- Limited endodontic services: pulp capping, pulpotomy, root canal therapy, apexification, periapical services, root amputation; hemisection; bleaching; intentional removal and apical filling;
- Limited bridgework: repairs to existing bridgework, not earlier than three months after it was put in;
- Periodontal work: surgical, non-surgical, and related periodontal services.

What do denture services include?

- Complete dentures or overdentures, upper and lower, once every three years;
- Partial dentures, once every three years;
- In-office lab charges and diagnostic costs, if related to the work covered by the dental plan.
- Replacement of existing dentures provided the existing dentures are at least three (3) years old.

What do Major Restorative Services Include?

- Gold foil and metal inlay restorations;
- Retentive pins in conjunction with major services;
- Inlay, porcelain;
- Crowns;
- Metal transfer coping;
- Post and core;
- Bridgework (fixed, once every three years); evaluation, pontics, retainers (inlay/onlay), repairs, splinting, retentive pins

- For years age 65 and over, charges for semi-private or private accommodation in a licensed chronic or convalescent hospital, up to \$25 per day and limited to 120 days per calendar year.
- Out-patient treatment: charges made by an approved hospital for out-patient treatment and not covered by OHIP (except for doctors, and special nursing fees).
- Registered nurse care: charges for nursing in your home by a registered nurse or nursing assistant by a person not normally living in your home, so long as the care can only be properly given by a nurse or nursing assistant. This service must be approved by a physician as necessary to the employee or dependant's health care.
- Being taken by ambulance to the nearest hospital, except what is covered by OHIP, in accordance with the schedule established by the Ontario Medical Association.
- Diagnostic procedures, radiology, blood transfusions, oxygen and its administration.
- Purchase of a wheelchair provided the attending physician has recommended and approved the purchase and if the rental cost would exceed the purchase price.
- Rental of wheelchair, hospital bed, or respirator/ventilator, for temporary use.
- Wheelchair repairs and modifications: 50% of the cost, up to \$500 for each repair.
- Artificial limbs and eyes.
- Crutches, epilims, casts, trusses, and braces.
- There is a limit of \$25,000 per lifetime for the costs of organ transplants.
- Dental services and supplies: charges made by a dental surgeon within 24 months after an accident. This includes replacing natural teeth, (as long as they were in good condition before the accident), and setting a fractured or dislocated jaw.

- 25% of the cost of an "Apnea Monitor" if it has been ordered in advance under the Assistive Devices Program for individuals at risk of Sudden Infant Death Syndrome.
 - Treatment by a physician, surgeon or specialist (Doctor's charges) when provided outside Ontario for any expense in excess of the amount covered by OHIP, according to the OMA fee schedule.
- The following limited expenses are also covered:
- Chiropractor, osteopath, naturopath, podiatrist, and speech, massage, or physiotherapist: up to \$12 per visit if you have used up your OHIP benefits to cover services from these specialists.
 - Out-of-hospital psychological treatment: SH&H will cover charges for the services of a psychologist up to \$16 per half hour for individual psychotherapy and/or testing, and \$12 per visit for all other visits.
 - Custom-made orthopaedic shoes as prescribed by a physician:
 - 75% of the cost of three pairs of shoes or boots in any calendar year; or
 - 75% of the cost of inserts (up to three pairs per calendar year).
 - Off-the-shelf orthopaedic shoes (factory custom) as prescribed by a physician:
 - 75% of the cost of customized stock shoes, modified to accommodate the person's particular medical needs (up to three pairs a calendar year);
 - 75% of the cost of corrective shoe inserts (up to three pairs a calendar year).
 - Podiatry (foot surgery): Surgery performed by a podiatrist in his or her office is covered up to \$100 in a calendar year.
 - Vision (Eye) Care:
 - SH&H will pay up to \$200 per person in a 2 year period, which begins the day you make a purchase. This

- cost of delivery of prescription drugs;
- services or supplies needed for sports or recreation.

When does this coverage end?

Coverage ends on either:

- the last day of the month in which you cease employment for reasons other than total disability;
- the date you join the armed forces of any country on a full time basis;
- the last day of the month in which you are no longer an employee, as defined;
- the day you are on an approved leave of absence without pay over 30 days and choose not to pay the required premium;
- the day you die.

What happens if I'm totally disabled when my SH&H coverage ends?

If you are totally disabled when your SH&H coverage terminates, benefits for such disability will be payable, as long as you remain disabled, up to a maximum period of six months after termination. If one of your covered dependants is hospitalized when your insurance terminates, benefits will be payable in the same manner as your own, or until your dependant is discharged from the hospital, whichever is earlier.

Payment will be made for pregnancy-related eligible expenses if you or your dependant are pregnant on the date coverage would normally cease, up to the date of delivery.

Extension of your health care benefits will cease if the Policy should terminate.

3. Sick Leave Insurance Plans

What kinds of sick leave are there?

There are five kinds of sick leave coverage:

- Short-term Sickness Plan (STSP)
- Long-term Income Protection (LTIP)
- Unemployment Insurance (UI)
- Canada Pension Plan Disability Benefit (CPP)
- Workers' Compensation (WC)

STSP BENEFITS

What happens if I am sick and cannot come to work?

If you cannot work because of sickness or injury, STSP pays your income for up to six months of time away (continuous or not) for each calendar year. STSP will pay all of your salary for the first six days, and 75% of your salary for the next 124 days.

Can I 'Top Up' the 75% STSP benefit?

You can use credits (attendance, vacation, etc.) to top up your STSP benefit to 100% of your salary. Once LTIP benefits begin, you can stop using your attendance credits. But it may be to your financial advantage to use your credits day by day, and put off the start of the LTIP payments. That way you will be paid at 100% of your pay until your credits are exhausted.

What happens if I am absent into the next calendar year?

You will be paid what is left of your STSP benefits from the last year. You will not be eligible for a full year's benefits until you have worked for 20 consecutive days. Each year your benefits will be renewed so long as you have worked the 20 consecutive days.

What happens if my disability comes back after my LTIP benefits end?

If you cease to be totally disabled at any time during the qualifying period and become disabled again, due to the same cause, within 2 weeks, the qualifying period will be extended by the number of days during which you cease to be disabled.

What happens if my disability comes back after my LTIP benefits end?

If you have been receiving benefits and your disability comes back within three months of returning to full-time work, and if it is due to the same or a related cause, your benefits will start again right away.

Can I be paid for doing rehabilitative work and still get some of my LTIP benefits?

Yes, if you were already getting LTIP benefits, or were approved to get LTIP benefits. But talk to your benefits coordinator, since there are some other rules about this.

When does this coverage end?

Coverage ends on the earliest of the following events:

- on the last day of the month in which you cease employment;
- on the date you join the armed forces of any country on a full time basis;
- on the last day of the month in which you are no longer an employee, as defined;
- on the day you are on an approved leave of absence without pay for more than 30 days and choose not to pay the required premium;
- when you reach the age 64 years and 6 months of age;
- on the day you die.

What are the Third Party Liability provisions?

If you have a cause of action against a Third Party for income lost as a result of your disability, the LTIP benefit will be payable as specified. However, prior to the commencement of payments, you will be required to complete a Reimbursement Agreement/Direct form, agreeing to reimburse Confederation Life. The amount to be reimbursed will not exceed the amount of benefits paid by Confederation Life.

Full details concerning terms and calculation of reimbursement are as set out in the Agreement.

Please contact your ministry benefits coordinator for details and assistance.

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- on the date you join the armed forces of any country on a full time basis;
- on the last day of the month in which you are no longer an employee, as defined;
- on the day you are on an approved leave of absence without pay for more than 30 days and choose not to pay the required premium;
- when you reach the age 64 years and 6 months of age;
- on the day you die.

UI BENEFITS

What are UI's benefits for sickness?

UI will give you up to 15 weeks of benefits if you are absent from work because of sickness. But you must have used up your

SECTION D: LEAVES OF ABSENCE

What kind of leaves am I entitled to as soon as I join the OPS?

You are immediately entitled to three types of leaves with pay:

- Statutory holidays;
- Bereavement Leave;
- Special and Compassionate Leave.

What are the Statutory Holidays?

There are 11 statutory holidays each year: New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and Boxing Day.

What is Bereavement Leave?

You are allowed up to three days leave with pay after the death of an immediate family member. These are: spouse, mother, father, mother-in-law, father-in-law, son, daughter, step-son, step-daughter, brother, sister, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, ward, or guardian.

You are allowed a one day leave with pay in the event of death and to attend the funeral of an uncle, aunt, niece, or nephew if you would otherwise have been at work.

If the funeral of a family member listed above is 800 or more kilometres from home you are allowed up to two days leave without pay for travel time.

How do I apply for Special Or Compassionate Leave?

You must send a letter to the Deputy Minister or designee, explaining why you need the leave.

- You may get a leave with pay for up to three days.

- In some special cases, you can get a leave with pay for up to six months.

You may get a leave with pay for over six months if it is certified by the Civil Service Commission and if it is approved by the Lieutenant Governor in Council.

- You may get a leave without pay.

How much Vacation time do I get?

Your vacation time depends on how long you have been in the OPS. These are the rates:

- for the first 8 years of continuous service -- 15 days a year;
- after 8 years of continuous service -- 20 days a year;
- after 15 years of continuous service -- 25 days a year;
- after 26 years of continuous service -- 30 days a year;

As well, after you have worked for the OPS for 25 years, you will be given an extra five days of vacation credits in that year only.

If you have worked for the OPS for 25 years, on or before the month you turn 64, you will be given five days of leave with pay for the year between your 64th and 65th birthday. This is called pre-retirement leave.

You cannot take a vacation until you have been working for six consecutive months. But, you begin to earn vacation credits as soon as you begin work.

Can I carry over or bank my unused vacation credits from one year to the following year?

Yes. You can carry over up to twice your earned vacation credits. However, you must reduce your banked vacation credits to a maximum of one year's accrual by December 31 each year.

Self-funded leave

The Self-funded Leave Plan allows employees to plan and self-finance a leave of absence for a minimum period of six months

SECTION E: PREGNANCY, ADOPTION & PARENTAL LEAVE

1. Pregnancy Leave:

Who can get pregnancy leave?

Any woman who has worked for the OPS for at least 13 weeks.

How do I apply?

You must send a letter to your supervisor with a statement signed by a physician. The letter must say that you are pregnant and when the baby is due.

When can the leave begin?

You can begin your pregnancy leave 17 weeks before the baby is due.

Note: If you qualify for Unemployment Insurance benefits, UI will only begin paying these benefits as early as 8 weeks before the baby is due. Therefore, if you start your pregnancy leave 17 weeks early, you will not get UI benefits for the first 9 weeks of leave. Please see your ministry benefits co-ordinator or human resources branch for more details.

How long is the leave?

If you are entitled to parental leave (see section on parental leave), your pregnancy leave will end 17 weeks after it began.

If you are not entitled to parental leave, your pregnancy leave will end 17 weeks after it began, or six weeks after the birth, still birth, or miscarriage, whichever is later.

If you wish, you can end your leave earlier by giving your employer at least four weeks written notice of the date you want

Do I get pension credit while I am on leave?

Under pension plan rules, you cannot contribute to the pension plan while on leave. Therefore, you do not earn pension credit for the leave. However, you can arrange to "buy-back" pension credit for the leave once you return to work. Your ministry benefits co-ordinator or Human Resources Branch will help you with the "buy-back" arrangements if you choose this option after you return to work.

Do I have to return to the OPS after the leave?

Under the Income Tax Act (which provides authority for the leave), you are required to return to the OPS for a period of time equal to the leave period.

What other kinds of leave are there?

Other leaves include:

- **Court witness or Jury Duty leave:** If you are subpoenaed to be a witness in a trial or selected to serve on a jury, you can:
 - keep the money paid you for being a witness or juror and count your time away from work as leave without pay;
 - keep the fee and count the time as vacation or compensating leave;
 - pay the fee to your employer and count the time away as leave with pay.
- **Foreign/Intergovernmental Employment Leave:** You may be given up to one year, with or without pay, to work in another country, for that government or for the Canadian government. Discuss your benefits coverage during leave with your benefits coordinator.
- **Canadian Forces Reserve Training:** You may be given up to one week of leave with pay, and one week without pay during a fiscal year. To find out more, talk to your benefits coordinator.

3. Parental Leave:

What is parental leave?

Parental leave is an 18 week unpaid leave for the purpose of child care. UI provides 10 weeks of benefits to either parent for care of a newborn or newly adopted child. UI may pay an additional five weeks of benefits if the child is over six months old and suffers from a physical, psychological or emotional condition that requires longer parental care.

The adopting parents may share the UI parental benefits. Your insured benefits continue as if at work for the 18 weeks of this leave unless you state in writing that you do not want this. You also continue to earn seniority and vacation credits.

Who can get parental leave?

- Any employee who has worked with the OPS for at least 13 weeks, and who is:
- a natural parent (mother or father);
 - an adoptive parent (mother or father); or
 - a person in a permanent relationship with the parent of a child, and who intends to treat the child as his/her own.

When does parental leave begin?

- A natural mother must take the leave immediately after her 17 weeks pregnancy leave, and the parental leave is part of the six month extended leave. A natural father must take the leave within 35 weeks of the birth.
- For adopting parents, leave must begin either on the day the child comes into their custody, care and control for the first time, or within 35 weeks of that date.
- An employee who is in a permanent relationship with the parent of a child (e.g. a step-parent) and who intends to treat the child as his/her own must begin the leave within 35 weeks of the child coming into custody, care and control for the first time.

When does the parental leave end?

The leave ends 18 weeks after it begins. However, if you are an adoptive parent, or in a permanent relationship with the parent of a child you intend to treat as your own, you have the flexibility to extend your leave. If requested in writing at least two weeks before the parental leave ends, you are entitled to an additional 25 weeks of leave without pay but with accumulation of credits.

Do I get a SUB allowance during parental leave?

Only if the leave is related to adoption. If you qualify, the SUB allowance plus UI benefits will provide 93% of weekly salary for 12 weeks.

Like pregnancy leave, parental leave is a leave without pay. However, UI provides 10 weeks of benefits. The SUB allowance will pay 93% of salary for the first two weeks of parental leave, before the UI benefits begin. After that, the SUB allowance will top-up the 10 weeks of UI benefits and any other earnings you receive, to give you 93% of your weekly salary.

You do not receive any pay or benefit (SUB or UI) during the last six weeks of the 18 weeks parental leave except under the following conditions.

UI may pay you an additional five weeks benefits if the newly adopted child has a physical, psychological or emotional condition and requires longer parental care. If you provide your employer with proof that you are receiving the additional five weeks of UI benefits, then you will receive an additional five weeks of SUB allowance payments.

The SUB allowance will be paid to the adoptive parent (mother or father) who is receiving the UI parental benefits.

When does coverage end?

Coverage ends on the last day of the calendar month in which you terminate employment. However, coverage remains in force for a 31-day "period of grace" following the date of termination.

SUPPLEMENTARY LIFE INSURANCE

What is it?

Supplementary Life Insurance is an optional benefit. You decide whether you wish to join. Under this option you can buy additional insurance of up to three times your yearly salary.

When does coverage begin?

If you decide to buy this insurance when you are first appointed to the civil service, coverage begins on the first day of the calendar month coinciding with or following two months of continuous service.

If you apply to buy or increase the insurance within 31 days of marriage or the birth/adoption of a child, coverage becomes effective the first of the month following application, providing you have completed two months of continuous service.

Otherwise, coverage becomes effective on the first of the month following approval by the insurance company.

If you are absent from work due to illness or injury on the day coverage is to begin, coverage does not become effective until you return to work for at least one regular working day.

Who pays the monthly premium?

You pay the entire monthly premium deduction, which is based on your age and how much insurance you buy. The money is taken off your pay.

What happens if my salary changes?

The amount of your insurance coverage adjusts with changes in

your salary from either the date the increase is approved or the effective date, whichever is later.

If you are absent from work due to sickness or injury on the date your increased coverage would have occurred, the increase will not take effect until you have returned to work for at least one working day.

If your salary is reduced, you may choose to maintain the insurance at the former higher level by applying through your benefits coordinator.

What happens if I become totally disabled?

- Total disability must commence prior to age 64 years and 6 months.
- Total disability must have existed continuously for at least 9 months.
- Proof of disability must be submitted within 24 months after the commencement of disability.
- If you are getting LTIP, your insurance coverage remains in force, but you will not have to pay premiums. You will be covered as long as you are disabled (as it is defined in the insurance policy), or until you turn 65, whichever is earlier.

Do I need to prove that I am insurable (in good health)?

If you buy Supplementary Life Insurance within 31 days after appointment, upon marriage or on the birth/adoption of a child, you do not need to prove that you are insurable. If you apply later, you must prove your insurability.

Can I convert my policy?

Upon resignation or retirement, you may convert your insurance coverage to an individual policy providing coverage up to the amount for which you were insured before ending employment (subject to a combined maximum with Basic Life of \$200,000). You do not need to provide proof of insurability. To apply for the conversion you must submit a letter stating your request to the insurance company within 31 days of the end of coverage.

Schedule 4.1(ae) - Litigation

PART A - CLAIMS

Date	3rd Party	Description
Dec. '97	728184 Ontario Ltd	disputing a set-off from a land compensation payment. Set-off relates to removal of stockpile on 407 Right of Way.
July '97	Union Gas Ltd.	Dust from construction activities allegedly damaged gas generator.
July '97	Halton Hills & Brampton Hydro	Backhoe dug up underground cable during excavation.
July '97		Five homeowners alleging problems with well water levels.
Jan. '97		claims to have struck pylon on Hwy. 427 (at 407), lost control and struck guardrail. Claiming head injuries as well as emotional and other physical distress. (Injury Claim)
Jan. '97	Region of York	Region alleging CHIC is responsible for flooding which damaged their meter.
Dec. '96		It has been alleged that a large puddle accumulated in the NBL of Warden Ave. approx. 100m S of 407 bridge. A vehicle travelling N/B lost control & crossed into the S/B lane hitting another vehicle head on. One fatality and serious injuries to the others. (Injury Claim)
Aug. '96	York Region	York Region notified CHIC that their 825mm Sanitary Sewer was leaking (river water running into the sewer) at a location near the S edge of the Hwy. 407 bridge. York region's Engineering Consultant said that increased flow in the sewer was first noted in Mid to late April of 1996. CHIC may have been working in this area. York Region must dig up the pipes to determine who is responsible for the damages. Repair costs unknown at this time.
July '96		claims to have been seriously injured on Torbram Rd. (S/W side of bridge over 407) - when the bike he was riding hit the sewer/asphalt under construction and sent him flying off his bike. He claims the area was not marked or covered. (Injury Claim)
Feb. '96		Vehicle #1 was N/B on the 410 when it encountered debris on the road (alleges it was our plastic tarp) lost control and hit the guard rail. The driver of vehicle #2 stopped to assist when vehicle #3 swerved to avoid the debris and collided with the first vehicle and struck the driver of the second vehicle - causing serious injuries. (Injury Claim)
Dec. '95	CN	While placing earth between pier and tracks for access road the blade of the dozer cut one CN cable and damaged another.
Ocl '95	Bell	Bell cable in conduit approx. 30 or 750mm below surface was severed while loading scraper.
Ocl '94		Vehicle 1 was S/B when struck head on by vehicle 2. Vehicle 2 travelling N/B at a high rate of speed (while being pursued by the police for failing to stop at a "Ride" spot check) loses control and crosses into the S/B/ lane. Serious injuries and one fatality. (Injury Claim)

PART B - POSSIBLE CLAIMS

	3rd Party	Description
	Ministry of Finance	Issue: Whether OTCC is liable for R.S.T. on the purchase of Transponders.
	Ministry of Finance	Issue: Whether OTCC is liable for R.S.T. on the entire 407 operations. This is an annual cost.
	Ministry of Finance	Issue: Whether OTCC is liable for R.S.T. on the purchase of Electronic Toll Equipment.

SCHEDULE 4.1(ad) – MATERIAL CONTRACTS

1. Development and Design Build Agreement for Highway 407 Central made as of May 11, 1994 among Ontario Transportation Capital Corporation ("OTCC"), Canadian Highways International Corporation ("CHIC") and Monenco AGRA Inc., Dufferin Construction Company, The Foundation Company Inc. and Ambro Construction Limited (collectively, the "Constructor Companies").
2. Development and Design-Build Amending Agreement made as of the 31st day of August, 1995, among OTCC, CHIC and the Constructor Companies.
3. Project Partnering Agreement dated May 11, 1994 between OTCC and CHIC.
4. Toll System Supply Agreement made as of August 31, 1995 among OTCC, CHIC, Hughes Aircraft of Canada Limited ("HACL"), Hughes Aircraft Company ("HAC"), Bell Canada and Bell Sygma Inc.
5. Mark IV Electronic Toll Equipment Supply Agreement made as of August 31, 1995 among OTCC, Mark IV Industries Ltd., HACL and CHIC.
6. Escrow and License Agreement made as of the 17th day of April, 1996 among HAC, HACL, OTCC and Data Securities International, Inc. ("DSI").
7. License Agreement made as of August 31, 1995 between HAC and OTCC.
8. Escrow and License Agreement made as of the 17th day of April, 1996 among Bell Sygma Inc., OTCC and DSI.
9. License Agreement dated as of August 31, 1995 between Bell Sygma Inc. and OTCC.
10. Escrow and License Agreement made as of the 17th day of April, 1996 between Mark IV Industries Ltd. and OTCC.
11. License Agreement dated as of August 31, 1995 between Mark IV Industries Ltd. and OTCC.
12. Indemnity Agreement dated as of August 31, 1995 between OTCC and Mark IV Industries, Inc..
13. Facility Operating, Maintenance, Management and Rehabilitation Agreement made as of the 1st day of April, 1997 among OTCC, Canadian Highways Management Corporation ("CHMC") and CHIC.
14. ATMC Operating, Maintenance, Management and Rehabilitation Agreement made as of April 1, 1997 among OTCC, Advanced Toll Management Corp. ("ATMC"), CHMC, Bell Canada and Raytheon Systems Canada Ltd. ("Raytheon Canada").

15. Raytheon Maintenance Subcontract made as of April 1, 1997 among ATMC, Raytheon Canada, OTCC and CHMC.
16. CGI Maintenance Subcontract made as of April 1, 1997 among ATMC, CGI Information Systems and Management Consultants Inc., OTCC and CHMC.
17. Mark IV Electronic Toll Equipment Maintenance Agreement dated as of April 1, 1997 among OTCC, Mark IV Industries Ltd. and CHMC.
18. Operations Centre License Agreement made as of April 1, 1997 between OTCC and CHMC.
19. Sublicense of Highway 407 Operations Centre dated as of April 1, 1997 among CHMC, ATMC and OTCC.
20. Patrol Yard License Agreement dated as of April 1, 1997 between OTCC and CHMC.
21. Highway 407 Concession and Ground Lease Agreement made as of April 6, 1999 between the Crown in Right of Ontario, as Represented by the Minister without Portfolio with Responsibility for Privatization and 407 ETR Concession Company Limited.
22. Letter Agreement dated January 25, 1999, between OTCC, Raytheon Canada and Raytheon Company, doing business as Raytheon Systems Company ("Raytheon Systems Company") with respect to disclosure of confidential information and amounts to be paid by OTCC to Raytheon Canada for the toll system extension for the Western and Eastern portion of Highway 407 and the toll system upgrade for the Central portion of Highway 407.
23. Letter Agreement dated March 4, 1999 between OTCC, Raytheon Canada and Raytheon Systems Company with respect to the supply and maintenance of the Western and Eastern portion of Highway 407 and the upgrade for the Central portion of Highway 407.

Schedule 8.5 - Rules of Procedure for Arbitration

The following rules and procedures shall apply with respect to any matter to be arbitrated by the Parties under the terms of the Agreement.

1. INITIATION OF ARBITRATION PROCEDURES

- (a) If a Party to this Agreement wishes to have any matter under this Agreement arbitrated in accordance with the provisions of this Agreement, it shall give notice to the other Party hereto specifying particulars of the matter or matters in dispute and proposing the name of the person it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other Party to this Agreement shall give notice to the first Party advising whether such Party accepts the arbitrator proposed by the first Party. If such notice is not given within such 15 day period, the other Party shall be deemed to have accepted the arbitrator proposed by the first Party. If the Parties do not agree upon a single arbitrator within such 15 day period, either Party may apply to a judge of the Ontario Court, General Division under the *Arbitration Act, 1991*, S.O. 1991, chap. 17, (the "Arbitration Act") for the appointment of a single arbitrator (the "Arbitrator").
- (b) The individual selected as Arbitrator shall be qualified by education and experience to decide the matter in dispute. The Arbitrator shall be at Arm's Length from both Parties and shall not be a member of the audit or legal firm or firms who advise either Party, nor shall the Arbitrator be an individual who is, or is a member of a firm, otherwise regularly retained by either of the Parties.

2. SUBMISSION OF WRITTEN STATEMENTS

- (a) Within 15 Business Days of the appointment of the Arbitrator, the Party initiating the arbitration (the "Claimant") shall send the other Party (the "Respondent") a Statement of Claim setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within 15 Business Days of the receipt of the Statement of Claim, the Respondent shall send the Claimant a Statement of Defence stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds, and on what other facts and contentions of law he relies.
- (c) Within 15 Business Days of receipt of the Statement of Defence, the Claimant may send the Respondent a Statement of Reply.
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the Party concerned relies and which have not previously been submitted by any Party, and (where practicable) by any relevant samples.

- (e) After submission of all the Statements, the Arbitrator will give directions of, for the further conduct of the arbitration.

3. MEETINGS AND HEARINGS

- (a) The arbitration shall take place in the City of Toronto, Ontario or in such other place as the Claimant and the Respondent shall agree upon in writing. The arbitration shall be conducted in English unless otherwise agreed by such Parties and the Arbitrator. Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.
- (b) All meetings and hearings will be in private unless the Parties otherwise agree.
- (c) Any Party may be represented at any meetings or hearings by legal counsel.
- (d) Each Party may examine, cross-examine and re-examine all witnesses at the arbitration.

4. THE DECISION

- (a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will set out reasons for decision in the decision.
- (b) The Arbitrator will send the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control.
- (c) The provisions of this Agreement and this Schedule requiring the determination of certain disputes of arbitration shall not operate to prevent recourse to the court by any Party as permitted by the *Arbitration Act* (Ontario) with respect to injunctions, receiving orders and orders regarding the detention, preservation and inspection of property, or whenever enforcement of an award by the sole arbitrator reasonably requires access to any remedy which an arbitrator has no power to award or enforce. In all other respects an award by the sole arbitrator or arbitrators, as the case may be shall be final and binding upon the Parties and there shall be no appeal from the award of the arbitrator or arbitrators as the case may be on a questions of law or any other questions provided that the Arbitrator has followed the rules provided herein in good faith and has proceeded in accordance with the principles of natural justice.

5. JURISDICTION AND POWERS OF THE ARBITRATOR

- (a) By submitting to arbitration under these Rules, the Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to these Rules and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the Arbitrator at law, the Parties agree that the Arbitrator shall have jurisdiction to:
 - (i) determine any question of law arising in the arbitration;
 - (ii) determine any question as to the Arbitrator's jurisdiction;
 - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
 - (iv) order any Party to furnish further details of that Party's case, in fact or in law;
 - (v) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with these Rules or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
 - (vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - (vii) make one or more interim awards;
 - (viii) hold meetings and hearings, and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of the Parties thereto;
 - (ix) order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant;
 - (x) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the Parties;
 - (xi) make interim orders to secure all or part of any amount in dispute in the arbitration;

- (xii) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis; and
- (xiii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

6. ARBITRATION ACT

The rules and procedures of the *Arbitration Act* (Ontario) shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of these Rules of Arbitration.

**HIGHWAY 407
CONCESSION AND GROUND LEASE
AGREEMENT**

BETWEEN:

**THE CROWN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTER WITHOUT PORTFOLIO
WITH RESPONSIBILITY FOR PRIVATIZATION**

- and -

407 ETR CONCESSION COMPANY LIMITED

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HIGHWAY 407 CONCESSION AND GROUND LEASE AGREEMENT

THIS HIGHWAY 407 CONCESSION AND GROUND LEASE AGREEMENT is made as of the 6th day of April, 1999,

B E T W E E N:

**THE CROWN IN RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER WITHOUT
PORTFOLIO WITH RESPONSIBILITY FOR
PRIVATIZATION**

(the "Grantor")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "Concessionaire").

For consideration, the receipt and sufficiency of which are acknowledged by each of them, the parties hereto covenant and agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"**Additional Lands**" has the meaning ascribed thereto in Subsection 2.24(a).

"**Affected Highway**" means a highway, road or roadway under the jurisdiction and control of the Province, the federal or a municipal government or any other Person (including any private road) that intersects or crosses over or under Highway 407.

"**Affected Highway Protocol**" means the protocol attached as Schedule 1, providing for the allocation of responsibilities for the maintenance, repair and rehabilitation of Affected Highways.

"**Affected Landowner Protocol**" means the protocol attached as Schedule 2, providing for the rights and obligations of the Concessionaire and the Minister of Transportation with respect to lands and landowners affected by the Work.

"**Affected Party**" has the meaning ascribed thereto in Section 18.2.

"Affiliate", when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

"Agreement" means this Highway 407 concession and ground lease agreement, including, for the avoidance of doubt, all schedules referred to herein.

"Approval", "Approved", "Approved by the Grantor" and similar expressions mean approved or consented to by the Grantor in accordance with the provisions of Section 1.19.

"Approved Change Request" means a Change Request which has been Approved by the Grantor.

"Arbitrator" has the meaning ascribed thereto in Section 25.5.

"Archaeological/Historical Finds" means property of archaeological or historical significance or heritage resources located in, under or on the Highway 407 Lands.

"Article", "Section", "Subsection", "Paragraph", "Subparagraph" and "Schedule" mean and refer to the specified article, section, subsection, paragraph, subparagraph or schedule of or to this Agreement.

"Assignment of Plans and Contracts Security Agreement" has the meaning ascribed thereto in Section 2.13.

"Audit" and similar expressions mean, with respect to any matter or thing relating to the Project or this Agreement, the performance by or on behalf of the Grantor of such reviews, investigations, inspections, audits, confirmations, certifications, tests, studies and determinations of or relating to such matter or thing as the Grantor may determine, in its sole and absolute discretion, to be advisable or desirable in the circumstances conducted in each case in accordance with applicable industry accepted practices, if any.

"Bank Rate" means the bank rate established by the Bank of Canada from time to time as the minimum rate at which the Bank of Canada makes short-term advances to the banks listed in Schedule 1 to the *Bank Act* (Canada).

"Bona Fide Debt" or "Bona Fide Leasehold Mortgage" means any debt or Leasehold Mortgage, as the case may be, owing or granted to a Person other than a Person related to the Concessionaire, pursuant to an agreement entered into prior to the occurrence of an event of Force Majeure, Discriminatory Action or other event giving rise to the payment of amounts for or in respect of termination under this Agreement, but for the avoidance of doubt, shall include any refinancing of such debt or Leasehold Mortgage, notwithstanding that the agreement in respect of such refinancing was entered into after the occurrence of the event giving rise to the payment of amounts for or in respect of termination under this Agreement, provided that such refinancing was entered into on commercially reasonable terms having regard to the circumstances of termination.

"Breakage Costs" means any commercially reasonable breakage costs, make-whole payment or other prepayment amounts that are required to be paid by the Concessionaire under any Bona Fide Debt relating to the Project as a result of the early repayment of such debt prior to its scheduled maturity date.

"Business Day" means any day which is not (i) a Saturday or a Sunday or (ii) a day observed as a holiday under a law of the Province of Ontario or a federal law of Canada applicable to the Province of Ontario.

"Change Order" means a written order prepared by or on behalf of the Grantor directing the Concessionaire to

- (i) add or perform work in respect of the Project in addition to that provided for in this Agreement, including work related to the integration of Highway 407 with
 - (A) other highways (whether tolled or not) and
 - (B) any Expansions or Extensions performed by or on behalf of the Grantor and not otherwise required hereunder,
- (ii) dispense with, delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or make other changes to the Work,
- (iii) implement and comply with Higher Ministry Safety Standards,
- (iv) implement an Expansion or Extension,
- (v) cause the Delivery Plan to be revised, or
- (vi) accelerate the construction of all or any of the Ultimate Number of Core Lanes (as defined in Schedule 22).

"Change Request" means a written request in respect of the Project prepared by or on behalf of the Concessionaire and addressed to the Grantor seeking to

- (i) dispense with, delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or make other changes to the Work in respect of Highway 407, provided that, for the avoidance of doubt, no Change Request shall be necessary to implement any change in the Work not specifically mandated or prohibited or otherwise regulated by the Governing Documentation or Laws and Regulations,
- (ii) alter or modify the Delivery Plan, Ministry Safety Standards or, if applicable, Higher Ministry Safety Standards, or
- (iii) implement an Expansion or Extension.

“Claim” means any claim, demand, liability, damage, loss, suit, action or cause of action and all costs and expenses relating thereto.

“Commencement of Construction” means that the Concessionaire has actually commenced or caused the commencement of Construction Work or related on-site activities (such as utility relocation, fence removal or demolition or alteration of existing structures) and **“Commence Construction”** has a corresponding meaning.

“Commissioned and Opened” means, with respect to any portion of Highway 407 (excluding the Toll System), that such portion of Highway 407 is determined by notice from the Grantor to the Concessionaire to be available for use by the public as a controlled access highway based on Ministry Safety Standards (and, if applicable, Higher Minister Safety Standards) and Laws and Regulations and for the purposes hereof, Highway 407 Central shall be deemed to be Commissioned and Opened, except for that two (2) kilometre portion of Highway 407 between McCowan Road and Highway 48 and the Highway 407 Central Deferred Interchanges and **“Commissioning and Opening”** shall have a corresponding meaning.

“Comparable Controlled Access Highways” means high volume controlled access King’s Highways designated under Subsection 36(1) of the *Public Transportation and Highway Improvement Act* (Ontario).

“Concession Termination Date” means the ninety-ninth (99th) anniversary of the Effective Date.

“Concessionaire Default” has the meaning ascribed thereto in Section 20.1.

“Concessionaire’s Advisors” means the agents, advisors, consultants, engineers, auditors, employees, representatives, contractors, subcontractors and/or workmen of the Concessionaire and all others for whom the Concessionaire is in law responsible, and includes the Designated Consultants and the Designated Contractors.

“Concessionaire’s Counsel” means such legal counsel as the Concessionaire may designate in writing from time to time.

“Concessionaire’s Interest” means the right, title and interest of the Concessionaire in and to the Project, the Project Agreements, the DDB/OMM Agreements, the Governing Documentation and/or the leasehold estate of the Concessionaire created by this Agreement.

“Construction Work” means the construction of Highway 407 East Partial, Highway 407 West and the Highway 407 Central Deferred Interchanges in accordance with the Governing Documentation and Laws and Regulations, and includes the rehabilitation and/or upgrade of Province Completed Facilities as part thereof.

“Corridor Lands” means lands and rights that are (i) adjacent to, over or under the Highway 407 Lands, (ii) owned by the Province and (iii) not leased to the Concessionaire.

“Corridor Management Protocol” means the protocol describing the responsibilities of the Province and the Concessionaire with respect to the administration and

implementation of the management of the Highway 407 Lands and the Corridor Lands attached as Schedule 3.

"Data" means all plans, materials, records, studies, tests, test results, certificates, investigations, samples, surveys, reports, statements, documents, facts, information, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) and data (including test data) provided, prepared, produced, created, collected, recorded, analyzed, characterized, categorized, processed, generated and/or stored by the Toll System or otherwise by the Concessionaire or any of the Concessionaire's Advisors in connection with the Project or the Work and, except as otherwise stated herein to the contrary, does not include Financial Information or financial statements of the Concessionaire.

"DDB/OMM Agreements" means agreements relating to the development, design, operation, management, maintenance, rehabilitation and/or tolling of the Project as in force from time to time, but excludes Leasehold Mortgages and related financing documents.

"DDB Work" means the Development Work, the Design Work and the Construction Work.

"Default" means a Concessionaire Default or a Grantor Default, as the case may be.

"Delay Event" has the meaning ascribed thereto in Section 18.1.

"Delay Period" has the meaning ascribed thereto in Subsection 4.14(b).

"Delivery Plan" means the delivery plan attached as Schedule 4 as the same may be amended pursuant to any Change Order or Approved Change Request.

"Design Work" means the design of Highway 407 West, Highway 407 East Partial and the Highway 407 Central Deferred Interchanges in accordance with the Governing Documentation and Laws and Regulations.

"Designated Consultant" has the meaning ascribed thereto in Subsection 4.3(a), and references to a Designated Consultant refer to the Designated Consultant retained to perform the relevant functions described in the sections of this Agreement in which the reference to such Designated Consultant appears.

"Designated Contractor" has the meaning ascribed thereto in Subsection 4.7(a), and references to a Designated Contractor refer to the Designated Contractor retained to perform the relevant functions described in the sections of this Agreement in which the reference to such Designated Contractor appears.

"Development Work" means the development obligations in this Agreement relating to the Design Work, the Construction Work and/or the Project, or any portion thereof in accordance with the Governing Documentation and Laws and Regulations.

"Discriminatory Action" has the meaning ascribed thereto in Section 19.1.

"Discriminatory Action Compensation" has the meaning ascribed thereto in Section 19.2.

"Discriminatory Action Damages" has the meaning ascribed thereto in Section 19.3.

"Discriminatory Action Termination Value" has the meaning ascribed thereto in Section 19.4.

"Effective Date" means the date of this Agreement.

"Encumbrance" means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of law or statutory or otherwise created.

"End Date" means the date on which the Term expires or is terminated.

"Environmental Laws" means

- (i) all requirements and provisions under or prescribed by the common law and any and all applicable federal, provincial, regional, local or municipal laws, statutes or by-laws,
- (ii) all applicable rules, regulations, protocols, guidelines, procedures, judgments, concessions, grants, franchises, licenses, agreements and any other governmental requirements, promulgated under or pursuant to any law referred to in clause (i),
- (iii) all applicable orders, decisions and exemptions rendered by any Governmental Authority, and
- (iv) any other applicable laws, rules, regulations, orders and decisions

relating to environmental matters that pertain to the Project and that with respect to clauses (ii), (iii) and (iv) would, in the ordinary and usual course of the development, design, construction, operation, management, maintenance, rehabilitation and/or tolling of a Comparable Controlled Access Highway, be recognized, followed and/or implemented.

"Existing Improvements" means

- (i) the highway that as of October 19, 1998 was part of the King's Highway known as Number 407 located on the Highway 407 Lands, including as at the Effective Date all improvements (including paving), signage (including all toll road entry and exit signage), the Toll System, chattels, machinery, equipment, materials, supplies, tools, appurtenances and fixtures forming a part of and used in connection with Highway 407,
- (ii) all buildings and structures, whether temporary or permanent, erected or located in, on, under or upon the Project Lands as at the Effective Date, including the existing Operations Centre located at 6300 Steeles Avenue West in the Town of Vaughan, Ontario and the existing Patrol Yards

located at 6200 Steeles Avenue West in the Town of Vaughan and at Part of Lot 10, Concession 9, in the Town of Milton, Ontario, together with the systems, facilities and equipment comprising the foregoing or related thereto,

- (iii) all other facilities, fixtures, appurtenances and tangible and intangible (other than receivables) personal property as at the Effective Date, including inventories of any nature whatsoever contained on or attaching to the Project Lands or used in connection with the Project Lands,
- (iv) all mechanical, electrical and other systems installed or used in connection with any of the foregoing as at the Effective Date, and
- (v) the Province Completed Facilities.

“Expansion” means the building of additional lanes, the adding or expanding of interchanges, the construction of tunnels, bridges and/or other structures and the making of other improvements in connection with Highway 407, and for the avoidance of doubt, does not include Highway 407 West, Highway 407 East Partial, or Highway 407 Central Deferred Interchanges or the construction of any additional lanes up to and including the Ultimate Number of Core Lanes (as defined in Schedule 22), and **“Expand”** and **“Expanded”** have corresponding meanings.

“Extension” means the construction of linear additions to Highway 407, and for the avoidance of doubt, does not include Highway 407 West, Highway 407 East Partial, or Highway 407 Central Deferred Interchanges, and **“Extend”** and **“Extended”** have corresponding meanings.

“Financial Information” means any and all information relating to the Project, including income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Toll Revenues (including accounts receivable aging and billable and non-billable trips), operating expenses, capital expenditures and budgeted operating results.

“Fiscal Year” means the twelve (12) month period commencing on April 1 and ending on March 31.

“Force Majeure” means any event beyond the reasonable control of the party to this Agreement claiming Force Majeure, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, governmental expropriation or confiscation of property or equipment by any Governmental Authority (other than the Province), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tidal wave, earthquake, epidemic, quarantine restriction, stop-work order or injunction issued by a court or public authority having jurisdiction and governmental embargo, which delays or interrupts the performance of any material obligation under this Agreement provided that such event is not otherwise specifically dealt with under this Agreement or does not arise by reason of

- (i) the negligence or wilful misconduct of the Affected Party or those for whom it is in law responsible,
- (ii) any act or omission by the Affected Party (or those for whom it is in law responsible) in breach of the provisions of this Agreement,
- (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Affected Party,
- (iv) any strike, labour dispute or other labour protest involving any Person retained, employed or hired by the Concessionaire or any of the Concessionaire's Advisors to supply materials or services for or in connection with the Work and any strike, labour dispute or labour protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire or any of the Concessionaire's Advisors,
- (v) any weather conditions (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced, save and except hurricanes, tornadoes and similar catastrophic weather conditions encountered or experienced at or in the vicinity of the Highway 407 Lands during the period of the performance of the Construction Work,
- (vi) the development, construction or operation of any mode of transportation, including a highway, that may result in the reduction of Toll Revenues or in the number of vehicles using Highway 407,
- (vii) any change or development in technology relating to tolling or toll highways,
- (viii) the existence of a Ministry Safety Standard, the introduction of a new Minister Safety Standard or any changes to an existing Ministry Safety Standard, or
- (ix) any Discriminatory Action.

"Force Majeure Termination Value" has the meaning ascribed thereto in Section 18.6.

"Government Agreements" has the meaning ascribed thereto in Section 3.13.

"Governmental Authority" means any federal, provincial, regional or municipal governmental, quasi-governmental, judicial, public or statutory authority, commission, tribunal, agency, department, ministry, body or other entity.

"Governmental Authorization" means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization, special lease or other requirement of any Governmental Authority or any utility, cable television supplier or railway operator, whether existing or to be obtained, which is necessary in connection with the Work or any part thereof.

"Governing Documentation" means this Agreement, Approved Change Requests, Change Orders, Ministry Safety Standards, Higher Ministry Safety Standards (if applicable), Governmental Authorizations and/or Other Authorizations.

"Grantor Default" has the meaning ascribed thereto in Section 20.3.

"Grantor's Counsel" means such legal counsel as the Grantor may designate in writing from time to time.

"Hazardous Substance" means, but is not limited to, any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by Environmental Laws or which is classified as hazardous or toxic under Environmental Laws.

"Higher Ministry Safety Standards" means safety standards, specifications, special provisions, directives, codes, policies, procedures, manuals, guidelines and/or processes of the Ministry of Transportation that constitute a higher level of safety standard than the standards set out in the Ministry Safety Standards.

"Highway 407" means the highway that as of October 19, 1998 was that part of the King's Highway known as Number 407 located on the Highway 407 Lands, together with Highway 407 West, Highway 407 East Partial, the Highway 407 Central Deferred Interchanges and the highway as it may be Expanded or Extended on the Highway 407 Lands and including all improvements (including paving), signage (including all toll road entry and exit signage), the Toll System, chattels, machinery, equipment, materials, supplies, tools, appurtenances and fixtures forming a part of and used in connection with such highway from time to time.

"Highway 407 Act" means the *Highway 407 Act, 1998* (Ontario).

"Highway 407 Central" means the portion of Highway 407 built from Highway 403 in Oakville to Highway 48 in Markham, as more particularly described in Schedule 5.

"Highway 407 Central Deferred Interchanges" means those interchanges to be designed and constructed as part of Highway 407 Central, as more particularly described in Schedule 5.

"Highway 407 East Partial" means the portion of Highway 407 to be designed and constructed from Highway 48 to Highway 7 east of Brock Road, as more particularly described in Schedule 6.

"Highway 407 Lands" means the lands described or to be described in regulations made under the Highway 407 Act, including the lands more particularly described in Schedule 7, and for the avoidance of doubt includes such subsurface and air rights as are necessary for the design, construction, use and safety of Highway 407.

"Highway 407 Lands Availability Schedule" means the schedule attached as Schedule 8 that includes

- (i) in part 1 thereof, a schedule of the dates by which the Grantor will make available or cause to be made available to the Concessionaire the lands required for Highway 407 West and Highway 407 East Partial (or relevant portions thereof),
- (ii) in part 2 thereof, a schedule of the dates by which the leases described therein will be terminated, and
- (iii) in part 3 thereof, a list of the agreements of purchase and sale of the properties identified therein containing conditions to be observed and performed by the Concessionaire as part of the Work.

“Highway 407 West” means the portion of Highway 407 to be designed and constructed from the junction of the Queen Elizabeth Way and Highway 403 in Burlington to the existing terminus of Highway 407 at Highway 403 in Oakville, as more particularly described in Schedule 9.

“Highway Purposes” means utilization of the Commissioned and Opened portions of Highway 407 for transportation purposes by means of any mode of transportation then in general use on Comparable Controlled Access Highways, subject only to closures or cessations expressly permitted hereunder or pursuant to the Highway 407 Act.

“Information” means all reports, certificates, schedules, notices requests, information, materials, test results, samples, plans, projections, files, correspondence, Data and proper, complete and accurate books, records, accounts and documents of the Concessionaire relating to the Project, including any of the foregoing stored electronically or on computer-related media but excludes Financial Information or financial statements of the Concessionaire except as otherwise stated herein to the contrary or as may be required to confirm compliance with the Governing Documentation.

“Initiating Party” has the meaning ascribed thereto in Section 25.4.

“Initiation Notice” has meaning ascribed thereto in Section 25.4.

“Interest Rate” means interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect.

“King’s Highway” means any highway designated from time to time as the King’s Highway by the Lieutenant Governor in Council pursuant to Subsection 7(1) or Subsection 36(1) of the *Public Transportation and Highway Improvement Act* (Ontario).

“Known Archaeological/Historical Finds” means Archaeological/Historical Finds, the presence or potential presence of which was known by the Concessionaire or described or otherwise referred to in the Reference Documents or the list of reports and materials set out in Schedule 10.

“Known Hazardous Substances” means Hazardous Substances the presence or potential presence of which was known by the Concessionaire or described or otherwise referred to in the Reference Documents or the list of reports and materials set out in Schedule 11.

"Late Payment" has the meaning ascribed thereto in Subsection 4.14(b).

"Laws and Regulations" means any requirements under or prescribed by the common law and any federal, provincial or municipal laws, court orders or judgments, orders-in-council, by-laws, codes, orders, rules, policies, regulations or statutes affecting, applicable to or otherwise relating to, the Concessionaire, the Project or the use thereof, including Environmental Laws.

"Leasehold Mortgage" has the meaning ascribed thereto in Section 22.1.

"Leasehold Mortgagee" has the meaning ascribed thereto in Section 22.1.

"Losses" means all losses (including actual and estimated losses of Toll Revenues), damages, costs (including administrative costs), expenses, liabilities, judgments, awards, taxes, fines, penalties, charges and amounts paid in settlement (net of insurance proceeds actually received), including

- (i) reasonable legal fees on a solicitor and client basis and reasonable fees or other charges of accountants and other advisors, and
- (ii) interest computed on money paid by a Person in respect of any of the foregoing at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus three percent (3%), calculated from the date such payment is made by such Person until the date of demand therefor

less, and to the extent applicable in the circumstances,

- (iii) costs and expenses that the party claiming the Losses would otherwise expend or incur in order to comply with the Governing Documentation, and/or
- (iv) costs and expenses that the Concessionaire would otherwise expend or incur in the ordinary course of the performance of the Work or the carrying on of business in the ordinary course.

"Management Plan" means the management plan developed by the Concessionaire for the implementation of the Work, as set out in Schedule 12.

"Minister of Transportation" means the Minister of Transportation of the Province of Ontario.

"Ministry of Transportation" means the Ministry of Transportation of the Province of Ontario.

"Ministry Safety Standards" means safety standards, specifications, special provisions, directives, codes, policies, procedures, manuals, guidelines and processes of the Ministry of Transportation that apply to the development, planning, design, construction, operation, maintenance and rehabilitation of Comparable Controlled Access Highways.

"MTO Enforcement Services Agreement" means the enforcement services agreement with the Ministry of Transportation containing the terms set out in Schedule 13.

"Non-Acceptance Notice" has the meaning ascribed thereto in Subsection 23.2(d).

"Notice of Discriminatory Action" has the meaning ascribed thereto in Section 19.3

"Notice of Dispute" has the meaning ascribed thereto in Section 19.3.

"Notice of Force Majeure Termination" has the meaning ascribed thereto in Section 18.5.

"OMM Work" means the operation, management, maintenance, rehabilitation and/or tolling of the Project in accordance with the Governing Documentation and Laws and Regulations.

"OPP" means the Ontario Provincial Police, its successor or any other public law enforcement service provider permitted to assume the responsibilities of the Ontario Provincial Police in connection with the Project.

"Operations Centre" means any building used primarily for activities relating to the control, management or monitoring of Highway 407 and any electronic or other tolling system on Highway 407 and includes the existing Operations Centre located at 6300 Steeles Avenue West in the City of Vaughan, Ontario.

"Operations Centre Lands" means that part of Lot 1 Concession 9 in the City of Vaughan, Region of York, designated as parts 1, 2 and 3 of Reference Plan 65R-16967 and any other lands upon which an Operations Centre is constructed.

"Other Authorizations" has the meaning ascribed thereto in Section 3.10.

"Other Non-Toll Revenues" means all revenues other than Toll Revenues charged by or on behalf of the Concessionaire from all sources in connection with the Project, including any express exclusions from Toll Revenues but excluding any permit fees, revenues or other monies payable to the Concessionaire pursuant to the Corridor Management Protocol.

"Parkway Belt Lands" means those lands which the Province has established by order as the Parkway Belt Planning Area, as such order may be amended from time to time, the current configuration of which is shown on a map prepared by the Ministry of Municipal Affairs and Housing dated March 5, 1999, and in respect of which the Province has the power and authority to exercise the rights conferred upon it pursuant to the Ontario Planning and Development Act, 1994. S.P. 1994. c.23.

"Patrol Yards" means the lands and premises used for patrol yards for Highway 407, including those located as at the date hereof at 6200 Steeles Avenue West, in the City of Vaughan, Ontario and at part of Lot 10, Concession 9, in the Town of Milton, Ontario.

"Patrol Yards Lands" means that part of Lot 1, Concession 9 in the City of Vaughan, Regional Municipality of York, described as Parts 1, 2 and 3 on Reference Plan 65R-20300 and part of Lot 10, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton, described as part 1 on Reference Plan 20R-12765.

"Permits" means all approvals, certificates of approval, registrations, licences, permits, exemption orders, or declaratory orders conferred under statute, by agreement or otherwise that are specific in their application to Highway 407 that were possessed by the Province as of the Effective Date in connection with the Project, including the permits listed in Schedule 14.

"Permitted Encumbrance" means

- (i) a security interest taken or reserved in personalty forming part of the Project to secure payment of all or part of its price, or
- (ii) a security interest taken by a Person who gives value for the purpose of enabling the Concessionaire to acquire rights in or to personalty which is to form part of the Project to the extent that the value is applied to acquire such rights, so long as none of such security interests are in default,
- (iii) inchoate or statutory liens for Taxes or utility rates or charges not at the time overdue,
- (iv) inchoate or statutory liens for overdue Taxes or utility rates or charges the validity or amount of which the Concessionaire is contesting in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens,
- (v) statutory liens (including any deposits to secure same) incurred or deposits made in the ordinary course of the operation of the Project in connection with worker's compensation, employment insurance and similar legislation,
- (vi) liens and privileges arising out of any judgments with respect to which the Concessionaire intends to prosecute appeals or proceedings for review, but only for so long as there is a stay of execution pending the determination of such appeals or proceedings for review,
- (vii) security given by the Concessionaire to a public or private utility or common carrier or any Governmental Authority when required by such utility, carrier or authority in the ordinary course of operating the Project, which singularly or in the aggregate do not materially detract from the value of the asset concerned or materially impair its use in the operation of the business of the Concessionaire,
- (viii) construction, repair or storage liens arising in the ordinary course of the Concessionaire's business for sums which are not overdue or the validity or amount of which is being contested in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens,
- (ix) easements and any registered restrictions or covenants that run with the Project Lands provided they have been complied with and with respect to Highway 407 Lands, do not in the aggregate materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with

respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes;

- (x) easements, rights of way for, or reservations or rights of others relating to, sewers, water lines, gas lines, pipelines, electric lines, cable television, telegraph and telephone lines, telecommunications services and other similar products or services, provided they have been complied with and provided that with respect to Highway 407 Lands, they do not in the aggregate materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes,
- (xi) zoning by-laws, ordinances or restrictions as to the use of real property, and agreements with other Persons registered against title to the Project Lands, provided they have been complied with and provided that with respect to Highway 407 Lands, they do not materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes,
- (xii) any discrepancies or encroachments that up-to-date surveys of the Project Lands might reveal , provided that they do not materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and, with respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes,
- (xiii) good faith deposits made in the ordinary course of business to secure the performance of bids, tenders, contracts (other than for the payment of borrowed money), leases, surety, customs, performance bonds and other similar obligations,
- (xiv) the rights reserved to or vested in any Governmental Authority by any statutory provision,
- (xv) agreements contemplated by this Agreement including those provided for in Sections 3.11, 3.12 and 3.13,
- (xvi) any Encumbrance permitted hereunder, including the Assignment of Plans and Contracts Security Agreement and any Leasehold Mortgage permitted hereunder, and
- (xvii) any amendment, extension, renewal or replacement of any of the foregoing.

"Person" means an individual, corporation, partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, the Grantor, commission or department and the heirs, beneficiaries, executors, legal representatives or administrators of an individual.

"Plans and Contracts" has the meaning ascribed thereto in Section 2.13.

"Police Services Agreement" means the police services agreement attached as Schedule 15.

"Preliminary Notice" has the meaning ascribed thereto in Section 19.3.

"Preparatory Work" has the meaning ascribed thereto in Section 5-1.

"Project" means

- (i) Highway 407,
- (ii) all buildings and structures, whether temporary or permanent, erected or located in, on, under or upon the Project Lands from time to time, including the Toll System, the Operations Centre and the Patrol Yards, together with the systems, structures, facilities and equipment comprising the foregoing or relating thereto,
- (iii) all other facilities, fixtures, appurtenances and tangible and intangible personal property, including inventories of any nature whatsoever contained on or attaching to the Project Lands from time to time or used in connection with the Project Lands,
- (iv) all mechanical, electrical and other systems installed or used in connection with any of the foregoing, and
- (v) the Concessionaire's leasehold interest in the Project Lands.

"Project Agreements" means all or any of the material agreements relating to the Project from time to time to which both the Grantor and the Concessionaire are parties, including this Agreement, the Requester Agreement, the Police Services Agreement, the MTO Enforcement Services Agreement and the Tolling, Congestion Relief and Expansion Agreement attached as Schedule 22, but excludes any Leasehold Mortgage and related financing documents and the Share Purchase Agreement made the ____ day of April, 1999, between, among others, the Grantor and the purchaser thereunder.

"Project Fair Market Value" has the meaning ascribed thereto in Subsection 23.2(a).

"Project Lands" means the Highway 407 Lands, the Operations Centre Lands and the Patrol Yard Lands.

"Province" means the Crown in Right of Ontario and any or all departments, ministries, agencies, boards, commissions, corporations or other entities thereof.

"Province Completed Facilities" means the facilities completed or to be completed by the Province and intended to form part of the Project as described in Schedule 16 and includes Highway 407 Central.

"Province Permitted Encumbrances" means

- (i) inchoate or statutory liens for Taxes or utility rates or charges not at the time overdue,

- (ii) inchoate or statutory liens for overdue Taxes or utility rates or charges the validity or amount of which the Grantor is contesting in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens,
- (iii) statutory liens (including any deposits to secure same) incurred or deposits made in the ordinary course of the operation of the Project in connection with worker's compensation, employment insurance and similar legislation,
- (iv) liens and privileges arising out of any judgments with respect to which the Grantor intends to prosecute appeals or proceedings for review, but only for so long as there is a stay of execution pending the determination of such appeals or proceedings for review,
- (v) security given by the Grantor to a public or private utility or common carrier or any Governmental Authority when required by such utility, carrier or authority in the ordinary course of operating the Project, which singularly or in the aggregate do not materially detract from the value of the asset concerned or materially impair its use in the operation of the business of the Grantor,
- (vi) construction, repair or storage liens arising in the ordinary course of the Grantor's business for sums which are not overdue or the validity or amount of which is being contested in good faith, but only for so long as such contestation effectively postpones enforcement of any such liens,
- (vii) easements and any registered restrictions or covenants that run with the Project Lands provided they have been complied with and with respect to Highway 407 Lands, do not in the aggregate materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes;
- (viii) easements, rights of way for, or reservations or rights of others relating to, sewers, water lines, gas lines, pipelines, electric lines, cable television, telegraph and telephone lines, telecommunications services and other similar products or services, provided they have been complied with and provided that with respect to Highway 407 Lands, they do not in the aggregate materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes,
- (ix) zoning by-laws, ordinances or restrictions as to the use of real property, and agreements with other Persons registered against title to the Project Lands, provided they have been complied with and provided that with respect to Highway 407 Lands, they do not materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with

respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes,

- (x) any discrepancies or encroachments that up-to-date surveys of the Project Lands might reveal, provided that with respect to the Highway 407 Lands, they do not materially and adversely affect the use of such Highway 407 Lands for Highway Purposes and with respect to other Project Lands, do not in the aggregate materially and adversely affect the use of such lands for their intended purposes,
- (xi) the rights reserved to or vested in any Governmental Authority by any statutory provision,
- (xii) agreements contemplated by this Agreement including those provided for in Sections 3.11, 3.12 and 3.13,
- (xiii) the license agreements with respect to the existing Operations Centre and existing Patrol Yards, forming part of the DDB/OMM Agreements,
- (xiv) any Encumbrance permitted hereunder,
- (xv) any subsisting reservations, limitations, provisos and conditions contained in any transfer from the Province to any other Person and statutory exceptions, qualifications or limitations to the title, and
- (xvi) any amendment, extension, renewal or replacement of any of the foregoing.

“Province’s Interest” means the right, title and interest of the Province in and to the Project, the DDB/OMM Agreements and/or the Governing Documentation.

“Provincial Advisors” means the agents, advisors, consultants, engineers, auditors, employees, representatives, contractors, subcontractors and/or workmen of the Grantor and/or the Province and all others for whom the Grantor and/or the Province is in law responsible, but excludes the Concessionaire and the Concessionaire’s Advisors.

“Realty Taxes” means all real property taxes, rates, duties, assessments (including local improvement taxes), imposts, charges or levies, whether general or special, that are levied, rated, charged or assessed against the Project or the leasehold estate of the Concessionaire created by this Agreement by virtue of any Laws and Regulations and any other payments which are imposed in lieu of any of the foregoing and whether or not in existence at the Effective Date.

“Reference Documents” means the documents listed in Schedule 17.

“Related Person” or **“Persons related to each other”** and similar expressions have the meaning ascribed to Related Persons in the *Income Tax Act* (Canada).

“Requester Agreement” means the vehicle information requester agreement with the Ministry of Transportation attached as Schedule 18.

"Required Condition" means, at any time, the state or condition of the Project required pursuant to the Governing Documentation.

"Responding Party" has the meaning ascribed thereto in Section 25.4.

"Restriction on Transfer Agreement" means the agreement made the _____ day of _____, 1999 among the Grantor, the Concessionaire, and _____ attached as Schedule 19.

"Reversion Date" means the day immediately following the End Date.

"Safety and Standards Protocol" means the safety requirements, standards and procedures described in Schedule 20.

"Sales Tax" means all goods and services taxes, sales taxes, value added taxes, multi-stage taxes, business transfer taxes and other taxes imposed on the Concessionaire or the Grantor in respect of rent payable by the Concessionaire under this Agreement or in respect of the concession and ground lease granted to the Concessionaire under this Agreement or otherwise with respect to the Work.

"Senior Operating Officer" means the person designated by notice from time to time by the Concessionaire for the purposes of Article 25.

"Senior Responsible Official" means the person designated by notice from time to time by the Grantor for the purposes of Article 25.

"Single Arbitrator" has the meaning ascribed thereto in Section 25.4.

"Statement of Claim" has the meaning ascribed thereto in Subsection 25.6(a).

"Statement of Defence" has the meaning ascribed thereto in Subsection 25.6(b).

"Statement of Reply" has the meaning ascribed thereto in Subsection 25.6(c).

"Statement of Reply to Counterclaim" has the meaning ascribed thereto in Subsection 25.6(d).

"Surplus Lands" has the meaning ascribed thereto in Subsection 2.24(a).

"Taxes" means all Realty Taxes, Sales Tax and all other taxes, levies, imposts, stamp taxes, duties, land transfer taxes, fees, deductions, withholdings and similar impositions payable, levied, collected, withheld or assessed as of the Effective Date or at any time in the future.

"Term" means the term of the concession referred to in Section 2.2.

"Termination Damages" has the meaning ascribed thereto in Section 23.1.

"Toll Revenues" means all toll revenues charged by or on behalf of the Concessionaire in respect of vehicles using Highway 407, including fees and interest charged on unpaid tolls, transponder activation, video and other non-transponder fees and charges, usage and

account fees and other income earned from transponders or other toll services, but excluding fines, penalties, fees, monies, costs and expenses levied, charged or payable to the Province, except as may be otherwise agreed to in writing between the Province and the Concessionaire.

“**Toll System**” means the toll structures, equipment and facilities having the characteristics and meeting the specifications set out in Schedule 21.

“**Total Completion**”, “**Totally Completed**” and similar terms mean that the Construction Work or relevant part thereof has been totally completed in compliance with the provisions of this Agreement and to the same extent as is or may be required for a contract to be deemed to be completed as provided in the *Construction Lien Act*, (Ontario).

“**Total Completion Date**” means the date upon which the Construction Work or relevant part thereof has been Totally Completed.

“**Transfer**” has the meaning ascribed thereto in Section 21.1.

“**Unaffected Party**” has the meaning ascribed thereto in Section 18.2.

“**Utility Relocation Protocol**” means the utility relocation protocol for the Project, attached as part of Schedule 3.

“**Valuation Notice**” has the meaning ascribed thereto in Subsection 23.2(d).

“**Work**” means

- (i) the DDB Work and the OMM Work, and
- (ii) all other work relating to the Project or otherwise to be performed by or on behalf of the Concessionaire as described in this Agreement.

1.2 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

1.3 Headings

The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.4 References to this Agreement

The words “herein”, “hereby”, “hereof”, “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it.

1.5 References to any Agreement

Unless specified otherwise, a reference in this Agreement to an agreement, document or standard (including, for avoidance of doubt, this Agreement and any Ministry Safety Standard) at any time refers (subject to all relevant approvals) to that agreement, document or standard as amended, supplemented, restated, substituted, replaced, novated or assigned at such time.

1.6 Meaning of Including

In this Agreement the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

1.7 Trade Meanings

Unless otherwise defined herein, words or abbreviations which have well-known trade meanings are used herein in accordance with those meanings.

1.8 Statutes

Unless specified otherwise, a reference in this Agreement to a statute refers to that statute as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto. A reference to a statute shall be deemed to include any regulations made thereunder.

1.9 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to lawful currency of Canada.

1.10 Generally Accepted Accounting Principles

All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

1.11 Calculation of Time

For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern standard time or Eastern daylight time, as the case may be) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern standard time or Eastern daylight time, as the case may be) on the next Business Day.

1.12 Performance on Holidays

If any action is required by this Agreement to be taken on or by a day which is not a Business Day, such action shall be valid if taken on or by the next succeeding Business Day.

1.13 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement. For the avoidance of doubt, the Concessionaire acknowledges and agrees that the Grantor has not made and is not making any representations and warranties as to the accuracy or completeness of the Reference Documents and that the Grantor shall not be responsible for any Losses incurred or suffered by the Concessionaire arising as a result of or in relation to any inaccuracy or deficiency therein.

1.14 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by the parties hereto.

1.15 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.16 Invalidity

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent, (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Article 25. If by means of the dispute resolution procedure the parties are unable, as a result of Laws and Regulations, to resolve the matter in a manner which effectively entitles the Grantor to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the Grantor shall have the right to enact and cause to come into force any law or regulation to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

1.17 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Article 25,

each party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

1.18 Schedules

The following schedules form part of this Agreement

Schedule 1	Affected Highway Protocol
Schedule 2	Affected Landowner Protocol
Schedule 3	Corridor Management Protocol
Schedule 4	Delivery Plan
Schedule 5	Description of Highway 407 Central
Schedule 6	Description of Highway 407 East Partial
Schedule 7	Description of Highway 407 Lands
Schedule 8	Highway 407 Lands Availability Schedule
Schedule 9	Description of Highway 407 West
Schedule 10	Known Archaeological/Historical Finds
Schedule 11	Known Hazardous Substances
Schedule 12	Management Plan
Schedule 13	Terms of MTO Enforcement Services Agreement
Schedule 14	Permits
Schedule 15	Police Services Agreement
Schedule 16	Description of Province Completed Facilities
Schedule 17	Reference Documents
Schedule 18	Requester Agreement
Schedule 19	Restriction on Transfer Agreement
Schedule 20	Safety and Standards Protocol
Schedule 21	Description of Toll System
Schedule 22	Tolling, Congestion Relief and Expansion Agreement
Schedule 23	Toll Collection/Enforcement Procedures

Schedule 24 Documents on Completion

1.19 Procedure for Approvals and Consents

Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Grantor of or to any action, Person, document, budget, list, plan or other matter contemplated by this Agreement, (unless it is expressly stated that such approval or consent may be unreasonably or arbitrarily withheld or is subject to the sole and absolute discretion of the Grantor, in which event the provisions of Article 25 and of clauses (iii) to (vii), inclusive, of this Section 1.19 shall not apply, or unless it is expressly stated that the time periods are to be otherwise, in which event this Section 1.19 shall apply but the time periods shall be adjusted accordingly), the following provisions shall apply

- (i) such request for approval or consent must be in writing and
 - (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as determined by the Grantor,
 - (B) clearly set forth the matter in respect of which such approval or consent is being sought,
 - (C) form the sole subject matter of the correspondence containing such request for approval or consent, and
 - (D) state clearly that such approval or consent is being sought,
- (ii) such approval or consent must be in writing,
- (iii) such approval or consent shall not be unreasonably or arbitrarily withheld or delayed,
- (iv) the Grantor shall, promptly after the giving of a notice by the Concessionaire requesting an approval or consent, advise the Concessionaire by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the Grantor acting reasonably, of the information or documentation provided,
- (v) if the responding notice mentioned in clause (iv) of this Section 1.19 indicates that the Grantor does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the Grantor set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 1.19 shall again apply until such time as the approval or consent of the Grantor is finally obtained,
- (vi) if the disapproval or withholding of consent mentioned in clause (v) is subsequently overruled, such approval or consent shall be deemed to have been given on the date of the final determination of such overruling, and

- (vii) any dispute as to whether a consent or approval has not been unreasonably withheld or delayed shall be resolved in accordance with the provisions of Article 25.

1.20 Approved Documents

Subject to the other provisions hereof, wherever in this Agreement approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report and/or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of Section 1.19.

1.21 Conflict

- (a) In the event of any conflict between the provisions of the documents mentioned below, the following order of precedence shall apply for interpretation purposes
 - (i) the provisions of this Agreement shall take precedence over the other Governing Documentation unless otherwise expressly stated in such other Governing Documentation, and
 - (ii) the provisions of this Agreement (excluding the Schedules) shall take precedence over the Schedules to this Agreement unless otherwise expressly stated in any such Schedule.
- (b) This Agreement may contain provisions which expand on the provisions of the Highway 407 Act, omit provisions which are contained in the Highway 407 Act or otherwise differ from the provisions of the Highway 407 Act. Notwithstanding such expansion, omission or difference, all of the provisions of this Agreement and of the Highway 407 Act are intended to be given full effect according to their terms except to the extent the same are in conflict or inconsistent with each other, in which event, the provisions of the Highway 407 Act shall govern and prevail. Without limiting the foregoing and for the avoidance of doubt, nothing in this Agreement shall be construed as a contracting out of or waiver of any other rights or remedies of the Grantor or the Concessionaire under or pursuant to the Highway 407 Act. This Subsection 1.21(b) shall be subject to Section 1.25.

1.22 Statements, Certificates

The notices, plans, statements, certificates, proposals, schedules and/or reports required to be furnished by or on behalf of the Concessionaire in connection with this Agreement or the Work shall be submitted to the Grantor in a format prescribed by this Agreement or otherwise Approved by the Grantor and the Concessionaire shall ensure that the information contained therein is presented fairly and is true, accurate and complete in every material respect as at the dates and for the periods indicated and omits no material fact necessary to make such information or statements or any of them not misleading.

1.23 Scope of Work

With the exception of any Expansion or Extension expressly required or permitted by this Agreement, the scope of this Agreement is limited to the Work and does not pertain to any other Expansion or Extension of Highway 407. The Concessionaire acknowledges that, subject to Section 2.4, any such other Expansion or Extension of Highway 407 shall be undertaken in the sole and absolute discretion of the Grantor and any contract for the planning, design, development, construction, operation, management, maintenance, rehabilitation and tolling of any Expansion or Extension of Highway 407 or any portion thereof may be awarded to any Person other than the Concessionaire pursuant to such process as the Grantor may determine.

1.24 Performance by Grantor

Any obligation, duty, right or remedy of the Grantor under this Agreement or any other Project Agreement may be performed or exercised by the Province or any Provincial Advisor, as the Grantor may determine.

1.25 Enactment, Administration, Application and Enforcement of Laws and Regulations by the Grantor

Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of the Grantor to enact, administer, apply and enforce Laws and Regulations. Save only for Discriminatory Actions, Governmental Authorizations of the type described in Subsection 3.9(b), the provisions of clause (iii) of Subsection 18.1(a) or Article 23, or unless compensation or other relief is otherwise available or provided for pursuant to applicable Laws and Regulations, the Concessionaire shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of Laws and Regulations by the Grantor.

1.26 References to Provincial Entities

A reference in this Agreement to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of the Crown in Right of Ontario shall be deemed to be a reference to the department, ministry, agency, board, commission, corporation or entity of the Crown in Right of Ontario which, pursuant to Laws and Regulations, has such right, power, obligation or responsibility at the relevant time.

ARTICLE 2
CONCESSION, GROUND LEASE AND
TRANSFER OF ASSETS

2.1 Grant of Concession

As of and with effect on the Effective Date, the Grantor grants to the Concessionaire the exclusive concession to develop, design and build the Highway 407 Central Deferred Interchanges, Highway 407 West and Highway 407 East Partial and to finance, operate, manage, maintain, rehabilitate and toll the Project in accordance with the provisions of this Agreement.

2.2 Term

The term of the concession granted under Section 2.1 shall be a period commencing on the Effective Date and expiring on the earlier of the ninety-ninth (99th) anniversary of the Effective Date and the Highway Purposes Termination Date, unless sooner terminated in accordance with the provisions of this Agreement.

2.3 Ground Lease

In order to give effect to the concession granted under Section 2.1, the Grantor demises and leases the Project Lands owned by the Grantor as of the Effective Date to the Concessionaire and the Concessionaire leases such Project Lands from the Grantor, as of and with effect on the Effective Date and in accordance with the provisions of this Agreement, to have and to hold for the Term. All lands leased by the Grantor to the Concessionaire under or pursuant to this Agreement are and shall be leased in an "as is" condition and the Grantor makes no representations or warranties with respect to such lands, other than as expressly set out herein.

2.4 Quiet Enjoyment

Subject to the provisions of this Agreement, the Concessionaire shall have and may peaceably enjoy and possess the Project Lands during the Term, without any interruption or disturbance whatsoever from the Grantor or any Person lawfully claiming from or under the Grantor. The Grantor shall defend its title to the Project Lands against any Person claiming any interest adverse to the Grantor in the Project Lands during the term, save and except where such adverse interest arises as a result of the act, omission, negligence or wilful misconduct of the Concessionaire or those for whom it is in law responsible.

2.5 Use

- (a) The Highway 407 Lands may only be used by the Concessionaire for the purpose of the development, design, construction, operation, management, maintenance, rehabilitation and tolling of Highway 407 in compliance with the provisions of this Agreement.
- (b) The Operations Centre Lands may only be used by the Concessionaire for an Operations Centre and other uses ancillary to the Project.
- (c) The Patrol Yards Lands may only be used by the Concessionaire for Patrol Yards and other uses ancillary to the Project.

- (d) Subject to this Agreement and applicable Laws and Regulations, the Concessionaire shall, at all times during the Term,
- (i) permit and provide barrier free access to all Commissioned and Opened portions of Highway 407 by all vehicles which have access to Comparable Controlled Access Highways, and
 - (ii) cause each of the Commissioned and Opened portions of Highway 407 to be continuously open and operational for use by all members of the public for Highway Purposes as a controlled access highway, twenty-four (24) hours a day, every day, during the Term,

except only for closures expressly permitted hereunder or pursuant to the Highway 407 Act and without requiring any user of Highway 407 to (i) provide any pre-notification of such user's intended use, (ii) provide any post-notification of such user's actual use, (iii) obtain any pre-approval to use Highway 407 or (iv) make any pre-payment to use Highway 407. The Concessionaire shall permit a user, at the user's option, to make use of an anonymous account to use Highway 407 with a prepayment or pre-approval requirement.

- (e) The Concessionaire shall not permit any portion of Highway 407 not then Commissioned and Opened to be used by the public and shall take all steps necessary to ensure that this provision is complied with at all times.

2.6 Rent

Yielding and paying for the Project Lands during the Term, in addition to all other payments to be made by the Concessionaire under this Agreement, rent in the amount of one dollar (\$1) per annum, payable in advance, commencing on the Effective Date, which rent may be prepaid in its entirety. All rent is payable without any deduction, abatement, set-off or compensation whatsoever.

2.7 Transfer of Existing Improvements, Operations Centre and Patrol Yards

As of and with effect on the Effective Date, the Grantor transfers, conveys, assigns and quit claims to the Concessionaire all of the right, title and interest, if any, of the Grantor in and to the Existing Improvements (but not the Project Lands in, on, under or upon which the Existing Improvements are located) which are not owned by the Concessionaire on the Effective Date in an "as is" condition without representation or warranty, subject to the provisions of this Agreement. From and after such transfer of the Existing Improvements to and including the End Date, all Existing Improvements shall be owned by the Concessionaire as contemplated by Section 2.8. All goods and services taxes and provincial sales taxes payable on such transfer shall be payable on the Effective Date in accordance with Section 2.15.

2.8 Ownership of Improvements

As between the Grantor and the Concessionaire, during the Term the Project (excluding the Project Lands) shall be the separate property of the Concessionaire and not of the Grantor, subject to the provisions of this Agreement. All buildings, structures, improvements, appurtenances and fixtures constructed, erected or situated upon the Project Lands following the Effective Date and prior to the Grantor becoming the owner of the Project pursuant to Subsection

24.1(i) shall be owned by the Concessionaire and not the Grantor. As of the Reversion Date, in consideration of the Grantor assuming full responsibility for the design, development, construction, operation, management, maintenance and rehabilitation of the Project as provided in Subsection 24.1(i), all improvements on the Project Lands and all improvements comprising the Project (other than, for the avoidance of doubt, any vehicles, non-fixed equipment or inventories owned by the Concessionaire, which shall remain the property of, and may be removed by, the Concessionaire) shall become the absolute property of the Grantor without any payment therefor to the Concessionaire (save as set forth in Article 18, Article 19 and Article 23), free and clear of all Encumbrances other than Province Permitted Encumbrances (all of which, including any Permitted Encumbrances, but excluding any Province Permitted Encumbrances, the Concessionaire shall satisfy and discharge by the Reversion Date) and without any action whatsoever being necessary on the part of the Grantor. Any other interest in the Project that may now or hereafter be created by the Concessionaire and all dealings by the Concessionaire with the Project and any other improvements on the Project Lands that in any way affect title thereto shall be subject to this right of the Grantor.

2.9 Transfer of Permits

- (a) As of and with effect from the Effective Date, the Grantor transfers and assigns to the Concessionaire all of the right, title and interest of the Grantor in, to and under all Permits, without representation or warranty. Where the consent of Her Majesty the Queen in Right of Canada or another federal agency is required for any such transfer or assignment, such transfer and assignment shall be subject to obtaining such consent and the Grantor shall use its commercially reasonable efforts to seek such consent and the Concessionaire shall co-operate with the Grantor in connection therewith.
- (b) Subject to Subsection 2.9(a), the Concessionaire shall possess all the responsibilities, obligations, duties, powers, benefits and advantages under all Permits transferred and assigned pursuant to Subsection 2.9(a).
- (c) As of and with effect from the Effective Date, the Grantor transfers and assigns to the Concessionaire all Governmental Authorizations and Other Authorizations that are specific in their application to Highway 407 that were possessed by the Province as of the Effective Date. Where the consent of Her Majesty the Queen in Right of Canada or another federal agency is required for any such transfer or assignment, such transfer and assignment shall be subject to obtaining such consent and the Grantor shall use its commercially reasonable efforts to seek the required consent and the Concessionaire shall co-operate with the Grantor in connection therewith.
- (d) Subject to Subsection 2.9(c) the Concessionaire shall possess all the responsibilities, obligations, duties, powers, benefits and advantages under the Governmental Authorizations and Other Authorizations assigned or conferred upon it pursuant to Subsection 2.9(c).
- (e) Notwithstanding the provisions of this Section 2.9, to the extent the Permits, Governmental Authorizations and Other Authorizations are not assignable or are not assignable without consent, the Grantor, at the request of the Concessionaire, shall extend or make available to the Concessionaire, such Permits, Governmental

Authorizations and Other Authorizations to the extent permitted or feasible in the circumstances, provided that the covenants and obligations thereunder shall be observed and performed by the Concessionaire and all benefits and obligations shall be for the account of the Concessionaire.

2.10 No Encumbrances

The Concessionaire shall not do any act or thing that will result in any Encumbrance (other than a Permitted Encumbrance or a Province Permitted Encumbrance) affecting the Project and shall promptly remove any Encumbrance (other than a Permitted Encumbrance) against the Project, unless the Encumbrance came into existence as a result of an act of or omission by the Province which in turn was not caused by an act or omission of the Concessionaire. The Concessionaire, if requested, shall use its commercially reasonable efforts, at the sole cost and expense of the Grantor, to assist the Grantor in attempting to remove any Encumbrance which has come into existence as a result of an act of or omission by the Province.

2.11 Observance of Governing Documentation and Laws and Regulations

During the Term, the Concessionaire shall comply with, and shall cause the Project and the development, design, construction, operation, management, maintenance, rehabilitation and tolling thereof to be in compliance with, all Governing Documentation and Laws and Regulations. For the avoidance of doubt, nothing in this Agreement shall abrogate or diminish any responsibilities or obligations of the Concessionaire under any Laws and Regulations.

2.12 Reservation of Rights in Favour of Grantor with Respect to Highway 407 Lands

Notwithstanding the lease of the Highway 407 Lands to the Concessionaire and the use by the Concessionaire of those lands for Highway Purposes, the Grantor shall continue to be able to use the Highway 407 Lands for the following purposes and hereby reserves unto itself all rights which may be necessary to achieve such purposes,

- (i) Transitways. The Grantor may design, construct, operate, manage, maintain, repair and rehabilitate transitways for public or private mass transit on the Corridor Lands which will generally run alongside Highway 407. Such transitways may be partially located on the Highway 407 Lands, may at some points run along the median of Highway 407 and may cross and recross the Highway 407 Lands as may be required by the plans for such transitways approved by the Minister of Transportation. In the construction, maintenance, repair and rehabilitation of such transitways the Grantor shall use its commercially reasonable efforts to minimize physical disruption to the operation or construction of Highway 407 or physical damage to the Project. The Grantor shall compensate the Concessionaire only for its Losses directly relating to the Project resulting from any such physical disruption and/or physical damage. No such transitways shall be built in such a manner as to prevent or materially impede the Work, the Toll System, operation of Highway 407 or the Expansion or Extension of Highway 407 as required or permitted by Section 9.1.

- (ii) Inspection Stations. In addition to the vehicle inspection and weigh stations to be constructed by the Concessionaire as described in the Governing Documentation, the Grantor may design, construct, operate, manage, maintain, repair and rehabilitate other vehicle inspection and weigh stations on the Corridor Lands and/or the Highway 407 Lands. The Grantor shall have the right to enter upon the Highway 407 Lands to construct linking and access roads or lanes allowing trucks and other vehicles to travel from Highway 407 to such other stations and to return to Highway 407 without incurring any additional tolls. In the design, construction, operation, management, maintenance, repair and rehabilitation of such other inspection and weigh stations the Grantor shall use its commercially reasonable efforts to minimize physical disruption to the operation or construction of Highway 407 or physical damage to the Project. The Concessionaire shall not be entitled to any compensation from the Grantor for any Losses resulting from such physical disruption or physical damage. No such linking or access roads shall be built in such a manner as to prevent or materially impede the Work, the Toll System, operation of Highway 407 or the Expansion or Extension of Highway 407 as required or permitted by Section 9.1.
- (iii) Utilities. The Grantor may install, or authorize the installation of, utilities, including water and sewer lines, fibre optic cable and other electronic communications, in, along, under, across or through the Highway 407 Lands, provided that the Grantor will use its commercially reasonable efforts to minimize any physical disruption to the operation or construction of Highway 407 or physical damage to the Project. The Grantor shall compensate the Concessionaire only for its Losses directly relating to the Project resulting from any such physical disruption or physical damage. The Concessionaire shall not have the right to install the said utilities, except to the extent that the said utilities are necessary for the operation and maintenance of Highway 407, including the Tolling System. No such utilities shall be built in such a manner as to prevent or impede the Work, the Toll System, the operation of Highway 407 or the Expansion or Extension of Highway 407 as required or permitted by Section 9.1.

The Grantor shall have such easements for access, support, repair and maintenance as may be necessary for the aforesaid purposes.

2.13 Assignment of Plans and Contracts

At the request of the Grantor, the Concessionaire shall assign to the Grantor, in form and substance satisfactory to the Grantor, acting reasonably, all of the right, title and interest of the Concessionaire in, to and under all or any of the DDB/OMM Agreements and all present and future specifications, plans, drawings, information and documentation in relation to the development, design, construction, operation, management, maintenance, rehabilitation and/or tolling of the Project, including for avoidance of doubt, the DDB/OMM Agreements, (collectively, the "Plans and Contracts"). The assignment of the Plans and Contracts shall be as

collateral security to the Grantor for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement and is referred to herein as the "Assignment of Plans and Contracts Security Agreement". The Concessionaire shall use commercially reasonable efforts to obtain the consent of all parties to all Plans and Contracts entered into or created on or prior to the Effective Date to the assignment of all of the right, title and interest of the Concessionaire in, to and under such Plans and Contracts. The Concessionaire covenants that all of the right, title and interest of the Concessionaire in, to and under all Plans and Contracts entered into or created after the Effective Date shall be assignable to the Grantor for the purposes of the Assignment of Plans and Contracts Security Agreement. The Grantor acknowledges that the Plans and Contracts may also be assigned as security to a Leasehold Mortgagee and that each of the Grantor and such Leasehold Mortgagee shall be entitled to use the Plans and Contracts in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, the Grantor shall be entitled to use the Plans and Contracts in each of the following events

- (i) If the Grantor terminates this Agreement without a concession agreement being granted to a Leasehold Mortgagee or a nominee thereof pursuant to the provisions of Section 22.2.
- (ii) If the Grantor elects to use the Plans and Contracts to remedy a default under this Agreement or any of the other Project Agreements.

Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 22, and is using the Plans and Contracts in respect of the development, design, construction, operation, management, maintenance, rehabilitation and/or tolling of the Project, the Grantor shall not be entitled to use the Plans and Contracts in enforcing its security, it being acknowledged that any assignment of the Plans and Contracts to a Leasehold Mortgagee shall have priority over the Assignment of Plans and Contracts Security Agreement. At the request of the Grantor, the Concessionaire shall promptly deliver to the Grantor, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Plans and Contracts.

2.14 Rights and Obligations of Grantor with Respect to Corridor Lands

The Grantor shall at all times have control over the Corridor Lands. Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property), the Concessionaire shall not enter upon the Corridor Lands without the prior Approval of the Grantor.

2.15 Payment of Taxes

The Concessionaire shall pay when due all Taxes which are payable in respect of (i) the operations at, occupancy of, or conduct of business in or from the Project and (ii) fixtures or personal property included in the Project.

2.16 Right to Contest

The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under Section 2.15 provided that (i) the Concessionaire has given prior notice to the Grantor of each such contest, (ii) no contest by the Concessionaire may involve the possibility of forfeiture or sale of the Project, and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay the amount found to be due, together with any costs, penalties and interest.

2.17 Utilities

The Concessionaire shall pay when due all charges for gas, electricity, light, heat, power, telephone, water and other utilities and services used in or supplied to the Project during the Term. Upon request of the Grantor, the Concessionaire shall forward to the Grantor, within fifteen (15) days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the Grantor, acting reasonably, of the payments required to be made by the Concessionaire in accordance with this Section 2.17.

2.18 Net Agreement

Except as otherwise expressly provided in this Agreement, this Agreement shall be a completely carefree net agreement for the Grantor. All charges, expenses, payments and costs of every nature and kind incurred in respect of the Project or for any matter or thing affecting the Project shall, except as otherwise expressly provided in this Agreement, be borne by the Concessionaire. The Grantor shall not be responsible for and the Concessionaire shall pay all charges, expenses, payments, costs, claims and liabilities in connection with the Project or the use of or occupancy of the Project Lands, except as otherwise expressly provided in this Agreement. Except as otherwise expressly provided in this Agreement or the Highway 407 Act, the Grantor shall be responsible for all employee and administrative costs incurred in respect of the performance of its obligations under this Agreement and the Highway 407 Act.

2.19 No Re-Entry

Unless expressly so stated in writing by the Grantor, any entry by the Grantor onto the Project Lands required or permitted under this Agreement shall not constitute a re-entry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement.

2.20 Highway 407 Lands

The Grantor shall cause the portions of the Highway 407 Lands required for Highway 407 West, Highway 407 East Partial and Highway 407 Central Deferred Interchanges that are identified in the Highway 407 Lands Availability Schedule to be made available to the Concessionaire in accordance with the Highway 407 Lands Availability Schedule and will terminate any leases identified in part 2 of Schedule 8 on or before the dates indicated therein at its sole cost and expense.

2.21 Conditions in Purchase Agreements

The Concessionaire shall be responsible, as part of the Work, for the observance and performance of all conditions contained in agreements of purchase and sale identified in Part 3 of

the Highway 407 Lands Availability Schedule, save and except those conditions relating to payment of the purchase price under such agreements and payment of land transfer tax in connection with such agreements, without any entitlement to any delay in the performance of the Work.

2.22 Acquisition or Expropriation by Grantor of Additional Lands

If the Concessionaire requires additional land for the purpose of an Expansion or Extension which is required or Approved pursuant to the terms of this Agreement, it shall submit a request to the Grantor for Approval describing the lands required, the estimated amount and, if applicable, the allocation of the costs and expenses relating to the acquisition or expropriation of the lands and such other particulars as are reasonably necessary.

The Grantor shall be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Grantor may reasonably consider necessary. Promptly upon receipt of such notice and further particulars, if requested, the Grantor shall by notice advise the Concessionaire if the Grantor Approves of such request and agrees to initiate the proceedings to arrange for the acquisition or expropriation of such additional lands. In connection with the foregoing, it is agreed that the Approval of any request to acquire or expropriate additional lands for an Expansion or Extension which is not required to be implemented by the Concessionaire hereunder may be given or withheld in the sole and absolute discretion of the Grantor. If the Grantor Approves the request, the Grantor shall initiate and diligently pursue to completion the proceedings necessary. In such event, subject to Section 2.15 and clause (D) of Section 15.2, all costs and expenses in respect of such acquisition or expropriation, including all judgements and settlements in expropriation, all awards of compensation, costs and litigation expenses, all awards of damages, all costs incurred in prosecuting the expropriation action, including the cost of all legal and support services and the fees of all witnesses shall, in the case of an expropriation or acquisition of additional lands for an Expansion or Extension required to be implemented by the Concessionaire hereunder, be borne by the Grantor and otherwise shall be paid by the parties in accordance with the Approved request.

2.23 Transfer

Immediately upon the Grantor acquiring or expropriating any lands referred to in Sections 2.20 and 2.22, the Grantor shall demise and lease such lands to the Concessionaire in accordance with Section 2.3 and thereupon such lands shall be deemed to be Highway 407 Lands and subject to the concession and ground lease contained in Sections 2.1 and 2.3.

2.24 Determination of Highway 407 Lands

- (a) From time to time during the course of the performance of the Design Work and/or the Construction Work, the Concessionaire and the Grantor shall jointly determine, having regard to the Highway 407 Act and the requirements of the Construction Work, whether an adjustment to the Highway 407 Lands is required to either add additional lands (the "Additional Lands") or delete surplus lands (the "Surplus Lands") from the grant of the concession and ground lease hereunder.
- (b) Upon the Grantor and the Concessionaire making the determination set out in Subsection 2.24(a), any Additional Lands shall be deemed to be Highway 407 Lands subject to the concession and ground lease contained in Sections 2.1 and

2.2 and any Surplus Lands shall be released from the concession and ground lease herein provided at no cost to the Grantor and this Agreement shall cease to apply to such Surplus Lands and such Surplus Lands shall cease to be Highway 407 Lands for all purposes hereunder. In connection with the foregoing, the Concessionaire shall, and shall cause any Leasehold Mortgagee to, execute such releases, quitclaims, discharges and other instruments as may be reasonably requested or required by the Grantor to give effect to the foregoing, all at no cost to the Grantor.

- (c) The Concessionaire acknowledges that as at the Effective Date, there may not be a registrable legal description available for the Highway 407 Lands or portions thereof. In this regard, as the extent of the Highway 407 Lands are determined in accordance with the provisions of this Section 2.24, the Grantor shall cause to be prepared, at its sole cost and expense and make available to the Concessionaire, a registrable legal description of such Highway 407 Lands.
- (d) Appropriate revisions shall be made to Schedule 7 from time to time to reflect determinations relating to the extent and description of the Highway 407 Lands pursuant to this Section 2.24.

ARTICLE 3 GENERAL DUTIES OF CONCESSIONAIRE

3.1 General Duties and Standards

The Concessionaire shall carry out its duties under this Agreement, and shall cause, and shall take all steps and actions necessary to cause, the Work and each portion of the Work to be provided and performed in accordance with and so as to implement the Governing Documentation and all Laws and Regulations.

3.2 Standard of Care

Without limiting the obligations and liabilities of the Concessionaire under this Agreement, the Concessionaire shall carry out its duties hereunder diligently and expeditiously, in good faith, in a safe, reasonable and prudent manner and in accordance with good business practices and management techniques.

3.3 Changes

- (a) Change Orders. The Concessionaire shall take steps to ensure that Change Orders issued during the performance of the Work are diligently complied with and implemented.
- (b) Change Requests. The Concessionaire may submit or cause to be submitted Change Requests together with all appropriate supporting documentation to the Grantor. No Change Request shall be implemented or incorporated as part of the Work unless and until such Change Request has been Approved.

3.4 Status of Concessionaire

- (a) Maintain Existence. The Concessionaire shall maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Work, including, all rights, franchises, licences, privileges and qualifications required in connection with the Work.
- (b) Conduct of Business. The Concessionaire shall conduct its business in a proper and prudent manner so as not to adversely affect its ability to perform and observe its obligations and covenants under this Agreement.

3.5 Payment of Costs

Subject to the provisions of this Agreement, the Concessionaire shall pay or cause to be paid all costs and expenses relating to the Work for which the Concessionaire is liable pursuant to this Agreement as and when the same are due and payable.

3.6 Notices

- (a) Notice of Concessionaire Default. The Concessionaire shall promptly give notice to the Grantor if a Concessionaire Default occurs under this Agreement.
- (b) Notice of Claim. The Concessionaire shall promptly give notice to the Grantor of all material claims, proceedings, disputes (including labour disputes) or litigation in respect of the Grantor, the Concessionaire or the Work (whether or not such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware or should be aware using all reasonable due diligence. The Concessionaire shall provide the Grantor with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

3.7 Insurance

The Concessionaire shall negotiate, obtain and maintain or caused to be negotiated, obtained and maintained all required insurance at the levels specified in Article 16.

3.8 Construction Lien Matters

- (a) Liens. The Concessionaire shall promptly give notice to the Grantor of all construction liens and other liens in connection with the Project in respect of which notice may have been given to the Concessionaire or which may be registered against or otherwise affect the Project Lands or the Grantor or impose or create a liability on the Grantor.
- (b) Vacate Liens. The Concessionaire shall cause any and all construction liens and other liens for labour, services and materials alleged to have been furnished through the Concessionaire or to have been charged to or for the Grantor, the Concessionaire, any Concessionaire's Advisors or any of them, or on their own or its behalf at or for the Work for which notice may have been given to the Grantor or which may be registered against or otherwise affect the Project Lands or the Grantor or impose or create a liability on the Grantor, to be vacated, and if

registered, to be removed from title within thirty (30) days following the date on which the Concessionaire becomes aware of such lien or receives notice from the Grantor of any claim for any such lien. If the Concessionaire fails to so vacate or, if applicable, remove the lien from title within such thirty (30)-day period, the Grantor may so vacate or remove the lien by paying monies into a court of competent jurisdiction or posting security with the court. Any amount so paid or any amount attributable to or drawn under the security so posted and all costs and expenses in connection therewith incurred by the Grantor, shall be reimbursed to the Grantor by the Concessionaire on demand, without any days of grace.

- (c) Holdbacks. The Concessionaire shall, subject to this Agreement, strictly comply with the holdback requirements of the *Construction Lien Act* (Ontario) insofar as such requirements relate to the Work and, at the request of the Grantor, shall provide evidence of such compliance to the Grantor.

3.9 Governmental Authorizations

- (a) Except for the Governmental Authorizations described in Subsection 3.9(b), the Concessionaire shall cause all other Governmental Authorizations as are necessary in connection with the Work to be obtained, complied with, promptly renewed and maintained in good standing.
- (b) Notwithstanding Subsection 3.9(a), if, after due and proper application for a Governmental Authorization necessary in connection with the Work, payment of the prescribed application fees (if any) and the diligent and best efforts in pursuit thereof, the Concessionaire is unable to obtain, comply with, promptly renew or maintain, or cause to be obtained, complied with, promptly renewed or maintained, or is delayed in obtaining, complying with or maintaining such Governmental Authorization by reason of
- (i) the imposition of terms by the relevant Governmental Authority, utility or cable television supplier or railway operator, as the case may be, that cannot be satisfied by the Concessionaire, except by taking extraordinary steps or measures or incurring or assuming extraordinary obligations, or
 - (ii) the arbitrary refusal by the relevant Governmental Authority, utility or cable television supplier or railway operator, as the case may be, to provide or grant such Governmental Authorization,

as determined by the Concessionaire, acting reasonably, and as Approved by the Grantor, the consequences shall be dealt with as a Delay Event in accordance with the provisions of Article 18.

For the avoidance of doubt, for the purposes of this Subsection 3.9(b),

- (A) "extraordinary steps or measures" includes an application to a court of competent jurisdiction for an injunction or other similar relief or the making of formal representations or other lobbying in a formal and organized manner for a change in legislation or regulation at any level of government,

- (B) “extraordinary obligations” means incurring or assuming the costs and expenses required to take the extraordinary steps or measures and the posting of any bonds or the provision of any security in addition to that provided for in this Agreement, and
- (C) “arbitrary refusal” means a non-judicious exercise of discretion at any relevant level of government, wherein such Governmental Authority, utility or cable television supplier or railway operator, as the case may be, unreasonably and without justification refuses to provide a requested authorization or fails to make a decision or delays making a decision beyond the time customarily encountered in making decisions of this nature.

3.10 Other Authorizations

In addition to Governmental Authorizations, the Concessionaire shall cause all other approvals, authorizations, consents, waivers and licences as are necessary in connection with the Work and/or to perform its obligations hereunder (“Other Authorizations”) to be obtained, complied with, promptly renewed and maintained in good standing.

3.11 Utilities, Railroads and Roadways

(a) Utility Relocation Coordination

- (i) The Concessionaire shall, in accordance with Schedule 3, be responsible for coordinating or ensuring the coordination of all Work with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under or over the Highway 407 Lands required for the temporary or permanent relocation of any lines, equipment, cables, systems and other apparatus affected by the Work and shall secure or cause to be secured any necessary Governmental Authorizations, Other Authorizations and, subject to Sections 3.12 and 3.13, the required construction and maintenance agreements, service contracts, indentures and easements relating thereto.
- (ii) The Concessionaire shall, in accordance with Schedule 3, cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services which intersect, interfere, interface with or otherwise affect the Work and shall arrange for temporary rights of entry and access to utilities and other services to be made available, as may be necessary for the performance of the Work and as may be required pursuant to any applicable Governing Documentation and Laws and Regulations.

(b) Railroad Coordination

- (i) The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Work with affected railroads and shall, subject to Sections 3.12 and 3.13, secure or cause to be secured from any railroad and/or the National Transportation Agency, the required construction and

maintenance agreements, service contracts, indentures and easements relating thereto.

- (ii) The Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of railroad facilities (including signals) which intersect, interfere, interface with or otherwise affect the Work and shall arrange for temporary right of entry and access to railroad property as may be necessary for the performance of Work required pursuant to any applicable Governing Documentation and Laws and Regulations.

(c) Affected Highway Coordination

- (i) The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Work with Affected Highways in accordance with the Affected Highway Protocol and shall, subject to Sections 3.12 and 3.13 secure or cause to be secured all relevant Governmental Authorizations, Other Authorizations and the required construction and maintenance agreements, service contracts, indentures and easements relating thereto.
- (ii) The Concessionaire shall cause provision to be made for the temporary or permanent relocation or closure of roadways which intersect, interfere, interface with or otherwise affect the Work and shall arrange for temporary right of entry and access to the property of all relevant Governmental Authorities as may be necessary for the performance of the Work and as may be required pursuant to any applicable Governing Documentation (including the Affected Highway Protocol) and Laws and Regulations.
- (iii) The obligations of the Concessionaire under or pursuant to the Affected Highway Protocol shall constitute Work and shall be performed by the Concessionaire in accordance with applicable Governing Documentation (including the Affected Highway Protocol).

3.12 Negotiations with Federal, Provincial and Municipal Governments

The Concessionaire shall, subject to Section 3.13, negotiate, settle and enter into or cause to be negotiated, settled and entered into, agreements with federal, provincial and municipal governments and other Persons as may be required in connection with the Work, provided that if the Grantor or the Province may incur any liability under such agreement, then the Concessionaire shall submit the agreement for Approval (which Approval may be arbitrarily withheld, unless the Concessionaire provides an indemnity in respect of such liability to the Grantor or the Province, as the case may be, in form and substance Approved by the Grantor) by the Grantor or the Province, as the case may be, prior to the execution and delivery thereof.

3.13 Government Agreements

Notwithstanding Sections 3.11 and 3.12, if it is appropriate in the circumstances for the Grantor or the Province to be a party to any agreements, contracts, indentures, easements, maintenance agreements or service contracts referred to in the referenced Sections (the

"Government Agreements"), in the place and stead of, or in addition to, the Concessionaire or the Concessionaire's Advisors, the Concessionaire shall assist the Grantor or the Province in entering into such Government Agreements; provided, however, that in providing such assistance, the Concessionaire shall in no way be relieved of any of its responsibilities set out in the referenced Sections and the form and substance of such Government Agreements shall be subject to the prior Approval (which Approval may be arbitrarily withheld) of the Grantor or the Province, as the case may be.

ARTICLE 4 DEVELOPMENT, DESIGN AND CONSTRUCTION

4.1 Design Work Duties

The Concessionaire shall cause each portion of the Design Work to be performed in accordance with Sections 3.1 and 3.2.

4.2 Duties Not Exhaustive

The Design Work set out in this Article 4 is not exhaustive and the Concessionaire is responsible for all aspects of the Design Work, namely those activities which in the ordinary and usual course of the design phase of a Comparable Controlled Access Highway would be recognized, followed or implemented by the Province.

4.3 Use of Designated Consultants

- (a) Designated Consultants. The Concessionaire shall retain, employ and utilize the engineers, engineering firms and consultants in respect of the performance of any portion of the Design Work who or which are specifically listed in the Management Plan (each such engineer, engineering firm or consulting firm retained, employed or utilized being herein referred to as a "Designated Consultant").
- (b) Engage Other Consultants. The Concessionaire shall not change or substitute any Designated Consultant in connection with the performance of any portion of the Design Work, except in each case, with the Approval of the Grantor.
- (c) Acknowledgement by Concessionaire. The Concessionaire shall be fully responsible for the performance by the Designated Consultants of the Concessionaire's duties hereunder and all acts by or omissions of the Designated Consultants shall be deemed to be those of the Concessionaire.

4.4 Additional Information

The Concessionaire shall prepare or cause the Designated Consultants to prepare any additional explanatory information and documents concerning the Design Work as may be reasonably required by the Grantor or any Governmental Authority.

4.5 Construction Work Duties

The Concessionaire shall perform the Construction Work in accordance with Sections 3.1 and 3.2.

4.6 Duties Not Exhaustive

The Construction Work set out in this Article 4 is not exhaustive and the Concessionaire is responsible for all aspects of the Construction Work, namely those activities which in the ordinary and usual course of the construction of a Comparable Controlled Access Highway would be recognized, followed and/or implemented by the Province.

4.7 Use of Designated Contractors

- (a) Designated Contractors. The Concessionaire shall retain, employ and utilize the contractors or subcontractors in respect of the performance and completion of any portion of the Construction Work who or which are specifically listed in the Management Plan (each such contractor, subcontractor and individual retained, employed or utilized being herein referred to as a "Designated Contractor").
- (b) Engage Other Contractors. The Concessionaire shall not change or substitute any Designated Contractor in connection with the performance of any portion of the Construction Work except in each case with the Approval of the Grantor.
- (c) Acknowledgement by Concessionaire. The Concessionaire shall be fully responsible for the performance by the Designated Contractors of the Concessionaire's duties hereunder, and all acts by or omissions of any of the Designated Contractors shall be deemed to be those of the Concessionaire.
- (d) Approvals Required Before Construction Work May Proceed. The Concessionaire shall not permit any portion of the Construction Work to be carried out without first having obtained all Approvals, which pursuant to the terms hereof are to be obtained prior to commencement of such Construction Work, and without complying with all requirements of this Agreement, which pursuant to the terms hereof are to be complied with prior to commencement of such Construction Work.
- (e) Archaeological/Historical Finds. The Concessionaire shall cause to be documented any property which appears to be of archaeological or historical significance located in, under or on the Project Lands. Any such property exposed or recovered as a result of excavation of the Project Lands shall become the property of the Province and shall be dealt with as the Grantor may direct in writing.
- (f) Notice to Grantor. The Concessionaire shall give notice to the Grantor of any material damage to or destruction of any property, real or personal, which forms a part of any Construction Work.
- (g) Reference Points and Layout. All permanent reference points in place as at the Effective Date and provided by or on behalf of the Grantor shall be carefully preserved by the Concessionaire. In the case of their destruction or removal, the Concessionaire shall cause such permanent reference points to be replaced at its sole cost and expense. The Concessionaire shall layout such stakes, markers and reference points as may be reasonably necessary or required to enable the Concessionaire to perform the Work and such stakes, markers and reference

points as may be reasonably necessary or required to enable the Grantor to perform testing to determine conformity by the Concessionaire with its obligations under this Agreement from time to time.

4.8 Use of Designated Personnel

- (a) Designated Personnel. The Concessionaire shall retain, employ and utilize the personnel in respect of the performance and completion of any portion of the Work who or which are specifically listed in the Management Plan (the Persons retained, employed or utilized being herein collectively referred to as the "Designated Personnel").
- (b) Engage Other Personnel. The Concessionaire shall not change or substitute any Designated Personnel in connection with the performance of any portion of the Work except in each case with the Approval of the Grantor.
- (c) Acknowledgement by Concessionaire. The Concessionaire shall be fully responsible for the performance by the Designated Personnel of the Concessionaire's duties hereunder, and all acts by or omissions of any of the Designated Personnel shall be deemed to be those of the Concessionaire.

4.9 Control of the Design Work and Construction Work

Subject to the provisions of this Agreement, the Concessionaire shall have complete control of the Design Work and Construction Work and shall effectively direct and supervise the Design Work and Construction Work and shall be solely responsible and liable for the means, methods, techniques, sequences and procedures for coordinating the various parts of the Design Work and Construction Work.

4.10 Documents on Completion

Within three (3) months following the Total Completion of the Construction Work or relevant portion thereof, the Concessionaire shall prepare and submit to the Grantor "record" drawings of the Construction Work or relevant portion thereof, in accordance with Schedule 24.

4.11 Integration of Province Completed Facilities

- (a) The Concessionaire shall be responsible for integrating or causing the integration of the Province Completed Facilities with the Work. In this regard, the Concessionaire acknowledges having inspected and satisfied itself with respect to the state and condition of the Province Completed Facilities and the Governmental Authorizations obtained with respect thereto and agrees to perform any upgrades or additional work relating thereto as part of the Work to ensure that the Province Completed Facilities comply with the Governing Documentation and Laws and Regulations. The Concessionaire shall not be entitled to any delay or additional costs or to submit a Change Request with respect to the foregoing. The Grantor shall provide reasonable assistance to the Concessionaire in the enforcement of any rights, remedies and warranties it may have against third parties in respect of the Province Completed Facilities.

- (b) The Concessionaire shall co-operate and cause the Concessionaire's Advisors to co-operate in all reasonable respects with the planning, development, design, construction, repair and maintenance of Affected Highways and other facilities which on the date hereof or in the future intersect or interface with the Project performed by Persons other than the Concessionaire.

4.12 Delivery Plan

The Concessionaire shall comply with the Delivery Plan attached as Schedule 4, and shall provide coordination and scheduling so as to ensure compliance with the Delivery Plan by the Concessionaire's Advisors.

4.13 Commencement of Design Work and Construction Work

The Concessionaire shall cause the Commencement of the Design Work and Construction Work to occur on or before the date set out therefor in the Delivery Plan and in compliance with the Governing Documentation.

4.14 Completion

- (a) Completion of Work. The Construction Work or each identified portion thereof in the Delivery Plan shall be Totally Completed in accordance with the Delivery Plan.
- (b) Late Commissioning and Opening. If any date for Commissioning and Opening for any identified portion of the Construction Work in the Delivery Plan does not occur on or before the date specified therefor in the Delivery Plan for any reason other than a Delay Event, the Concessionaire shall pay to the Grantor as liquidated damages in respect thereof (which, subject to the payment thereof by the Concessionaire, shall constitute the sole and exclusive remedy of the Grantor in respect of such delay) an amount (the "Late Payment") equal to, in the case of Highway 407 West, sixty thousand dollars (\$60,000) and in the case of Highway 407 East Partial, twenty-three thousand dollars (\$23,000), for each calendar day of delay to the Commissioning and Opening date after the specified date in the Delivery Plan. Late Payments shall be payable by the Concessionaire to the Grantor within five (5) Business Days following each applicable thirty (30) day period of delay (the "Delay Period"). If the Commissioning and Opening date occurs at any time prior to the expiry of the then current Delay Period, the Late Payment with respect to such partial Delay Period shall be pro-rated accordingly and shall be payable within five (5) Business Days following such Commissioning and Opening date.

ARTICLE 5 MODIFICATIONS

5.1 Change Orders

The Grantor may at any time or times during the Term issue a Change Order to the Concessionaire. Prior to implementation of such Change Order the Grantor and the Concessionaire shall jointly determine

- (i) whether the Change Order will require a material expenditure of time and/or money by the Concessionaire in order to perform the work reasonably necessary in connection with the evaluation and costing of the implementation of the Change Order (the "Preparatory Work") and, if so, the Grantor will reimburse the Concessionaire for the reasonable costs incurred by the Concessionaire in connection with the Preparatory Work,
- (ii) whether the Change Order will impact the timing of performance and obligations under this Agreement, and, if so, the parties will determine the manner and extent to which the timing of performance and obligations under this Agreement should be adjusted or otherwise altered, if at all,
- (iii) the amount required to be paid by the Grantor to implement the Change Order and to compensate the Concessionaire for all Losses in relation thereto and the timing of payment therefor,
- (iv) with respect to a Change Order requiring integration of the Toll System with other toll systems or tolling operations, whether such Change Order will be affected or restricted by any agreement between the Concessionaire and a third party relating to the Toll System and, if so, what procedures will be utilized to obtain a waiver or consent from such third party to facilitate the Change Order and the costs involved to do so, and
- (v) any other material terms of the Change Order.

5.2 Determination

If the parties cannot agree

- (i) as to whether the Preparatory Work will require a material expenditure of time and/or money,
- (ii) as to whether the Change Order will impact the timing of performance and obligations under this Agreement,
- (iii) as to the amount required to implement the Change Order and/or to compensate the Concessionaire for all Losses in relation thereto and the timing of payment therefor, or
- (iv) as to any other material terms of the Change Order,

and the Grantor determines, in its sole and absolute discretion, that the Change Order is required to be proceeded with, the Grantor in the first instance, shall determine the cost of the Preparatory Work, the impact on the timing of performance and obligations under this Agreement, the amount required to implement the Change Order and/or to compensate the Concessionaire for all Losses in relation thereto and the timing of payment therefor and such other material terms subject to final resolution in the manner set out in Article 25 and the Concessionaire shall, pending such resolution, but subject to obtaining the waiver or consent referred to in Subsection 5.1(iv) or otherwise being saved harmless in respect thereof by the Grantor, nonetheless proceed to implement and perform the Change Order. Notwithstanding the foregoing, but subject to

Subsection 25.12(b), if the Concessionaire, acting reasonably, determines that the amount in dispute required to implement the Change Order and/or to compensate the Concessionaire for all Losses in relation thereto exceeds five million dollars (\$5,000,000), the Concessionaire shall not be obligated to proceed with the implementation and performance of the Change Order until the matters set out in this Section 5.2 relating to such Change Order have been resolved.

5.3 Change Requests

The Concessionaire may, at any time, submit a Change Request to the Grantor for Approval by the Grantor. No Change Request shall be implemented or incorporated as part of the Work unless and until such Change Request has been Approved by the Grantor. For the avoidance of doubt, the Concessionaire shall be entitled to construct prior to the times required pursuant to Schedule 22 and without any requirement to submit a Change Request, additional lanes over and above the initial requirements of the Construction Work, up to and including (but not exceeding) the Ultimate Number of Core Lanes, as defined in Schedule 22.

5.4 Performance of Changes

Subject to the other provisions of this Article 5, the Concessionaire shall take steps to ensure that Change Orders and Approved Change Requests are diligently complied with and implemented in such manner that the costs and delays relating thereto are minimized.

5.5 Payment for Change Orders

The Grantor shall pay the amount required to implement the Change Order and/or to compensate the Concessionaire for all Losses in relation thereto as set out in Sections 5.1 and 5.2.

ARTICLE 6 MINISTRY SAFETY STANDARDS

6.1 Compliance with Ministry Safety Standards

Subject to Section 6.2, the Concessionaire shall comply with the Safety and Standards Protocol and all Ministry Safety Standards at all times throughout the Term. The Concessionaire acknowledges that the Ministry Safety Standards may change from time to time during the Term. The Concessionaire, at its cost and expense, shall comply with all such changes so long as

- (i) such changes apply to any other Comparable Controlled Access Highways, and
- (ii) the Concessionaire has received a notice advising it of such change, provided that no such notice shall be required if such change was known or (with reasonable due diligence including review of materials or publications generally available to Persons in the business of the development, design, construction, operation, management, maintenance, rehabilitation or tolling of Comparable Controlled Access Highways) should have been known by the Concessionaire or such change constituted a Law and Regulation.

The Concessionaire shall perform all work required to implement Ministry Safety Standards as part of the Work, at its sole cost and expense. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Concessionaire be excused from compliance with Ministry Safety Standards in accordance with the provisions of this Article 6. Without limiting the foregoing and for the avoidance of doubt, but subject to Subsection 18.1(a)(vii), in no event shall the Concessionaire be entitled to issue a Change Request as a result of the existence of or change to a Ministry Safety Standard, claim that an event of Force Majeure, a Delay Event or a Discriminatory Action has resulted from the existence of or change to a Ministry Safety Standard or, in the absence of any agreement to the contrary, claim that any such event or action relieves the Concessionaire from compliance with any Ministry Safety Standard in accordance with the provisions of this Article 6.

6.2 Timing and Manner of Compliance with Ministry Safety Standards

- (a) The Concessionaire shall comply with and implement all Ministry Safety Standards in the same manner as the Ministry Safety Standards apply to other Comparable Controlled Access Highways.
- (b) The Concessionaire shall not, except as expressly otherwise set out in this Agreement, be required to
 - (i) follow a safety standard that is more onerous than the safety standard which applies to other Comparable Controlled Access Highways, or
 - (ii) apply a safety standard in a manner that is more onerous than the manner in which it is applied to other Comparable Controlled Access Highways.
- (c) For the avoidance of doubt, but without limitation,
 - (i) a Ministry Safety Standard shall not be considered to be more onerous or more onerously applied merely because (A) the Grantor requires additional time to implement such Ministry Safety Standard as a result of the extensive system of Comparable Controlled Access Highways for which the Grantor is responsible or (B) such Ministry Safety Standard applies only upon the occurrence of a condition or circumstance which has not yet occurred in respect of a Comparable Controlled Access Highway; and
 - (ii) a Ministry Safety Standard shall be deemed to apply to other Comparable Controlled Access Highways if the Grantor can demonstrate that such Ministry Safety Standard has been published, issued or made available to Persons in the business of the development, design, construction, operation, management, maintenance, rehabilitation or tolling of Comparable Controlled Access Highways or that such Ministry Safety Standard is or has been applied to any other Comparable Controlled Access Highways.

6.3 Permitted Equivalent Safety Standards

Notwithstanding anything to the contrary contained herein, with the Approval of the Grantor, the Concessionaire, at its cost and expense, may implement and comply with safety

standards other than the Ministry Safety Standards with respect to Highway 407 if, in the opinion of the Grantor, the proposed safety standards provide equivalent or increased safety protection to that which would have been provided by the applicable Ministry Safety Standards.

In connection with the foregoing, if the Concessionaire, at its cost and expense, wishes to implement and use safety standards other than the Ministry Safety Standards, the Concessionaire must provide notice of such proposal to the Grantor accompanied by its reasons for such proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as may be reasonably required by the Grantor in support of the Concessionaire's assertion that the proposed safety standards would provide equivalent or increased safety protection to that which would have been provided by the applicable Ministry Safety Standard. For the avoidance of doubt, (i) the Approval of the Grantor referred to herein may be withheld in the sole and absolute discretion of the Grantor and (ii) unless and until the Grantor provides its express Approval for the implementation of the Concessionaire's proposed safety standards, the Concessionaire shall not implement the proposed safety standards and shall implement and comply with the Ministry Safety Standards.

6.4 Failure to Comply

- (a) Subject to Subsection 6.4(d), if, at any time, the Concessionaire fails to comply with any Ministry Safety Standards or the Grantor and the Concessionaire cannot reach an agreement regarding the interpretation or application of a Ministry Safety Standard within a period of time acceptable to the Grantor, acting reasonably, the Grantor shall have the absolute right and entitlement to undertake or direct the Concessionaire to undertake any work required to ensure implementation of and compliance with Ministry Safety Standards as interpreted or applied by the Grantor.
- (b) To the extent that any work done pursuant to Subsection 6.4(a) is undertaken by the Grantor and is necessary to ensure implementation of and compliance with Ministry Safety Standards, the cost of such work plus an administration fee equal to fifteen percent (15%) of the cost of such work, shall be paid by the Concessionaire to the Grantor on demand, without any days of grace, and the Grantor (whether it undertakes the Work or has directed the Concessionaire to undertake the Work) shall have no obligation or liability to compensate the Concessionaire for any Losses suffered or incurred by the Concessionaire as a result thereof.
- (c) To the extent that any Work done pursuant to Subsection 6.4(a) is not necessary to ensure implementation of and compliance with Ministry Safety Standards, the Grantor shall compensate the Concessionaire only for Losses relating to the Project suffered or incurred by the Concessionaire as a result thereof.
- (d) Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable judgment of the Grantor the failure of the Concessionaire to comply with any Ministry Safety Standards results in an emergency or danger to persons or property, and if the Concessionaire is not then diligently taking all necessary steps to rectify or deal with said emergency or danger, the Grantor may, in addition and without prejudice to its other remedies (but without obligation to do so), (i) immediately take such steps as may be reasonably necessary to rectify said

emergency or danger, in which event the provisions of Subsection 20.2(iii) shall apply *mutatis mutandis*, or (ii) if and to the extent reasonably necessary to protect persons or property, stop the progress of the Work and/or close or cause to be closed any and all portions of Highway 407 affected by the said emergency or danger, and the Grantor shall have no obligation or liability to compensate the Concessionaire for any Losses suffered or incurred by the Concessionaire as a result thereof, provided that immediately following rectification of said emergency or danger, as determined by the Grantor, acting reasonably, the Grantor allows the Work to continue or such portions of Highway 407 to be reopened, as the case may be.

6.5 Higher Ministry Safety Standards

If during the Term the Grantor is of the opinion that a Higher Ministry Safety Standard is required or desirable, the Grantor may negotiate an agreement with the Concessionaire to ensure that such Higher Ministry Safety Standard is implemented and complied with in connection with Highway 407 at the cost of the Province and the Concessionaire shall be compensated only for its Losses relating to the Project reasonably attributable thereto. If no such agreement is reached within a period of time acceptable to the Grantor, acting reasonably, the Grantor shall have the right to undertake the work necessary to ensure implementation of and compliance with the Higher Ministry Safety Standard or the Grantor may issue a Change Order with respect thereto. To the extent that such work is undertaken by the Grantor, the Concessionaire shall pay to the Grantor within ten (10) Business Days following demand therefor the costs of the portion of the work performed in order to comply with Ministry Safety Standards and the Grantor shall be responsible only for the incremental costs of the additional Work required in order to implement the Higher Ministry Safety Standards and the Concessionaire shall be compensated only for its Losses relating to the Project reasonably attributable thereto.

ARTICLE 7 ENVIRONMENTAL MATTERS

7.1 Environmental Protection

The Concessionaire shall ensure that all Environmental Laws are complied with at all times during the performance of each portion of the Work and at all times during the Term.

7.2 Disposal of Hazardous Substances

The Concessionaire shall identify Hazardous Substances affecting any portion of the Project and shall store, remove, transport and dispose of Hazardous Substances in compliance with all applicable Governing Documentation and Laws and Regulations.

7.3 Discharge of Hazardous Substances

At all times during the Term, spills or discharges of Hazardous Substances affecting or relating to any portion of the Project shall be reported immediately to the applicable Governmental Authority and shall be remedied by the Concessionaire, at its cost and expense, in each case, in accordance with all applicable Governing Documentation and Laws and Regulations.

ARTICLE 8 OMM WORK

8.1 OMM Work Duties

The Concessionaire shall cause each portion of the OMM Work to be performed in accordance with Sections 3.1 and 3.2.

8.2 Duties Not Exhaustive

The OMM Work set out in this Article 8 is not exhaustive and the Concessionaire shall be responsible for all aspects of the OMM Work, namely those activities which in the ordinary and usual course of the operation, management, maintenance, rehabilitation and tolling of a Comparable Controlled Access Highway would be recognized, followed or implemented by the Province.

8.3 Public Information

The Concessionaire shall prepare, as part of the OMM Work, any additional documentation of an explanatory or promotional nature concerning the OMM Work for public information purposes, as may be reasonably required by the Grantor, the Province and/or any Governmental Authority.

8.4 Ownership of Toll Revenues

All Toll Revenues shall be the sole and exclusive property of the Concessionaire.

8.5 Tolling, Congestion Relief and Expansion Agreement

The Concessionaire shall comply with the provisions of the Tolling, Congestion Relief and Expansion Agreement attached as Schedule 22.

8.6 Other Non-Toll Revenues

All sources of Other Non-Toll Revenues and activities generating Other Non-Toll Revenues shall be controlled by the Grantor and the Concessionaire shall have no right, title, entitlement or interest therein.

8.7 Toll Collection

The Concessionaire shall comply with the toll collection and enforcement procedures with respect to Toll Revenues set out in Schedule 23.

8.8 Access to Vehicle Permit Information

The Concessionaire shall access vehicle permit information from the Ministry of Transportation pursuant to the Requester Agreement attached hereto as Schedule 18 and shall use such information only for the purposes set out therein.

8.9 Change of Name

The name designated for Highway 407 is "Highway 407 ETR" and such name may not be changed without the prior Approval of the Grantor.

8.10 Inter-Agency Agreements

- (a) The Province shall have the right, as often as it deems necessary or advisable, to make reciprocal arrangements and enter into agreements with the government of a Province of Canada or a State of the United States of America or other Persons in such jurisdictions providing for the collection of tolls and any matter related to their collection. Upon making such arrangement or agreement that affects Highway 407 or the Concessionaire, the Grantor shall notify the Concessionaire and shall provide the Concessionaire with appropriate and relevant details relating to such arrangement or agreement. The Grantor may issue a Change Order or the Concessionaire may submit a Change Request, when required, to implement compliance with such arrangement or agreement.
- (b) The Concessionaire shall have the right, as often as it deems necessary or advisable, to make reciprocal arrangements with the government of a Province of Canada or a State of the United States of America or other Persons in such jurisdictions for the collection of tolls and any matter related to their collection provided that
 - (i) such agreement or arrangement complies with the Governing Documentation and Laws and Regulations, and
 - (ii) the Province shall not be bound by and shall not incur any obligations or liabilities thereunder without Approval (which Approval may be arbitrarily withheld unless the Concessionaire provides an indemnity in respect of such liability to the Grantor or the Province, as the case may be, in form and substance Approved by the Grantor).
- (c) The Grantor shall, upon such terms (including terms as to reimbursement) as it may Approve, provide reasonable assistance to the Concessionaire so as to facilitate the making of reciprocal arrangements or agreements described in Subsection 8.10(b).
- (d) The Grantor shall, to the extent such arrangements or agreements are assignable and to the extent the Minister of Transportation considers such assignment to be feasible in the circumstances, assign or cause to be assigned to the Concessionaire any rights the Minister of Transportation has pursuant to any reciprocal arrangement or agreement entered into with a government of a Province of Canada or a State of the United States of America or other Persons in such jurisdictions providing for the collection of tolls and any matter related to their collection and, to the extent such arrangements or agreements are not assignable, or are not assignable without consent, at the request of the Concessionaire, extend or make available to the Concessionaire such arrangements or agreements to the extent permitted or feasible in the circumstances, provided that the covenants and

obligations thereunder shall be observed and performed by the Concessionaire and all benefits and obligations shall be for the account of the Concessionaire.

8.11 Affected Highways and Affected Landowners

The Concessionaire shall implement and comply with the terms and provisions of the Affected Highway Protocol and the Affected Landowner Protocol, attached as Schedule 1 and Schedule 2, respectively.

ARTICLE 9 EXPANSION/EXTENSION

9.1 Required Expansions and Extensions

The Concessionaire shall be required to Expand and/or Extend Highway 407 in accordance with and subject to Schedule 22 and the other provisions of this Agreement. In addition, the Grantor may, at any time, issue a Change Order mandating the implementation of an Expansion or Extension.

9.2 Voluntary Expansion and Extension

The Concessionaire may initiate an Expansion or Extension by submitting a Change Request to the Grantor setting out all of the relevant particulars supporting the implementation of such Expansion or Extension.

9.3 Standards

Any Expansion or Extension implemented pursuant to the provisions of this Article 9, shall comply with the Ministry Safety Standards and if applicable, the Higher Ministry Safety Standards.

ARTICLE 10 REPORTING AND RECORD KEEPING BY CONCESSIONAIRE

10.1 Traffic Characteristics Report

In addition to any other traffic or traffic-related reports required pursuant to this Agreement, the Concessionaire shall provide to the Grantor a quarterly traffic characteristics report providing the following details for each toll site in a format specified by the Grantor

- (i) traffic volume forecasts for each type of classification of vehicle for the next three (3) months,
- (ii) traffic volume forecasts for the entire Fiscal Year, and
- (iii) actual traffic counts.

The Concessionaire shall provide such reports to the Grantor within twenty (20) Business Days following the end of each quarter of each Fiscal Year.

The Concessionaire shall also provide, at its cost and expense, real time data reports for the purposes of the Freeway Traffic Management System of the Province of Ontario to a Ministry of Transportation designated point and in a manner and format requested by the Grantor.

10.2 Incident Management Reports

The Concessionaire shall report on a quarterly basis details of emergencies, accidents and incidents occurring on or at the Project. The specific details to be provided include the following

- (i) type of incident - bodily injury, death, property damage,
- (ii) classification of incident - road related, barrier hit, right of way, other,
- (iii) number of incidents by type and classification,
- (iv) number of claims and revenue received by type and classification; and
- (v) costs to correct incidents by type and classification.

The Concessionaire shall provide such report to the Grantor within twenty (20) Business Days following the end of each quarter of each Fiscal Year.

10.3 Environmental Incident Report

The Concessionaire shall report, on a per occurrence basis, the discharge, dumping, spilling (accidental or otherwise) of any Hazardous Substances and the location at which the incident has occurred, the time, the agencies involved, the damage which has occurred and the remedial action taken.

The Concessionaire shall provide such report to the Grantor within seven (7) Business Days following the occurrence of each incident or such shorter time period as may be required pursuant to Laws and Regulations.

ARTICLE 11 ACCESS, TESTING, INSPECTION, REVIEW AND AUDIT RIGHTS

11.1 Audits, Assistance, Inspections and Approvals

Wherever in this Agreement reference is made to the Grantor or the Provincial Advisors providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or the Concessionaire's Advisors, or to the Grantor or the Provincial Advisors performing an Audit or inspecting, testing, reviewing or examining the Project, the Work or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or the Concessionaire's Advisors, such undertaking by the Grantor or the Provincial Advisors shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or

Approvals) on the Grantor or Provincial Advisors not otherwise created or imposed pursuant to the express provisions of this Agreement.

11.2 Furnish Information

At the request of the Grantor, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times

- (i) make available or cause to be made available (and, if requested by the Grantor, furnish or cause to be furnished) to the Grantor all Information relating to the Work, this Agreement, and/or the Project as may be specified in such request and as shall be in the possession or control of the Concessionaire or any of the Concessionaire's Advisors, and
- (ii) permit the Grantor to discuss the obligations of the Concessionaire under this Agreement, with any of the directors, officers, employees or managers of the Concessionaire or the Concessionaire's Advisors,

for the purpose of enabling the Grantor to determine whether the Concessionaire is in compliance with the Governing Documentation and Laws and Regulations.

11.3 Inspection, Audit and Review Rights of the Grantor

In addition to the rights set out in Section 11.2, the Grantor may, at all reasonable times, upon twenty-four (24) hours prior notice, cause a Provincial Advisor designated by it to carry out an Audit of the Information required to be maintained and/or delivered by the Concessionaire under this Agreement in connection with the performance of the Work for the purpose of verifying the information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at its expense. The Concessionaire, at the cost and expense of the Concessionaire, shall make available or cause to be made available to the Grantor or the designated Provincial Advisor such reasonable information and material as may be required by the Grantor or the designated Provincial Advisor for its purposes and otherwise provide such co-operation as may be reasonably required by the Grantor or the designated Provincial Advisor.

11.4 Inspection of Project and OMM Work

The Grantor and the Provincial Advisors shall, at all times, have access to the Project and every part thereof and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause all of the Concessionaire's Advisors to, furnish the Grantor and the Provincial Advisors with every reasonable assistance for inspecting the Project and the Work for the purpose of Auditing the Information and/or ascertaining compliance with the Governing Documentation and Laws and Regulations.

11.5 The Grantor and Others May Perform Tests

The Grantor shall be entitled, at the sole cost and expense of the Grantor, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Project or the Work as the Grantor may determine to be reasonably necessary or advisable in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause each of the Concessionaire's Advisors, to furnish the Grantor or the Provincial Advisors with every reasonable assistance in connection with the

carrying out of such tests, procedures, studies and investigations. For the avoidance of doubt, in connection with the foregoing the Grantor and the Provincial Advisors shall be entitled to install machines, equipment, systems, monitors, counters and other devices in, on, under, over or adjacent to the Project to permit and facilitate any test, study, monitor, review or investigation of or relating to the Work or the Project.

11.6 Inspection, Review, Test and Audit Not Waiver

Failure by the Grantor or the Provincial Advisors to inspect, review, test or Audit the Work or any part thereof or the Information, shall not constitute a waiver of any of the rights of the Grantor hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Default shall not constitute a waiver of any Default or constitute an acknowledgement that there has been or will be compliance with the Governing Documentation and Laws and Regulations.

11.7 No Undue Interference

In the course of performing its inspections, reviews, tests and audits hereunder, the Grantor shall use commercially reasonable efforts to minimize the effect and duration of any disruption to the Work having regard to the nature of the inspections, reviews, tests and audits being performed.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Grantor

The Grantor makes the following representations and warranties to the Concessionaire with respect to itself and acknowledges that the Concessionaire is relying upon such representations and warranties in entering into this Agreement

- (i) It has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.
- (ii) This Agreement constitutes a valid and legally binding obligation of the Grantor, enforceable against the Grantor in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally, the general principles of equity and the exception that equitable remedies such as specific performance are not available against the Grantor.
- (iii) Save as otherwise set out in Schedule 8, the Province has good title to the Project Lands described in Schedule 7 and when acquired, will have good title to all other Project Lands, subject only to Province Permitted Encumbrances. The Province shall not encumber any portion of the Highway 407 Lands, except for the Province Permitted Encumbrances, until a registrable legal description of such portion of the Highway 407 Lands has been made available to the Concessionaire and a reasonable

opportunity has been given to the Concessionaire to register this Agreement or notice thereof pursuant to Section 27.10.

12.2 Survival

All representations and warranties set forth in this Agreement or in any certificate or other document delivered by or on behalf of the Grantor pursuant hereto shall, unless expressly provided otherwise, survive the execution of this Agreement and any investigation at any time with respect thereto and continue indefinitely.

ARTICLE 13 FINANCE OBLIGATIONS

13.1 Concessionaire's Obligations

The Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement.

13.2 Grantor's Obligations

The Grantor shall have no responsibility to meet debt service or repayment obligations on any financing incurred by the Concessionaire in connection with the performance by the Concessionaire of its obligations under this Agreement. The Grantor shall, to the extent consistent with Laws and Regulations and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The Grantor's co-operation may include reviewing, approving and executing documents which substantiate the terms of this Agreement and making information and material available to the Concessionaire's lenders to facilitate financing to the extent permitted by Laws and Regulations and contractual obligations with third parties and to the extent the Grantor considers reasonable in the circumstances. In addition, the Grantor shall, promptly upon the request of the Concessionaire or any Leasehold Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement and any of the other Project Agreements which may be qualified to the best of the knowledge and belief of a designated representative of the Grantor. Nothing herein shall require the Grantor to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

13.3 Concessionaire's Obligation re: Estoppel Certificates

The Concessionaire shall, promptly upon the request of the Grantor, execute and deliver to the Grantor, or any of the parties specified by the Grantor, standard consents and estoppel certificates with respect to this Agreement and any of the other Project Agreements which may be qualified to the best of the knowledge and belief of a designated representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

ARTICLE 14
POLICE SERVICES AND MINISTER OF TRANSPORTATION
ENFORCEMENT SERVICES

14.1 Engagement of Police

- (a) Required Level of Police Service. The Concessionaire shall permit the OPP to maintain traffic patrol and provide other services which the OPP is required to perform pursuant to Laws and Regulations in respect of Highway 407. The Concessionaire shall perform and observe its covenants and obligations under the Police Services Agreement.
- (b) Violations under Highway Traffic Act (Ontario). The Concessionaire acknowledges that the OPP is empowered to enforce the *Highway Traffic Act* (Ontario) on Highway 407.

14.2 No Private Enforcement Activities

The Concessionaire shall not engage private security services to provide traffic patrol or traffic law enforcement services on Highway 407.

14.3 Enforcement Services by Minister of Transportation

The Concessionaire shall permit the Minister of Transportation to enforce vehicle licensing requirements and safety standards under Laws and Regulations for Highway 407. The Concessionaire shall enter into and shall perform and observe its covenants and obligations under the MTO Enforcement Services Agreement.

ARTICLE 15
INDEMNIFICATION

15.1 Indemnification by Concessionaire

The Concessionaire shall

- (i) indemnify and save harmless the Grantor against and from all claims, demands, actions, suits and proceedings by whomsoever made, brought or prosecuted, and
- (ii) pay to the Grantor on demand, without any days of grace, the amount of any Losses incurred by the Grantor,

in either case in any manner based upon, arising out of, related to, occasioned by or attributable to

- (A) any material inaccuracy in any representation or warranty made by the Concessionaire in any Project Agreement or in any document or certificate given by the Concessionaire pursuant to any Project Agreement,

- (B) any failure by the Concessionaire to observe or perform any of its material covenants or obligations in this Agreement or any other Project Agreement,
- (C) the existence of any defect or dangerous condition in the Work,
- (D) any intentional wrongdoing or negligent act or omission in relation to the Project during the Term by the Concessionaire or any of the Concessionaire's Advisors, including any infringement of a patent, copyright, invention or any other kind of intellectual property,
- (E) any damage to property, either real or personal whether owned by the Grantor or others (including any member of the public), howsoever occasioned as a result of the performance of the Work, or any personal or bodily injury to or death of any Person or Persons (including any member of the public), howsoever occasioned by or as a result of the Work, or
- (F) any act which the Grantor takes or causes to be taken at the request of the Concessionaire, pursuant to Subsections 2.9(e) and 8.10(d),

provided that claims are made in writing within a period of six (6) years from the expiry of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by any limitation statute of the Province of Ontario. Subject to the foregoing, this Section 15.1 shall survive the termination or expiry of this Agreement.

Notwithstanding the preceding sentence, the Concessionaire's obligations under this Section 15.1 shall not apply to any matter to the extent that such matter is directly attributable to

- (iii) any intentional wrongdoing or negligent act or omission by the Grantor, its servants, agents or contractors or those for whom the Grantor is in law responsible or any breach by the Grantor of this Agreement, or
- (iv) any act which the Concessionaire is directed to perform by the Grantor, if this Agreement requires the Concessionaire to comply with such direction, and if the Concessionaire complies with such direction in a manner which is good and workmanlike, appropriate in the circumstances, without any negligence and in compliance with Laws and Regulations.

The Grantor shall allow the Concessionaire (if the Concessionaire so wishes) to be joined in any proceedings brought by any Person against the Grantor that leads or may lead to the indemnity obligation of the Concessionaire under this Section 15.1 being called upon, and shall consult with the Concessionaire as to any material action which the Grantor proposes to take in respect of such proceedings and give the Concessionaire such assistance (without an obligation to incur costs) as it shall reasonably require in respect of its participation in the defence.

If the Grantor intends to or does make a claim under this Section 15.1, the Grantor shall not settle or compromise any claim brought against it or make any payments in

connection with any such claim brought against it without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed.

If the Grantor becomes aware of any claim which could lead to the indemnity obligation of the Concessionaire under this Section 15.1 being called upon, the Grantor shall give notice thereof to the Concessionaire promptly. The failure to give such notice promptly shall not adversely affect the Grantor's rights under this Section 15.1 except to the extent that such failure materially and adversely affects the right of the Concessionaire to assert any reasonable defence to such claim.

The obligation of the Concessionaire to indemnify, save harmless and pay the Grantor under the provisions of this Section 15.1 shall, notwithstanding any other provision of this Agreement, survive the expiration of the Term and the termination of this Agreement.

15.2 Indemnification by Grantor

The Grantor shall

- (i) indemnify and save harmless the Concessionaire against and from all claims, demands, actions, suits and proceedings by whomsoever made, brought or prosecuted, and
- (ii) pay to the Concessionaire on demand, without any days of grace, the amount of any Losses incurred by the Concessionaire,

in either case in any manner based upon, arising out of, related to, occasioned by or attributable to

- (A) any material inaccuracy in any representation or warranty made by the Grantor in any Project Agreement or in any document or certificate given by the Grantor pursuant to any Project Agreement,
- (B) any failure by the Grantor to observe or perform any of its material covenants or obligations in this Agreement or in any other Project Agreement,
- (C) any intentional wrongdoing or negligent act or omission in relation to the Project during the Term by the Province, its servants, agents or contractors or those for whom the Province is in law responsible,
- (D) any and all land transfer taxes and goods and services taxes payable by the Concessionaire in connection with the grant of the concession and ground lease in respect of the Project Lands, the Existing Improvements and the registration of the Concessionaire's Interest against title to the Project Lands, provided that notwithstanding the foregoing, the Concessionaire shall be responsible for any and all land transfer taxes and goods and services taxes payable in connection with the acquisition of

additional lands for the purpose of any Expansion or Extension pursuant to Section 2.22, or

- (E) the Crown in right of Ontario as represented by the Ministry of Transportation issuing an order at any time on or before the tenth (10th) anniversary of the completion of the sale of the shares of the Concessionaire by the Grantor for any reason other than the failure of the Concessionaire to comply with its obligations relating to the OMM Work under this Agreement to bring any portion of Highway 407 Central which, at the time of completion of such sale of shares, did not comply with a Ministry Safety Standard into compliance with such Ministry Safety Standard,

provided that claims are made in writing within a period of six (6) years of the expiry of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by any limitation statute of the Province of Ontario. Subject to the foregoing, this Section 15.2 shall survive the termination or expiry of this Agreement.

Notwithstanding the preceding sentence, the Grantor's obligations thereunder shall not apply to any matter to the extent that such matter is directly attributable to any intentional wrongdoing or negligent act or omission by the Concessionaire, or its servants, agents or contractors or those for whom the Concessionaire is in law responsible or any breach by the Concessionaire of this Agreement.

If the Concessionaire becomes aware of any claim which could lead to the indemnity obligation of the Grantor under this Section 15.2 being called upon, the Concessionaire shall give notice thereof to the Grantor promptly. The failure to give such notice promptly shall not adversely affect the Concessionaire's rights under this Section 15.2 except to the extent that such failure materially and adversely affects the right of the Grantor to assert any reasonable defence to such claim.

The obligation of the Grantor to indemnify, save harmless and pay the Concessionaire under the provisions of this Section 15.2 shall, notwithstanding any other provision of this Agreement, survive the expiration of the Term and the termination of this Agreement.

ARTICLE 16 INSURANCE

16.1 Insurance During the Construction Work

- (a) The Concessionaire shall, at its own cost and expense, purchase, provide and maintain in full force during the Construction Work, or cause to be purchased, provided and maintained in full force during the Construction Work, the following insurance with respect to the Project, the use and occupancy of the Project Lands, the Design Work and the Construction Work, all of which shall be dedicated to the Project
- (i) Wrap-Up Liability Insurance. Comprehensive general liability insurance, written on a wrap-up basis in the joint names of the Grantor and

the Concessionaire. The Designated Consultants, Designated Contractors, all other contractors, subcontractors, suppliers and/or tradesmen while working on site, engineers, architects, consultants and/or sub-consultants, any other Person which the Grantor or the Concessionaire reasonably may require to be added as insured parties, and all of their successors and assigns, shall be included as Insureds or Additional Insureds. The said insurance shall provide coverage for property damage, personal injury and bodily injury (including death) arising out of all operations and activities pertaining to the Construction Work and control or use of the Project Lands by the Insureds. The said insurance shall be written on an occurrence basis and shall include the following coverages

- (A) Premises and operations,
- (B) Owner's and contractor's protective liability,
- (C) Broad form products hazard and completed operations liability,
- (D) Blanket written and oral contractual liability,
- (E) Broad form occurrence property damage,
- (F) Cross liability and severability of interest with respect to each Insured,
- (G) Directors, officers, employees, shareholders, legislators and officials involved in the Project added as Insureds or Additional Insureds,
- (H) Waiver of subrogation against Insureds and/or Additional Insureds,
- (I) Non-owned automobile liability,
- (J) Incidental medical malpractice liability,
- (K) Employer's liability and contingent employer's liability,
- (L) All risks tenant's legal liability,
- (M) Fire fighting and forest fire fighting expense liability,
- (N) Hoist liability,
- (O) Shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and above ground surface, work below, on and above water, tunnelling and grading, and similar operations associated with the Construction Work, as applicable,
- (P) Sudden and Accidental Pollution Liability with a discovery provision of not less than one hundred and twenty (120) hours and

a subsequent reporting provision of not less than one hundred and twenty (120) hours, and

- (Q) If structured in layers, "drop down" provision for impaired or exhausted limits (automatic re-instatement of aggregate limits in underlying insurance an acceptable alternative).

The said insurance shall provide primary coverage with respect to the Construction Work without right of contribution of any insurance carried by the Grantor. Breach of any of the terms of the policy, any negligent or wilful act of, or omission or false representation by, an Insured or any other Person shall not invalidate the said insurance with respect to the Grantor or any of its directors, officers, employees, legislators and officials involved in the Project.

The policy limit of liability shall be not less than ten million dollars (\$10,000,000) per occurrence or claim (which may be structured as primary plus supplementary layers, or primary plus Umbrella Liability and/or Excess Liability layers). The deductible for each occurrence or claim shall be not greater than two hundred and fifty thousand (\$250,000), except that the deductible applicable to Sudden and Accidental Pollution coverage claims or incidents shall be not greater than one million dollars (\$1,000,000) for each claim or incident.

Coverage under the said insurance shall be maintained continuously with respect to the performance of any aspect of the Construction Work until the Total Completion Date, provided, however, that Completed Operations coverage shall be provided for thirty-six (36) months after the Total Completion Date for the applicable Construction Work.

The said insurance shall be non-cancellable, except for non-payment of premiums, termination or indefinite postponement of the Project, loss of more than fifty percent (50%) of reinsurance or change in statutory law which places the Insurer in violation of the laws of its place of domicile or threatens its solvency. Each policy for the said insurance shall include agreement by the Insurer that the policy shall not be materially changed except on the annual anniversary date thereof and only upon ninety (90) days' prior written notice to the Grantor or its nominee. Each such policy shall include a provision permitting (but not obligating) the Grantor or its nominee, to assume direction and control of the policy in the event of a Concessionaire Default.

- (ii) **Automobile Liability Insurance.** Automobile Liability insurance with a combined property damage and bodily injury limit of liability of two million dollars (\$2,000,000) per accident covering all licensed vehicles owned, leased, operated or used by the Concessionaire or the Concessionaire's Advisors. The Concessionaire must ensure that evidence of comparable coverage is provided, prior to commencement of work at the site, to the Grantor by all contractors, subcontractors and workmen or tradesmen or other Persons working at the site. The deductible for each occurrence or claim shall be not greater than ten thousand dollars (\$10,000) per accident.

(iii) **Umbrella and Excess Liability Insurance.** Umbrella Liability and/or Excess Liability insurance with respect to, and following the form of, the underlying Wrap-Up Liability and Automobile Liability insurance. Such insurance shall include the following provisions

- (A) Limit of liability (including Wrap-Up Liability) shall be not less than seventy-five million dollars (\$75,000,000) per occurrence (which may be structured as primary plus supplementary layers and Umbrella Liability and/or Excess Liability layers, or primary plus Umbrella and/or Excess).
- (B) Annual aggregate limits permitted for Products Hazard and Completed Operations liability, Sudden and Accidental Pollution liability (if provided under this insurance) and employee benefits, errors and omissions liability (if provided under this insurance), no other policy aggregate limits are permitted.
- (C) "Drop-down" provision for impaired or exhausted aggregates in underlying insurance (automatic reinstatement of aggregate limits in underlying insurance acceptable alternative).
- (D) Sudden & Accidental Pollution coverage not required above ten million dollars (\$10,000,000) limit per occurrence and in the aggregate annually.
- (E) Deductible for each occurrence, claim or accident not covered by underlying insurance shall not be greater than two hundred and fifty thousand dollars (\$250,000).
- (F) Coverage for incidental medical malpractice liability, employer's liability and contingent employer's liability, all risks tenants' legal liability, employee benefits, errors and omissions liability, fire fighting and forest fire expense liability is not required above the ten million dollar (\$10,000,000) limit required for Wrap-Up Liability Insurance.

The said insurance shall be non-cancellable, except for non-payment of premiums, termination or indefinite postponement of the Project, loss of more than fifty percent (50%) of reinsurance or change in statutory law which places the Insurer in violation of the laws of its place of domicile or threatens insolvency. Each policy for the said insurance shall include agreement by the Insurer that the policy shall not be materially changed except on the annual anniversary date thereof and only upon 90 days' prior written notice to the Grantor or its nominee.

Each policy shall include a provision permitting (but not obligating) the Grantor (or its nominee) to assume direction and control of the policy in the event of a Concessionaire Default.

- (b) **Other Insurance.** Any other type, form or amount of insurance which may be required pursuant to Laws and Regulations or as otherwise may be reasonably requested by the Grantor.

16.2 Insurance During the OMM Work

The Concessionaire, at its own cost and expense, shall purchase, provide and maintain in full force, or shall cause to be purchased, provided and maintained in full force during the Term the following insurance with respect to the Project, the use and occupancy of the Project Lands and the OMM Work, all of which shall be dedicated to the Project

- (i) **Comprehensive General Liability Insurance.** Comprehensive General Liability Insurance in the joint names of the Grantor, the Concessionaire, the Concessionaire's Advisors, any other Person which the Grantor or the Concessionaire reasonably may require to be added from time to time as insured parties, and all of their successors and assigns. The said insurance shall provide coverage for property damage, personal injury and bodily injury (including death) arising out of all operations and activities pertaining to the Project, the control or use and occupancy of the Project Lands by the Insureds and the OMM Work. The said insurance shall be written on an occurrence basis and include the following coverages
- (A) Premises and operations,
 - (B) Owner's and contractor's protective liability,
 - (C) Broad form products hazard and completed operations liability,
 - (D) Blanket written and oral contractual liability,
 - (E) Broad form occurrence property damage,
 - (F) Cross liability and severability of interest with respect to each Insured,
 - (G) Directors, officers, employees, shareholders, legislators and officials involved in the Project added as Insureds or Additional Insureds,
 - (H) Waiver of subrogation against Insureds and/or Additional Insureds,
 - (I) Non-owned automobile liability,
 - (J) Incidental and non-owned aircraft and watercraft coverage,
 - (K) Incidental medical malpractice liability,
 - (L) Employer's liability and contingent employer's liability,
 - (M) All risks tenant's legal liability,
 - (N) Fire fighting and forest fire expense liability,

- (O) Employee benefits errors and omissions liability, if employee benefit plans exist for employees of the Concessionaire,
- (P) Hoist liability associated with the OMM Work, as applicable,
- (Q) Shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and ground surface, work below, on and above water, tunnelling and grading, and similar operations associated with the OMM Work, as applicable,
- (R) Sudden and Accidental Pollution Liability with a discovery provision of not less than one hundred and twenty (120) hours and a subsequent reporting provision of not less than one hundred and twenty (120) hours, and
- (S) If structured in layers, "drop-down" provision for impaired or exhausted aggregates (automatic reinstatement of aggregate limits in underlying layers an acceptable alternative).

The said insurance shall provide primary coverage with respect to operations and activities pertaining to the Project, the control or use and occupancy of the Project Lands by the Insureds, the OMM Work and any other obligations set out in this Agreement, without right of contribution of any insurance carried by the Grantor. Breach of any of the terms of the policy, or any negligent or wilful act of, or omission or false representation by, an Insured or any other Person shall not invalidate the said insurance with respect to the Grantor or any of its directors, officers, employees, legislators and officials involved in the Project.

The policy limit of liability must be not less than ten million dollars (\$10,000,000) per occurrence or claim (in any combination of primary, supplementary, umbrella and excess layers). The deductible for each occurrence or claim shall be not greater than two hundred and fifty thousand dollars (\$250,000), except that the deductible applicable to Sudden and Accidental Pollution claims or incidents shall be not greater than one million dollars (\$1,000,000) per claim or incident.

Coverage under the said insurance shall be maintained continuously, from and after the Effective Date and at all times thereafter during the Term, provided, however, that any coverage written on a claims made basis shall include provision for a twelve (12) month extended discovery and reporting period in the event of termination of this Agreement for any reason, including its expiration.

- (ii) **Automobile Liability Insurance.** Automobile Liability Insurance with a combined property damage and bodily injury limit of liability of two million dollars (\$2,000,000) per accident covering all licensed vehicles owned, leased, operated or used by the Concessionaire or the Concessionaire's Advisors in connection with the Project or the OMM Work. The Concessionaire must ensure that evidence, acceptable in form and content to the Grantor (or its nominee), of comparable coverage is provided, prior to commencement of work on the Project or

commencement of OMM Work to the Grantor or (its nominee) by all contractors, subcontractors or other Persons working on the Project, or involved in any OMM Work. The deductible for each occurrence or claim shall be not greater than ten thousand dollars (\$10,000) per accident.

- (iii) **Road Hazard Liability Insurance.** Road Hazard Liability Insurance with a limit of liability not less than ten million dollars (\$10,000,000) per claim and in the aggregate ten million dollars (\$10,000,000) annually covering the Concessionaire, Concessionaire's Advisors, the Grantor and all other Persons with an insurable interest for liability imposed by the Highway 407 Act and/or any liability arising out of the construction, maintenance, repair and resurfacing of Highway 407 or of any Affected Highway.
- (iv) **Umbrella and Excess Liability Insurance.** Umbrella and Excess Liability Insurance with respect to, and following the form of, the underlying Comprehensive General Liability insurance, Automobile Liability insurance, Non-Owned Aircraft and Watercraft Liability coverages and any other, similar primary insurance. The said insurance shall be in an amount sufficient to provide an overall limit of liability not less than seventy-five million dollars (\$75,000,000) per occurrence. Sudden and Accidental Pollution coverage for all insured perils shall be provided to an annual aggregate limit not less than ten million dollars (\$10,000,000) each claim and is not required above this ten million dollars (\$10,000,000) limit per occurrence and ten million dollars (\$10,000,000) in the aggregate annually.

The said insurance can be structured as any combination of primary plus supplementary layers and Umbrella Liability and/or Excess Liability insurance. Coverage for Sudden and Accidental Pollution liability (if provided by this insurance), incidental medical malpractice liability, employer's liability and contingent employer's liability, all risks tenant's liability, employee benefits errors and omissions liability, fire fighting and forest fire fighting expense liability is not required above the ten million dollar (\$10,000,000) limit required for Comprehensive General Liability insurance.

The said insurance must include the following provisions

- (A) Annual aggregate limits permitted for Products Hazard and Completed Operations liability, Sudden and Accidental Pollution Liability (if provided under this insurance) and Employee Benefits Errors and Omissions Liability (if provided under this insurance), no other policy aggregates permitted.
- (B) If structured in layers, "drop-down" provision for impaired or exhausted aggregates (automatic reinstatement of aggregate limits in underlying layers acceptable alternative) for Products Hazard and Completed Operations liability.

- (C) Deductible for each occurrence or claim or accident not covered by underlying insurance shall be not greater than two hundred and fifty thousand dollars (\$250,000).

Coverage under the said insurance shall be maintained continuously, from and after the Effective Date and at all times thereafter during the Term, provided, however, that any coverage written on a claims made basis shall include provision for a twelve (12) month extended discovery and reporting period in the event of termination of this Agreement for any reason, including its expiration.

- (v) **Environmental Impairment Liability Insurance.** Environmental Impairment Liability Insurance with a limit of liability not less than ten million dollars (\$10,000,000) per accident or incident or claim and in the aggregate ten million dollars (\$10,000,000) annually covering the Concessionaire and all Concessionaire's Advisors involved in any OMM Work.

Coverage under the said insurance shall be maintained continuously, from and after the Effective Date and at all times thereafter during the Term. The said insurance shall cover pollution conditions emanating from the Project during the policy period that result in bodily injury or property damage, or that necessitate clean up, remediation or rehabilitation of property other than the Project. The said insurance may be used to meet the requirement for Sudden & Accidental Pollution coverage under Comprehensive General Liability insurance.

- (vi) **Other Insurance.** Any other type, form or amount of insurance which may be required to protect any property or Persons associated with the operation, management, maintenance, rehabilitation and tolling of the Project or involved in any of the OMM Work with respect to risks or exposures that arise, or may arise, out of the particular nature, design or construction methods used, or intended to be used, in the Concessionaire's execution of the OMM Work, resulting from any obligations under this Agreement, imposed under any Laws and Regulations, or as otherwise may be requested by the Grantor, acting reasonably.

16.3 Notice of Cancellation or Material Change

Each of the Comprehensive General Liability, Umbrella and Excess Liability, Environmental Impairment Liability and Road Hazard Liability policies shall include agreement by the Insurer that such policy shall not be cancelled, except for non-payment of premium, or materially changed except only upon one hundred and twenty (120) days' prior written notice to the Grantor. Each such policy shall include a provision permitting (but not obligating) the Grantor (or its nominee) to assume direction and control of the policy in the event of a Concessionaire Default.

All other policies required to be maintained pursuant to this Article 16 shall include agreement by the Insurer that the policy or policies shall not be cancelled, except for non-payment of premium, or materially changed except upon ninety (90) days' prior written notice to the Grantor (or its nominee).

Each policy shall include a provision permitting (but not obligating) the Grantor and the Leasehold Mortgagee to pay any delinquent premiums before the cancellation date specified by the Insurer in any notice of cancellation for non-payment of premium in order to maintain such policy in full force and effect.

The Concessionaire shall not cancel, terminate, materially change to the detriment of the Grantor, or replace any insurance required to be maintained pursuant to this Article 16, except upon thirty (30) days' prior notice to the Grantor (or its nominee). Such notice shall provide in sufficient detail, acceptable to the Grantor, acting reasonably, the nature, scope and terms of the replacement insurance.

16.4 Premiums

The Concessionaire shall duly and punctually pay, or cause to be duly and punctually paid, all premiums and other sums of money payable by it or by any other Person for maintaining any insurance required to be maintained pursuant to this Article 16 and shall, if required from time to time by the Grantor, provide or cause to be provided to the Grantor evidence, acceptable to the Grantor, acting reasonably, of payment of premiums.

16.5 Evidence of Insurance

The Concessionaire shall deliver or cause to be delivered to the Grantor (or its nominee) certified copies of all insurance policies required to be obtained and maintained by it or by any other Person pursuant to this Article 16 or referred to in Section 16.14 on or before the Effective Date and shall provide or cause to be provided, not less than sixty (60) days prior to expiration of any then current policy, certified copies of policies or other documentation evidencing the renewal, extension or replacement of such insurance. With respect to the insurance policies required to be obtained and maintained by the Concessionaire or other Person pursuant to this Article 16, such policies and all documentation relating thereto shall be acceptable in form and content to the Grantor (or its nominee). The Concessionaire shall deposit or shall cause to be deposited promptly with the Grantor certified copies of all renewal, extension or replacement insurance policies. Delivery to and examination by the Grantor of any policy of insurance or certificate or other form of documentation evidencing such insurance shall not relieve the Concessionaire of any of its obligations pursuant to the provisions of this Article 16 and shall not operate as a waiver by the Grantor of any rights.

16.6 Co-Insurance

If any policy of insurance required to be maintained pursuant to this Article 16 contains any co-insurance clause, the Concessionaire shall maintain or cause to be maintained at all times a sufficient amount of such insurance to meet the requirements of any such co-insurance clause so as to prevent the Concessionaire or the Grantor from becoming a co-insurer under the terms of such policy and to permit full recovery up to the amount insured in the event of loss, less any applicable deductible.

16.7 Review of Required Insurance

- (a) Review by Concessionaire at Each Third Anniversary Date. Not less than five (5) months before each succeeding third anniversary of the Effective Date (or at such other intervals as may be agreed upon from time to time between the

Concessionaire and the Grantor), the Concessionaire shall submit, or cause its insurance broker or other knowledgeable person, acceptable to the Grantor to submit to the Grantor a statement of the maximum foreseeable general liability and environmental liability losses for the OMM Work and the operations associated with this Agreement at that time. For insurance not susceptible to maximum foreseeable loss assessment, equivalent or comparable loss assessment methodology shall be used. At the same time, the Concessionaire shall submit to the Grantor a report outlining any proposed amendments to the minimum amounts, limits, sublimits, deductibles, coverages, policy forms, administrative requirements and any proposed alternative risk financing methods or vehicles and the proposed effective date for the insurance contemplated in Sections 16.1, 16.2 and 16.11.

- (b) Implementation of Concessionaire Insurance Changes. Within sixty (60) days following receipt from the Concessionaire of the proposed insurance amendments, the Grantor shall confirm to the Concessionaire its acceptance or rejection of the proposed amendments and the proposed effective date for such amendments. The Concessionaire shall promptly effect the insurance amendments accepted by the Grantor and, subject to any agreement between the parties to the contrary, the additional cost of any such changes shall be borne by the Concessionaire.
- (c) Review by Grantor at Each Third Anniversary Date. Not less than five (5) months before each succeeding third anniversary of the Effective Date (or at such other intervals as may be agreed from time to time between the Concessionaire and the Grantor), the Grantor shall submit, or cause to submit to the Concessionaire a report outlining any proposed amendments to the minimum amounts, limits, sublimits, deductibles, coverages, policy forms and administrative requirements and all such refinements to reflect known changes in liability insurance policies available in Canada on a commercially reasonable basis or known changes in liability insurance exposures associated with operations similar to the Project and the proposed effective date for such amendments, for the insurance contemplated in Sections 16.1, 16.2 and 16.11.
- (d) Implementation of Grantor Insurance Changes. Within sixty (60) days following receipt by the Concessionaire of the proposed insurance amendments, the Concessionaire shall confirm to the Grantor its acceptance or rejection of the proposed amendments and the proposed effective date for such amendments. The Concessionaire shall promptly effect the accepted insurance amendments and, subject to any agreement between the parties to the contrary, the additional cost of any such changes shall be borne by the Grantor.

16.8 Approvals

Save as otherwise expressly set out herein, all insurance required to be maintained by this Article 16 shall be Approved by the Grantor from time to time as to terms, form, amounts, deductibles, loss payees, named and additional insureds and insurers. Each policy of insurance shall be signed by the insurer responsible for the risks insured against or by the insurer's authorized representative. For the purposes of this Section 16.8, the period of Approval by the Grantor shall be forty-five (45) days following receipt of a certified copy of the relevant insurance policy.

16.9 Liabilities of Concessionaire

The liabilities and obligations of the Concessionaire shall not be restricted to any sums mentioned in any of the insurance clauses contained herein and such insurance amounts provided for herein shall not be construed so as to relieve or limit the liability of the Concessionaire in excess of such coverage and shall not preclude the Grantor from taking such other actions as are available to it under any provision of this Agreement or otherwise at law or in equity.

16.10 Grantor's Right to Insure

The Concessionaire shall advise the Grantor of any cancellation, material alteration or lapse of any policy of insurance required to be provided pursuant to this Agreement, whether initiated by the insurer or by the Concessionaire or by any other Person under the financial or management control of the Concessionaire or by any Person acting on behalf of the Concessionaire. If the Concessionaire fails to obtain and maintain or cause to be obtained and maintained such insurance or there is a material alteration of such insurance or if such insurance is in an amount less than the amount required under this Agreement, the Grantor shall have the right (without any obligation to do so), upon two (2) days' notice to the Concessionaire in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the Grantor in connection therewith shall be payable by the Concessionaire to the Grantor on demand without any days of grace, without prejudice to any other rights and remedies of the Grantor hereunder. Such insurance taken out by the Grantor shall not relieve the Concessionaire of its obligations to insure hereunder and the Grantor shall not be liable for any loss or damage suffered by the Concessionaire in connection therewith.

16.11 Insurance Requirements for Contractors

The Concessionaire shall require in each contract with any Designated Contractor and subcontractor retained in connection with the Work that all Designated Contractors and subcontractors obtain appropriate liability insurance comparable to liability insurance required to be obtained and maintained by the Concessionaire under Article 16 (where such Designated Contractors or subcontractors are not covered by the policies required under Section 16.1). Such policies shall insure the interests of the Grantor, its directors, officers, employees, legislators and officials involved in the Project, the Concessionaire and any other Designated Contractors and subcontractors in respect of the applicable Work and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concessionaire pursuant to this Agreement. When requested to do so by the Grantor (or its nominee), the Concessionaire shall provide or cause to be provided to the Grantor certified copies of such insurance policies or such other evidence of insurance, acceptable in form and content to the Grantor, acting reasonably.

16.12 Cooperation

The Grantor and the Concessionaire shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.

16.13 Extension of Policies

If the Grantor requires that any or all of the insurance policies described in this Article 16 remain in place for a period of time in addition to that provided for in this Article 16, the Grantor may

- (i) arrange for replacement insurance policies for such additional period of time, at its sole cost and expense, or
- (ii) request, in writing, that the Concessionaire extend the term of the relevant existing insurance policy, at the sole cost and expense of the Grantor,

provided that if the Concessionaire elects not to extend the term of the existing policy, the Grantor may arrange extended insurance coverage pursuant to Section 16.10.

16.14 Other Insurance Obtained by Concessionaire

If the Concessionaire obtains any property, liability or other insurance coverages in addition to those required pursuant to this Article 16, then the Grantor shall have the right, to be exercised in its sole and absolute discretion, to require the Concessionaire to cause the Grantor to be added as a Named Insured or Additional Insured, and its directors, officers, employees, legislators and officials involved in the Project to be added as Insureds or Additional Insureds under such additional insurance coverages.

ARTICLE 17 DELEGATION BY CONCESSIONAIRE

17.1 Restrictions

Subject to the restrictions herein contained respecting the Transfer by the Concessionaire of any or all of the Concessionaire's Interest and the restrictions set out in Sections 4.3 and 4.7, the Concessionaire may upon notice to the Grantor, delegate to one or more of the Concessionaire's Advisors, the performance, as agent for and on behalf of the Concessionaire, of specified duties and functions to be observed or performed by the Concessionaire as required or provided for under this Agreement. Following the giving of such notice by Concessionaire to the Grantor, the designated Concessionaire's Advisor shall have the authority for and on behalf of the Concessionaire to perform the said duties and functions specified in the notice to the same extent as if the said duties and functions were performed by the Concessionaire.

17.2 Revocation of Delegation

The Concessionaire shall have the right, from time to time, upon notice to the Grantor to revoke a delegation previously made to a Concessionaire Advisor and to appoint and designate one or more replacement Concessionaire's Advisors to perform the delegated duties or functions or to prospectively revoke, in whole or in part, on a temporary or permanent basis, the authority delegated to a Concessionaire's Advisor and to exercise such duties and functions itself.

17.3 Fully Liable

Notwithstanding any delegation by the Concessionaire of its duties or functions hereunder to one or more of the Concessionaire Advisors, the Concessionaire shall be fully

responsible for the performance of such duties and functions by each Concessionaire Advisor and errors or omissions by any such Concessionaire Advisor shall be deemed to be those of the Concessionaire hereunder.

ARTICLE 18 DELAY EVENTS

18.1 Delay Events

- (a) For purposes of this Agreement, "Delay Event" means
- (i) an event of Force Majeure,
 - (ii) a failure to obtain or delay in obtaining any Governmental Authorization of the type described in Subsection 3.9(b), provided that such failure or delay could not have been reasonably prevented by technical and scheduling measures of the Concessionaire,
 - (iii) a change to Laws and Regulations arising after the date of this Agreement,
 - (iv) delay caused by the performance of works carried out by a Governmental Authority or any utility or cable television supplier or railway operator,
 - (v) a failure by the Unaffected Party to perform or observe any of its covenants or obligations under this Agreement or any of the other Project Agreements, including a failure by the Grantor to comply with the provisions of Section 1.19,
 - (vi) delay caused by the presence in, on, under or around the Highway 407 Lands of Hazardous Substances other than Known Hazardous Substances,
 - (vii) delay caused by the presence in, under or on the Highway 407 Lands of Archaeological/Historical Finds, other than Known Archaeological/Historical Finds,
 - (viii) delay to the Construction Work with respect to a portion of Highway 407 which is not then Commissioned and Opened caused by the introduction of a new Ministry Safety Standard or a change to an existing Ministry Safety Standard after the Effective Date, or
 - (ix) delay to the Construction Work relating to Highway 407 East Partial caused by a requirement to conduct a comprehensive study under the *Canadian Environmental Assessment Act* or a referral to a mediator or a review panel pursuant to such Act.

which results in or would result in a delay or interruption in the performance of any obligation under this Agreement provided that such delay or the cause thereof is not specifically dealt with in this Agreement or does not arise by reason of

- (A) the negligence or wilful misconduct of the Affected Party or those for whom it is in law responsible,

- (B) any act or omission by the Affected Party (or those for whom it is in law responsible) in breach of the provisions of this Agreement,
 - (C) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Affected Party,
 - (D) save and except to the extent such events constitute an event of Force Majeure, any strike, labour dispute or other labour protest involving any Person retained, employed or hired by the Concessionaire or any of the Concessionaire's Advisors to supply materials or services for or in connection with the Work and any strike, labour dispute or labour protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Concessionaire or any of the Concessionaire's Advisors,
 - (E) save and except to the extent such events constitute an event of Force Majeure, any weather conditions (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced,
 - (F) any change or development in technology relating to tolling or toll highways,
 - (G) subject to Paragraph 18.1(a)(viii), the existence of a Ministry Safety Standard, the introduction of a new Ministry Safety Standard or a change to an existing Ministry Safety Standard, or
 - (H) a Discriminatory Action.
- (b) For the avoidance of doubt, the Concessionaire shall not be entitled to any relief for any delay caused by, and the Grantor shall not be liable to pay any costs or damages incurred by the Concessionaire as a result of, any delay to the Construction Work, or otherwise in connection with the performance of the Work, arising as a result of the presence of Known Hazardous Substances or Known Archaeological/Historical Finds in, under or on the Project Lands.

18.2 Notice of Delay Event

If either the Grantor or the Concessionaire is affected by a Delay Event (the "Affected Party") it shall give notice within ten (10) Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) of the said Delay Event to the other party (the "Unaffected Party"), provided, however, in the case of the same Delay Event being a continuing cause of delay, only one notice shall be necessary. The said notice must include

- (i) a statement of which Delay Event the claim is based upon,
- (ii) details of the circumstances from which the delay arises, and

- (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to the said Delay Event and information in support thereof, if known at that time.

The Unaffected Party shall, after receipt of the said notice, be entitled by notice to require the Affected Party to provide such further supporting particulars as the Unaffected Party may reasonably consider necessary.

18.3 Notice to Unaffected Party

The Affected Party shall notify the Unaffected Party within ten (10) Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) that a Delay Event has ceased.

18.4 Extension of Time for Completion by Reason of Delay Event

Subject to the Affected Party giving the notice required in Section 18.2, a Delay Event shall excuse the Affected Party from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of Business Days as the Grantor and the Concessionaire jointly determine, each acting reasonably. If the Grantor and the Concessionaire cannot agree upon the period of extension, then either party shall be entitled to refer the matter to the dispute resolution procedure in Article 25. This Section 18.4 shall not excuse the Affected Party from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Affected Party shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its commercially reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse non-compliance with a change to Laws and Regulations.

18.5 Termination for Force Majeure of Over One Year

If an event of Force Majeure occurs that is reasonably likely to have the effect of

- (i) delaying the performance of any material obligation created by this Agreement beyond the time required for its performance under this Agreement,
- (ii) causing physical damage or destruction to Highway 407 that results in Highway 407 being substantially unavailable for Highway Purposes, or
- (iii) suspending toll collection,

and such effect continues for a period in excess of one (1) year, the Grantor and the Concessionaire may agree to terminate this Agreement, in which event the Grantor shall pay the Force Majeure Termination Value to the Concessionaire (i) on the Reversion Date or (ii) if the Force Majeure Termination Value is determined on a date subsequent to the Reversion Date, then not later than thirty (30) days following the date of determination of the Force Majeure Termination Value, together with interest at the Interest Rate from the Reversion Date to the date on which payment is due.

If the parties do not agree to terminate this Agreement as set out in this Section 18.5, then the other provisions of this Article 18 shall apply to the event of Force Majeure.

18.6 Compensation for Termination by Reason of Force Majeure

- (a) "Force Majeure Termination Value" means the amount determined as set out in this Section 18.6.
- (b) The Force Majeure Termination Value shall be the aggregate of
 - (i) an amount equal to the outstanding principal of any Bona Fide Leasehold Mortgages granted by the Concessionaire in accordance with Article 22 as at the date immediately preceding the occurrence of the event of Force Majeure to the extent the amount secured by such Bona Fide Leasehold Mortgages relates to the Project, together with accrued interest thereon (but excluding interest on overdue amounts, penalties and late payment charges) and Breakage Costs relating thereto during the period commencing on the date of the occurrence of the event of Force Majeure and ending on the End Date, plus
 - (ii) without duplication, the reasonable costs and expenses incurred by the Concessionaire as a result of such termination,less
 - (iii) the amounts received or claimable by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable (or that should have been payable pursuant to such policies but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) as a result of the event of Force Majeure, except to the extent applied to repair the Project, and
 - (iv) expropriation proceeds received by the Concessionaire in respect of all or any portion of the Project as a result of the event of Force Majeure.

Notwithstanding anything else contained in this Section 18.6, the amount of the Force Majeure Termination Value shall not be less than one dollar (\$1).

- (c) The Grantor and the Concessionaire shall attempt to determine the Force Majeure Termination Value through negotiation, and any amount so agreed shall be the Force Majeure Termination Value. If such negotiation has not resulted in an agreement within thirty (30) days following the commencement of negotiations, the Force Majeure Termination Value shall be determined in accordance with the procedure set out in Subsections 18.6(d) and (e) and Article 25 shall not apply to such determination.
- (d) If the negotiation described in Subsection 18.6(c) does not result in an agreement on the Force Majeure Termination Value, either party may by notice to the other require that the dispute be resolved by mediation as described below. The mediation shall be held within thirty (30) days following the end of the thirty (30) day negotiation period. Within seven (7) days following the end of such thirty

(30) day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be binding on them. If the parties fail to agree on a mediator or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

- (e) If the procedures described above do not result in an agreement on the Force Majeure Termination Value, the Grantor and the Concessionaire shall, within thirty (30) days, jointly appoint a valuator to determine the Force Majeure Termination Value. The valuator so approved shall be a duly qualified business valuator having not less than fifteen (15) years' experience in the field of business valuation. If the parties are unable to agree upon a valuator within such period, the Grantor and the Concessionaire shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Ontario Court (General Division) to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario), shall govern such appointment. The valuator shall determine the Force Majeure Termination Value within sixty (60) Business Days following his or her appointment. The Grantor and the Concessionaire shall each pay fifty percent (50%) of the fees and expenses of the valuator.
- (f) In order to facilitate the determination of the Force Majeure Termination Value by the valuator, each of the Grantor and the Concessionaire shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Concessionaire shall permit the valuator and his representatives to have reasonable access during normal business hours to the Information and the Financial Information and to take extracts therefrom and make copies thereof.
- (g) The Force Majeure Termination Value as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (h) Subject to Subsection 24.1(vii), payment of the Force Majeure Termination Value by the Grantor to the Concessionaire shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the termination of this Agreement pursuant to Section 18.5 and, upon such payment, the Grantor shall be released and forever discharged by the Concessionaire from any and all liability in respect of such termination hereunder.

ARTICLE 19 DISCRIMINATORY ACTION

19.1 Discriminatory Action

A "Discriminatory Action" shall occur if the Province takes action of any nature whatsoever after the date hereof, including the coming into force or application of any law, by-

law, code, order, rule, regulation, policy or statute or fails to perform its obligations as prescribed by Laws and Regulations including, for the avoidance of doubt, the revocation or repeal, or any amendment having the effect of revoking or repealing, any or all of the provisions of the Highway 407 Act, and the effect is principally borne by the Concessionaire, if such action or failure materially and adversely affects the fair market value of the Project, except where such action is in response to any act or omission on the part of the Concessionaire which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Action) or such action is otherwise permitted under this Agreement. Notwithstanding the preceding sentence, none of the following shall be a Discriminatory Action

- (i) An increase in taxes of general application,
- (ii) The development, construction or operation of any mode of transportation, including a highway, that may result in the reduction of Toll Revenues or in the number of vehicles using Highway 407, provided that for the avoidance of doubt, the development, construction or operation by the Province of such mode of transportation within the Parkway Belt Lands (save and except the development, construction or operation of transitways for public or private mass transit as contemplated in Subsection 2.12(i)) shall constitute a Discriminatory Action,
- (iii) A Ministry Safety Standard or Higher Ministry Safety Standard or any Laws and Regulations relating to the enforcement thereof,
- (iv) The enactment of any law or regulation referred to in Section 1.16, or
- (v) The coming into force of any law or regulation (provided that the Grantor has the right to do so under the Tolling, Congestion Relief and Expansion Agreement attached as Schedule 22) to provide for the same or substantially the same level of compensation to the Grantor as contemplated by Sections 3.2 and 3.4 of such agreement on the assumption that Sections 3.2 and 3.4 are enforceable in accordance with their terms.

19.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Concessionaire shall have the right to

- (i) obtain compensation from the Grantor in order to restore the Concessionaire to the same economic position the Concessionaire would have been in if such Discriminatory Action had not occurred (the "Discriminatory Action Compensation"), or
- (ii) terminate this Agreement by giving notice in the manner described in Section 19.3.

19.3 Notice of Discriminatory Action

The Concessionaire shall give a notice (the "Preliminary Notice") to the Grantor within thirty (30) Business Days following the date on which the Concessionaire first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating

that a Discriminatory Action has occurred. Within one hundred and eighty (180) days following the giving of the Preliminary Notice, the Concessionaire must give another notice (the "Notice of Discriminatory Action"). A Notice of Discriminatory Action must include

- (i) a statement of the Discriminatory Action which has occurred,
- (ii) details of the effect of the said occurrence which is principally borne by the Concessionaire,
- (iii) details of the material adverse effect of the said occurrence on the economic position of the Concessionaire.
- (iv) a statement as to which right in Section 19.2 the Concessionaire elects to exercise, and
- (v) if the Concessionaire elects to exercise the right to compensation under Section 19.2, the amount claimed as Discriminatory Action Compensation and details of the calculation thereof.

The Grantor shall, after receipt of the Notice of Discriminatory Action, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Grantor may reasonably consider necessary.

If the Grantor wishes to dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation, if any, claimed in the Notice of Discriminatory Action, the Grantor shall give notice of dispute (the "Notice of Dispute") to the Concessionaire within thirty (30) days following the date of receipt of the Notice of Discriminatory Action stating the grounds for such dispute.

If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days following the date of receipt of the Notice of Dispute by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 25.

- (vi) If the Grantor does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation, if any, claimed in the Notice of Discriminatory Action, then if the Concessionaire has elected to exercise its right to compensation, the Grantor shall pay the amount of Discriminatory Action Compensation claimed to the Concessionaire
 - (A) within sixty (60) days following the date of receipt of the Notice of Discriminatory Action, or
 - (B) if a Notice of Dispute has been given, then not later than sixty (60) days following the date of determination of the Discriminatory Action Compensation, together with interest at the Interest Rate from the date of receipt of the Notice of Discriminatory Action to the date on which payment is due, or
- (vii) if the Concessionaire has elected to exercise its right to terminate this Agreement, this Agreement, subject to Section 19.5, shall terminate sixty

(60) days following the date of receipt of the Notice of Discriminatory Action by the Grantor and the Grantor shall pay an amount equal to the aggregate of

- (A) the Discriminatory Action Termination Value, plus
- (B) without duplication, the reasonable costs and expenses incurred by the Concessionaire as a result of such termination, less
- (C) expropriation proceeds received by the Concessionaire in respect of all or any portion of the Project as a result of the occurrence of a Discriminatory Action,

(collectively, the "Discriminatory Action Damages") to the Concessionaire (I) on the Reversion Date or (II) if the Discriminatory Action Damages are determined on a date subsequent to the Reversion Date, then not later than thirty (30) days following the date of determination of the Discriminatory Action Damages, together with interest at the Interest Rate from the Reversion Date to the date on which payment is due,

- (viii) no Notice of Discriminatory Action given by the Concessionaire to the Grantor in which the Concessionaire states that it elects to exercise its right of termination of this Agreement shall be valid for any purpose unless the Concessionaire has first obtained and delivered to the Grantor the written consent of each Leasehold Mortgagee to such Notice of Discriminatory Action, and
- (ix) subject to Subsection 24.1(vii), payment of the Discriminatory Action Damages or the Discriminatory Action Compensation, as the case may be, by the Grantor to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Grantor shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Discriminatory Action.

19.4 Compensation for Termination by Reason of Discriminatory Action

- (a) "Discriminatory Action Termination Value" means the amount determined as set out in this Section 19.4.
- (b) The Discriminatory Action Termination Value shall be the aggregate of
 - (i) the amount (including Breakage Costs) required under the terms of all Bona Fide Debt or Bona Fide Leasehold Mortgages to repay such debt or the amounts secured by such Leasehold Mortgages on the End Date to the extent such Bona Fide Debt or the amounts secured by such Bona Fide Leasehold Mortgages relate to the Project, plus

- (ii) such further amount, if any, as may be required to ensure that following receipt by the Concessionaire of the Discriminatory Action Termination Value and repayment by the Concessionaire on the End Date of the amounts referred to in Paragraph 19.4(b)(i), but before consideration of any amounts received by the Concessionaire referred to in clause (C) of Subsection 19.3(vii), the value of the Concessionaire on the End Date is the same as it would have been had the Discriminatory Action not occurred.
- (c) The Discriminatory Action Damages shall be determined as if no Discriminatory Action has occurred. Notwithstanding anything else contained in this Article 19, the amount of the Discriminatory Action Damages shall not be less than one dollar (\$1).
- (d) The Grantor and the Concessionaire shall attempt to determine the Discriminatory Action Damages through negotiation, and any amounts so agreed shall be the Discriminatory Action Damages. If negotiation does not result in an agreement within thirty (30) days following the commencement of negotiations, the Discriminatory Action Damages shall be determined in accordance with the procedure set forth in Subsections 19.4(e) and (f) and Article 25 shall not apply to such determination.
- (e) If the negotiation described in Subsection 19.4(d) does not result in an agreement on the Discriminatory Action Damages, either party may by notice to the other require that the dispute be resolved by mediation as described below. The mediation shall be held within thirty (30) days following the end of the thirty (30) day negotiation period. Within seven (7) days following the end of such thirty (30) day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be binding on them. If the parties fail to agree on a mediator or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.
- (f) If the procedures described above do not result in an agreement on the Discriminatory Action Damages, the Grantor and the Concessionaire shall, within thirty (30) Business Days, jointly appoint a valuator to determine the Discriminatory Action Damages. The valuator so appointed shall be a duly qualified business valuator having not less than fifteen (15) years' experience in the field of business valuation. If the parties are unable to agree upon a valuator within such period, the Grantor and the Concessionaire shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Ontario Court (General Division) to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario), shall govern such appointment. The valuator shall select the Discount Rate to be applied and determine the

Discriminatory Action Damages within sixty (60) Business Days following his or her appointment.

- (g) In order to facilitate the determination of the Discriminatory Action Damages by the valuator, each of the Grantor and the Concessionaire shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and shall permit the valuator and his representatives to have reasonable access during normal business hours to its Information and Financial Information and to take extracts therefrom and to make copies thereof. The Grantor shall pay the fees and expenses of the valuator.
- (h) The Discriminatory Action Damages as determined by the valuator shall be final and conclusive and not subject to any appeal.

19.5 Right of Grantor to Remedy Discriminatory Action

If the Grantor wishes to remedy the occurrence of a Discriminatory Action, the Grantor shall give notice thereof to the Concessionaire within thirty (30) days following the date of receipt of the Notice of Discriminatory Action. If the Grantor gives such notice it must remedy the Discriminatory Action within one hundred and eighty (180) days following the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days following the final award pursuant to Article 25 to the effect that a Discriminatory Action occurred. If the Grantor remedies the occurrence of a Discriminatory Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for Discriminatory Action Compensation.

ARTICLE 20 DEFAULTS

20.1 Default by Concessionaire

The occurrence of any one or more of the following events shall constitute a Concessionaire Default under this Agreement

- (i) If the Concessionaire fails to make any payment of any amount due to the Grantor under this Agreement or any other Project Agreement and such default continues unremedied for a period of ninety (90) days following notice thereof from the Grantor to the Concessionaire.
- (ii) If any material representation or warranty made by the Concessionaire in this Agreement or in any document or certificate given pursuant to this Agreement or, subject to any applicable limitation period set out therein, in any other Project Agreement or any document or certificate given pursuant to any such other Project Agreement proves to have been incorrect in any material respect (unless such representation and warranty is already qualified as to materiality) when made and such incorrect representation or warranty, if capable of being remedied, continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the incorrect representation or warranty in reasonable detail) from the Grantor to the Concessionaire or for such

longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Grantor, acting reasonably, that

- (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, and
 - (B) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Grantor, acting reasonably, and
 - (C) if such failure is in fact cured within such period of time.
- (iii) If the Concessionaire fails to perform or observe any of its material obligations or covenants under this Agreement (other than as otherwise referred to in this Section 20.1) or any other Project Agreement, and such failure continues unremedied for a period of sixty (60) Business Days following notice thereof (giving particulars of the failure in reasonable detail) from the Grantor to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Grantor, acting reasonably, that
- (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure,
 - (B) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Grantor, acting reasonably, and
 - (C) such failure is in fact cured within such period of time.
- (iv) If there is a default by the Concessionaire under any Project Agreement (other than this Agreement and other than as referred to in Subsection 20.1(xi)) which is not cured prior to the expiry of the applicable notice and cure period, if any, relating thereto and which has a material and adverse effect on the ability of the Concessionaire to perform or cause the performance of the Work in accordance with the Governing Documentation and Laws and Regulations.
- (v) If the Concessionaire fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Article 25 and such default continues unremedied for a period of ninety (90) days following notice thereof from the Grantor to the Concessionaire.
- (vi) If any resolution is passed for the dissolution, liquidation or winding-up of the Concessionaire or for the suspension of operations of the Concessionaire.
- (vii) If a decree or order of a court having jurisdiction is issued or entered adjudging the Concessionaire bankrupt or insolvent, ordering the winding-

up or liquidation of the Concessionaire or approving any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Concessionaire under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction and such decree or order continues unstayed and in effect and is not withdrawn, dismissed, overturned or set aside within the period of ninety (90) days following its issuance or entry.

- (viii) If execution or any analogous process is issued or filed against the Concessionaire or against all or a substantial part of its property or assets and such execution or other process continues unstayed and in effect and is not withdrawn, dismissed, overturned or set aside within the period of thirty (30) Business Days following its issuance or filing and the same has a material and adverse effect on the Work.
- (ix) If a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other Person with similar powers is appointed in any manner in respect of the Concessionaire or in respect of all or a substantial portion of its property or assets and such appointment continues unstayed and in effect and is not withdrawn, overturned, set aside or revoked within the period of ninety (90) days following the appointment.
- (x) If the Concessionaire becomes insolvent, admits its inability to pay or fails to pay its debts generally as they become due, acknowledges its insolvency, makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, or files any proposal, notice of intention or petition or otherwise commences or consents to or acquiesces in the commencement of any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Concessionaire under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or consents to or acquiesces in the appointment in any manner of a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other Person with similar powers in respect of the Concessionaire or in respect of all or a substantial portion of its property or assets.
- (xi) If a Disposition (as defined in the Restriction on Transfer Agreement) occurs that is not permitted under the Restriction on Transfer Agreement.
- (xii) If (A) there is a pattern over an aggregate period of one (1) year or more of the Concessionaire repeatedly failing to perform or observe any of its material obligations or covenants under any of Section 6.1, 6.2 or 6.5

and/or under any notice of non-compliance issued by the Province pursuant to Schedule 20 and (B) notice of each such failure shall have been given to the Concessionaire and (C) in respect to each such failure, the Grantor has taken action under Subsections 6.4(d), 20.2(iii), or 20.2(viii).

20.2 Remedies of the Grantor

Upon the occurrence of a Concessionaire Default, the Grantor may by notice to the Concessionaire, with a copy to each Leasehold Mortgagee of whom the Grantor has been given notice pursuant to Subsection 22.1(iv), declare the Concessionaire to be in default and may, subject to the provisions of this Section 20.2 and Articles 22 and 25, do any or all of the following as the Grantor, in its sole and absolute discretion, shall determine

- (i) The Grantor may terminate this Agreement by
 - (A) giving sixty (60) days' prior notice to the Concessionaire upon the occurrence of a Concessionaire Default pursuant to Subsection 20.1(iii) consisting of a failure by the Concessionaire to perform or observe any of its obligations or covenants under Section 2.5, or
 - (B) giving sixty (60) days' prior notice to the Concessionaire upon the occurrence of a Concessionaire Default described in Subsection 20.1(xii) provided the Concessionaire shall be entitled to cure such Concessionaire Default by providing the Grantor with a written work plan within such sixty (60) day period outlining the actions by which the Concessionaire will ensure future compliance with its obligations and covenants under Sections 6.1, 6.2, 6.5 and Schedule 20, which work plan is Approved by the Grantor, provided further that any failure of the Concessionaire to comply in any material respect with the Approved work plan following sixty (60) days' notice of such failure from the Grantor to the Concessionaire shall be deemed to be a Concessionaire Default described in Subsection 20.1(xii) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto.
- (ii) If the Concessionaire is in default under this Agreement by reason of the failure to pay any monies, the Grantor may (without obligation to do so) make payment on behalf of the Concessionaire of such monies. Any amount so paid by the Grantor shall be payable by the Concessionaire to the Grantor on demand, without any days of grace.
- (iii) The Grantor may cure the Concessionaire Default (but this shall not obligate the Grantor to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so) and all costs and expenses incurred by the Grantor in curing or attempting to cure the Concessionaire Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses shall be payable by the Concessionaire to the Grantor

on demand, without any days of grace. No such action by the Grantor shall be deemed to be a termination of this Agreement. The Grantor shall not incur any liability to the Concessionaire for any act or omission of the Grantor or any other Person in the course of remedying or attempting to remedy any Concessionaire Default.

- (iv) The Grantor may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default.
- (v) The Grantor may seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt.
- (vi) With respect to those Concessionaire Defaults which entitle the Grantor to terminate this Agreement pursuant to Subsection 20.2(i), the Grantor may re-enter the Project Lands in the name of the whole and have again, repossess and enjoy the Project Lands as of the Grantor's former estate. No re-entry by the Grantor shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire. Despite a reletting without termination, the Grantor may at any time thereafter elect to terminate this Agreement for the previous breach. Any re-entry or termination of this Agreement made in accordance with this Agreement as against the Concessionaire shall be valid and effectual against the Concessionaire even though made subject to the rights of a Leasehold Mortgagee to cure any default of the Concessionaire and continue as in the place of the Concessionaire under this Agreement or a new concession and ground lease agreement as provided herein.
- (vii) The Grantor may, subject to Laws and Regulations, distrain against any of the Concessionaire's goods which are situate on the Project Lands and the Concessionaire waives any statutory protections and exemptions in connection therewith.
- (viii) The Grantor may stop the progress of the Work and/or close any and all portions of Highway 407.
- (ix) The Grantor may exercise any of its other rights and remedies provided for hereunder.

20.3 Default by the Grantor

The occurrence of any one or more of the following events shall constitute a Grantor Default under this Agreement

- (a) If the Grantor defaults in the payment of any amount due to the Concessionaire under this Agreement or any other Project Agreement and such default continues unremedied for a period of ninety (90) days following notice thereof from the Concessionaire to the Grantor.

- (b) If any material representation or warranty made by the Grantor in this Agreement, any other Project Agreement or in any document or certificate required to be given pursuant to this Agreement or any other Project Agreement proves to have been incorrect in any material respect (unless such representation and warranty is already qualified as to materiality) when made and such incorrect representation or warranty, if capable of being remedied, has not been remedied within a period of ninety (90) days following notice thereof (giving particulars of the incorrect representation or warranty in reasonable detail) from the Concessionaire to the Grantor.
- (c) If the Grantor fails to perform or observe any of its material obligations or covenants under this Agreement (other than a Discriminatory Action or as referred to in Subsection 20.3(a)) or any other Project Agreement and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Grantor or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Grantor has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that
 - (i) it is proceeding with all due diligence to cure or cause to be cured such failure, and
 - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably,

and if such failure is in fact cured within the period of time acceptable to the Concessionaire, acting reasonably, then such failure shall not be a Grantor Default.

- (d) If the Grantor fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Article 25 and such default continues unremedied for ninety (90) days following notice thereof from the Concessionaire to the Grantor.

20.4 Remedies of Concessionaire

Upon the occurrence of a Grantor Default by the Grantor under this Agreement, the Concessionaire may by notice to the Grantor declare the Grantor to be in default and may, subject to the provisions of Article 25, do any or all of the following as the Concessionaire, in its sole and absolute discretion, shall determine

- (a) The Concessionaire may terminate this Agreement by giving sixty (60) days' prior notice to the Grantor.
- (b) The Concessionaire may seek such equitable remedies as are available to it.
- (c) The Concessionaire may seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt.

- (d) The Concessionaire may exercise any of its other rights and remedies provided for hereunder.

ARTICLE 21 ASSIGNMENT AND RESTRICTIONS ON TRANSFERS

21.1 Assignment by the Concessionaire

Except as permitted in or pursuant to this Agreement, the Concessionaire shall not grant or permit to exist any Encumbrance other than a Permitted Encumbrance or a Province Permitted Encumbrance upon any or all of the Concessionaire's Interest to or in favour of any Person.

The Concessionaire acknowledges that its right to sell, convey, assign, sublease, transfer or otherwise dispose of (a "Transfer") any or all of the Concessionaire's Interest to or in favour of any person (a "Transferee") is restricted pursuant to the Restriction on Transfer Agreement. On the expiry of such restriction, the Concessionaire shall not Transfer any or all of the Concessionaire's Interest to or in favour of a Transferee unless

- (i) the proposed Transferee, unless it is a Leasehold Mortgagee permitted under Article 22, enters into an agreement with the Grantor in form and substance satisfactory to the Grantor, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire in respect of the agreements and other assets and property to which the portion of the Concessionaire's Interest which is the subject of the Transfer relates, and
- (ii) the Concessionaire agrees with the Grantor in form and substance satisfactory to the Grantor, acting reasonably, to be jointly and severally liable with the Transferee in respect of the performance and observance of all of the obligations and covenants of the Concessionaire under the agreements and other assets and property to which the portion of the Concessionaire's Interest which is the subject of the Transfer relates,

provided that the Concessionaire may in the ordinary course of business Transfer any part of the Project which has become worn out, unserviceable, undesirable or unnecessary for use in the operation thereof.

No Transfer shall be made or have any force or effect if at the time of such Transfer there has occurred a Concessionaire Default which has not been remedied or an event which with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

Consolidation, merger or amalgamation of the Concessionaire with any other Persons shall be deemed to be a Transfer which shall be subject to the foregoing provisions.

21.2 Assignment by the Grantor

The Grantor shall have the right to Transfer any or all of the Grantor's Interest, provided that it be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the Grantor under this Agreement and any agreement entered into

by the Grantor under this Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 22.3.

ARTICLE 22 LENDER'S RIGHTS AND REMEDIES

22.1 Leasehold Mortgages

Notwithstanding Article 21, at any time and from time to time during the Term the Concessionaire shall have the right, at its sole cost and expense, to charge, mortgage, pledge, grant a security interest in, assign or sublease the Concessionaire's Interest or enter into any deed of trust or similar instrument with respect to all or any part of the Concessionaire's Interest as security for any indebtedness, liability or obligation of the Concessionaire, including bonds or debentures issued under a trust indenture (the holder of any such charge, mortgage, pledge, security interest, assignment or sublease and the beneficiary of any such deed of trust or similar instrument being referred to herein as a "Leasehold Mortgagee" and for the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures, only the trustee in respect thereof shall be the Leasehold Mortgagee and the holder of any such bonds or debentures shall be deemed not to hold an interest in the Leasehold Mortgage, as hereinafter defined and the charge, mortgage, pledge, security interest, assignment, sublease or deed of trust or similar instrument together with any amendment, change, supplement, restatement, extension, renewal or modification being referred to herein as a "Leasehold Mortgage"), upon and subject to the following conditions

- (i) Leasehold Mortgages may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Concessionaire, except as otherwise provided in this Agreement.
- (ii) A Leasehold Mortgage may not cover any real or personal property of the Concessionaire not related to the Project, but for the avoidance of doubt, may cover shares in the capital of the Concessionaire.
- (iii) No Leasehold Mortgage shall affect or encumber in any manner the Grantor's freehold title to the Project Lands. Except as expressly otherwise provided under this Agreement, the Grantor shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Leasehold Mortgagee shall not be entitled to seek any damages against the Grantor for any or all of the same.
- (iv) No Leasehold Mortgage shall be binding upon the Grantor in the enforcement of the Grantor's rights and remedies herein and by law provided, unless and until a copy of the original thereof and the registration details if applicable, together with written notice of the address of the Leasehold Mortgagee to which notices may be sent have been delivered to the Grantor by the Concessionaire or the Leasehold Mortgagee; and in the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon the Grantor unless

and until a copy thereof and the registration details if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Grantor by the Concessionaire or the Leasehold Mortgagee.

- (v) Each Leasehold Mortgage shall provide that if the Concessionaire is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to the Concessionaire then the Leasehold Mortgagee shall give notice of such default to the Grantor and no such notice shall be valid for any purpose as against the Concessionaire unless and until such notice has also been given to the Grantor.
- (vi) A Leasehold Mortgage permitted hereunder may secure two or more separate debts, liabilities or obligations in favour of two or more separate Leasehold Mortgagees, provided that such Leasehold Mortgage complies with the provisions of this Article.
- (vii) Any number of permitted Leasehold Mortgages may be outstanding at any one time, provided that each such Leasehold Mortgage complies with the provisions of this Article.
- (viii) All rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement, and to all of the rights of the Grantor hereunder. While any Leasehold Mortgage is outstanding, the Grantor and the Concessionaire shall not amend, change or supplement this Agreement or any Project Agreement or agree to a voluntary surrender or termination of this Agreement or any Project Agreement without the consent of the Leasehold Mortgagee, provided that such consent shall not be unreasonably withheld or delayed. A Leasehold Mortgagee must use its reasonable best efforts to respond within a reasonable period of time to any request to amend, change or supplement this Agreement or for a voluntary surrender.
- (ix) Notwithstanding any enforcement of the security of any Leasehold Mortgage, the Concessionaire shall remain liable to the Grantor for the payment of all sums owing to the Grantor hereunder and under the other Project Agreements and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement and the other Project Agreements.
- (x) The Leasehold Mortgagee must agree with the Grantor to discharge its Leasehold Mortgage for no consideration upon the expiry of the Term or earlier termination of this Agreement and the payment of amounts, if any, owing by the Grantor to the Concessionaire hereunder as a result of such termination subject to Section 22.2.
- (xi) The Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage acquire any greater rights or interest in the Project Lands and the Project than the Concessionaire has at the material time under this Agreement, provided that the foregoing shall in no way be construed as restricting the

right of the Leasehold Mortgagee from being named as loss payee and named insured together with the Grantor and other Persons contemplated in Article 16 under any policy of insurance required pursuant to Article 16.

22.2 Rights and Obligations of Leasehold Mortgagees

While any Leasehold Mortgage remains outstanding, and if the Grantor has received the notice referred to in Subsection 22.1(iv) or the contents thereof are embodied in the Agreement entered into by the Grantor in accordance with Section 22.3, the following provisions shall apply

- (i) No Concessionaire Default shall be grounds for the termination by the Grantor of this Agreement or re-entry by the Grantor on the Project Lands unless and until
 - (A) any notice required to be given under Section 20.1 has been given by the Grantor to the Concessionaire and to the Leasehold Mortgagee,
 - (B) the notice required to be given under Section 20.2 has been given to the Concessionaire and to the Leasehold Mortgagee,
 - (C) the cure period set forth in Subsection 22.2(ii) has expired without a cure having been completed; and
 - (D) The period set out in Section 22.2(iv) has expired without the Leasehold Mortgagee having taken the actions therein contemplated.
- (ii) In the event the Grantor has given any notice required to be given under Section 20.1, the Leasehold Mortgagee shall, within the applicable cure period, if any, and otherwise as herein provided, have the right (but not the obligation) to remedy such default, and the Grantor shall accept such performance by such Leasehold Mortgagee as if the same had been performed by the Concessionaire. The Leasehold Mortgagee shall have one hundred and eighty (180) days following delivery by the Grantor of the notice required under Subsection 20.2(i) to cure the default or cause the same to be cured, provided, however, that such one hundred and eighty (180) day period shall be extended if the default is other than the payment of money and the default complained of in such notice may be cured but cannot reasonably be cured within one hundred and eighty (180) days and the Leasehold Mortgagee begins to cure such default within such one hundred and eighty (180) day period and thereafter proceeds with all due diligence to cure such default within a reasonable period of time acceptable to the Grantor, acting reasonably.
- (iii) If a Concessionaire Default occurs which entitles the Grantor to terminate this Agreement under Paragraph 20.2(i)(A) and if before the expiration of one hundred and eighty (180) days following the Leasehold Mortgagee's receipt of the notice required under Subsection 20.2(i) the Leasehold

Mortgagee has complied or is engaged in complying with all the requirements of this Agreement (if any) then in default and with which the Leasehold Mortgagee is capable of complying, the Grantor shall not be entitled to terminate this Agreement.

- (iv) Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee.
- (v) A Leasehold Mortgagee shall be entitled to the Concessionaire's rights and benefits contained in this Agreement and shall become liable for the Concessionaire's obligations under this Agreement solely as provided herein. A Leasehold Mortgagee may, subject to the provisions of this Agreement, save and except that it shall not be bound by the Restriction on Transfer Agreement in any realization, including any realization against the issued and outstanding shares of the Concessionaire, enforce any Leasehold Mortgage and acquire the Concessionaire's interest in any lawful way and, without limitation, a Leasehold Mortgagee may, by its representatives or a receiver or a receiver and manager, take possession of and manage the Project and, upon foreclosure of, or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage, may, subject to the provisions of Article 21 (other than Subsection 21.1(ii) and the Restriction on Transfer Agreement), applied to the Leasehold Mortgagee as if it were the Concessionaire, sell or assign the Concessionaire's interest.
- (vi) Unless and until a Leasehold Mortgagee (A) forecloses or has otherwise taken ownership of the Concessionaire's interest or (B) has taken possession or control of the Concessionaire's interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire's interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement or the other Project Agreements except by way of security. If the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner or is in control or possession of the Concessionaire's interest, it shall be bound by all liabilities and obligations of the Concessionaire under this Agreement. Once the Leasehold Mortgagee goes out of possession or control of the Concessionaire's interest or transfers the Concessionaire's interest to another person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be liable for any of the Concessionaire's obligations under this Agreement and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

- (vii) Notwithstanding anything else contained in this Agreement, any Person to whom the Leasehold Mortgagee Transfers the Concessionaire's Interest shall take the Concessionaire's Interest subject to any of the Concessionaire's obligations under this Agreement other than any obligations which the Leasehold Mortgagee was not required to assume. No Transfer by a Leasehold Mortgagee shall be effective unless the Transferee has entered into an agreement with the Grantor in form and substance satisfactory to the Grantor, acting reasonably, wherein the Transferee agrees to assume (to the extent indicated in the preceding sentence) and to perform and observe the assumed obligations and covenants of the Concessionaire in respect of the Concessionaire's Interest.
- (viii) In the event of the termination of this Agreement prior to the expiration of the Term due to a Concessionaire Default, the Grantor shall notify each Leasehold Mortgagee of such termination and shall deliver to each Leasehold Mortgagee a statement of all sums which would at that time be due under this Agreement then known to the Grantor. Subject to the provisions of this Article 22 the Leasehold Mortgagee shall thereupon have the option to obtain from the Grantor a concession and ground lease agreement in accordance with the following terms
- (A) Upon receipt of the written request of the Leasehold Mortgagee within sixty (60) days following its receipt of the notice required under this Subsection 22.2(viii) the Grantor shall enter into a concession and ground lease agreement with the Leasehold Mortgagee or the nominee of the Leasehold Mortgagee, including any Transferee.
- (B) Such concession and ground lease agreement shall be effective as of the date of termination of this Agreement and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. Title to the Grantor's interest to the Project Lands shall be subject to the Province Permitted Encumbrances and any Encumbrances permitted by this Agreement or consented to by the Leasehold Mortgagee. The Grantor's obligation to grant a concession and ground lease agreement is conditional upon the Leasehold Mortgagee (I) paying all sums which would, at the time of the execution thereof, be due under this Agreement but for such termination, (II) otherwise fully remedying any defaults under this Agreement existing immediately prior to termination of this Agreement to the extent the Leasehold Mortgagee is capable of remedying such defaults, and (III) paying all reasonable costs and expenses including legal fees (on a solicitor and client basis) incurred by the Grantor in connection with such default and termination, the recovery of possession of the Project and the preparation, execution and delivery of such concession and ground lease agreement and related agreements and documents provided, however, that with respect to any default which could not be cured

by such Leasehold Mortgagee until it obtains possession, such Leasehold Mortgagee shall have a reasonable time after it obtains possession to cure such default.

- (ix) Anything herein contained to the contrary notwithstanding, the provisions of this Article 22 shall enure only to the benefit of the holders of Leasehold Mortgages. If the holders of more than one such Leasehold Mortgage make written requests of the Grantor in accordance with this Section 22.2 to obtain a concession and ground lease agreement, the Grantor shall accept the request of the holder whose Leasehold Mortgage had priority immediately prior to the termination as between the Leasehold Mortgagees making such request and thereupon the written request of each other Leasehold Mortgagee shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Leasehold Mortgages, the Grantor may in its sole and absolute discretion rely upon the opinion as to such priorities of any law firm qualified to practice law in the Province of Ontario retained by the Grantor or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.
- (x) The parties hereto shall give the Leasehold Mortgagee notice of any expropriation proceedings affecting the Project.

22.3 Co-operation

The Grantor and the Concessionaire shall enter into an agreement with any Leasehold Mortgagee for the purpose of implementing the Leasehold Mortgagee protection provisions contained in this Agreement, including a subordination agreement to give effect to the provisions of Section 2.13. The Grantor, acting reasonably, shall consider any request jointly made by the Concessionaire and a Leasehold Mortgagee or proposed Leasehold Mortgage to facilitate a provision of a Leasehold Mortgage or proposed Leasehold Mortgage that may require an amendment to this Agreement, provided that the rights of the Grantor are not adversely affected thereby and the consent of any other Leasehold Mortgagee to such amendment has been obtained by the Concessionaire or the Leasehold Mortgagee making the request for the amendment.

ARTICLE 23

DAMAGES PAYABLE TO CONCESSIONAIRE FOR TERMINATION BY GRANTOR

23.1 Termination

The Grantor shall not have the right under this Agreement to terminate this Agreement for any reason other than under Sections 18.5 or 20.2. If, notwithstanding the preceding sentence, the Grantor terminates this Agreement for any reason other than under Sections 18.5, or 20.2, the Grantor shall pay to the Concessionaire an amount equal to the aggregate of

- (i) the Project Fair Market Value plus
- (ii) without duplication, the reasonable costs and expenses incurred by the Concessionaire as a result of such termination, less

- (iii) expropriation proceeds received by the Concessionaire in respect of all or any portion of the Project as a result of the termination of this Agreement (collectively, the "Termination Damages").

on the Reversion Date. If an event of Force Majeure has occurred at any time prior to the Reversion Date and the effects of such event of Force Majeure have not been remedied prior to the Reversion Date, the amounts received or claimable by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable (or that should have been payable pursuant to such policies but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) as a result of such event of Force Majeure, except to the extent applied to repair the Project, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Grantor to the Concessionaire.

23.2 Termination Damages

- (a) "Project Fair Market Value" means the amount determined as set out in this Section 23.2.
- (b) The Project Fair Market Value shall be the aggregate of
 - (i) the amount (including Breakage Costs) required under the terms of all Bona Fide Debt or Bona Fide Leasehold Mortgages to repay such debt or the amounts secured by such Leasehold Mortgages on the End Date to the extent such Bona Fide Debt or the amounts secured by such Leasehold Mortgages relate to the Project, plus
 - (ii) such further amount, if any, as may be required to ensure that following receipt by the Concessionaire of the Project Fair Market Value and repayment by the Concessionaire on the End Date of the amounts referred to in Paragraph 23.2(b)(i), but before consideration of any amounts received by the Concessionaire referred to in Subsection 23.1(iii), the value of the Concessionaire on the End Date is the same as it would have been had the termination of this Agreement not occurred.
- (c) The Termination Damages shall be determined as if neither an event of Force Majeure entitling the Grantor to terminate this Agreement nor any Discriminatory Action had occurred. Notwithstanding anything else contained in this Article 23, the amount of the Termination Damages shall not be less than one dollar (\$1).
- (d) The Grantor may give to the Concessionaire a notice (the "Valuation Notice"), from time to time, setting out an amount that the Grantor proposes as the Termination Damages, together with details of the calculations. If the Concessionaire does not give notice (the "Non-Acceptance Notice") to the Grantor stating that it does not accept the Termination Damages proposed by the Grantor within thirty (30) days following receipt of the Valuation Notice, the Concessionaire shall be deemed to have accepted the Termination Damages so proposed. A Non-Acceptance Notice shall set out the amount that the Concessionaire proposes as the Termination Damages. If the Non-acceptance Notice is given, the Grantor and the Concessionaire shall attempt to determine the Termination Damages through negotiation, and any amount so agreed shall be the

Termination Damages. If a negotiation has not resulted in an agreement within thirty (30) days following the giving of the Non-Acceptance Notice, the Termination Damages shall be determined in accordance with the procedure set forth in Subsections 23.2(e) and (f) and Article 25 shall not apply to such determination.

- (e) If the negotiation described in Subsection 23.2(d) does not result in an agreement on the Termination Damages, either party may by notice to the other require that the dispute be resolved by mediation as described below. The mediation shall be held within thirty (30) days following the end of the thirty (30) day negotiation period. Within seven (7) days following the end of such thirty (30) day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be binding on them. If the parties fail to agree on a mediator or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.
- (f) If the procedures described above do not result in an agreement on the Termination Damages, the Grantor and the Concessionaire shall, within thirty (30) days, jointly appoint a valuator to determine the Termination Damages. The valuator so appointed shall be a duly qualified business valuator having not less than fifteen (15) years' experience in the field of business valuation. If the parties are unable to agree upon a valuator within such period, the Grantor and the Concessionaire shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Ontario Court (General Division) to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Termination Damages within sixty (60) Business Days following his or her appointment. The Grantor shall pay the fees and expenses of the valuator.
- (g) In order to facilitate the determination of the Termination Damages by the valuator, each of the Grantor and the Concessionaire shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Concessionaire shall permit the valuator and his representatives to have reasonable access during normal business hours to its Information and Financial Information and to take extracts therefrom and to make copies thereof.
- (h) The Termination Damages as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (i) Subject to Subsection 24.1(vii), payment of the Termination Damages by the Grantor to the Concessionaire shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the termination of this Agreement and upon such payment, the Grantor shall be

released and forever discharged by the Concessionaire from any and all liability in respect of such termination hereunder.

ARTICLE 24 CONSEQUENCES OF TERMINATION OR REVERSION

24.1 General Provisions

Upon the termination of this Agreement, notwithstanding any claims the parties may have against each other and subject to Subsections 20.2(v), 20.4(c) and Article 22, the following shall apply

- (i) Subject to Subsection 24.1(ii), the Grantor shall, as of the Reversion Date, become the owner of the Project and as consideration therefor, assume full responsibility for the design, development, construction, operation, management, maintenance, rehabilitation and/or tolling of the Project.
- (ii) The Concessionaire shall be liable for all costs and expenses incurred in connection with the design, development, construction, operation, management, maintenance, rehabilitation and/or tolling of the Project up to but not including the Reversion Date and the Grantor shall be liable for all such costs and expenses incurred in connection with such activities on and as of the Reversion Date.
- (iii) The Grantor shall have the option of requiring that the Concessionaire assign all of its right, title and interest in, to and under all or any of the Plans and Contracts to the Grantor or its nominee for the remainder of their respective terms. The Grantor may exercise such option by giving a notice to such effect to the Concessionaire. If the Grantor exercises such option, the right, title and interest of the Concessionaire in, to and under the Plans and Contracts shall be assigned to the Grantor or its nominee as of the Reversion Date and the Grantor shall assume the Concessionaire's obligations under the DDB/OMM Agreements which arise in respect of, or relate to, any period of time falling on and after the Reversion Date. If the Grantor does not exercise such option, the Concessionaire shall, unless the Grantor has granted to a Leasehold Mortgagee or its nominee, a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the DDB/OMM Agreements.
- (iv) Subject only to the continuing rights of the other parties (other than the Concessionaire) to the DDB/OMM Agreements, if the DDB/OMM Agreements are assigned to the Grantor or its nominee as provided in Subsection 24.1(iii), the Concessionaire shall surrender the Project to the Grantor and shall cause all Persons claiming under or through the Concessionaire to do likewise.
- (v) The Concessionaire, at its sole cost and expense, shall deliver to the Grantor all records and other documents relating to the Toll Revenues and

all other records and information relating to the Project as the Grantor, acting reasonably, may request.

- (vi) The Concessionaire shall assist the Grantor in such manner as the Grantor may require to ensure the orderly transition of design, development, construction, control, operation, management, maintenance, rehabilitation and tolling of the Project, and shall, if appropriate and if requested by the Grantor, take all steps as may be necessary to enforce the provisions of the DDB/OMM Agreements pertaining to the surrender of the Project.
- (vii) The Grantor and the Concessionaire shall make appropriate adjustments, including adjustments relating to any DDB/OMM Agreements assigned to the Grantor, tolls, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities. Any adjustments and payment therefor shall be made by the appropriate party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of one hundred and eighty (180) days following the Reversion Date. The Grantor and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the Grantor or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended.
- (viii) Subject to Subsection 24.1(vii), if this Agreement is terminated as a result of an event of Force Majeure, a Discriminatory Action or as contemplated in Article 23, the payment by the Grantor to the Concessionaire of the amounts required under Article 18, Article 19 or Article 23 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the Grantor for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the Grantor may reasonably require to give effect to the foregoing.

ARTICLE 25 DISPUTE RESOLUTION

25.1 Limitation

The Concessionaire shall accept and shall have no recourse whatsoever to challenge the reasonableness, appropriateness or content of any Ministry Safety Standards or Higher Ministry Safety Standards.

25.2 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Grantor and the Concessionaire under or relating in any way to this Agreement, including a dispute with respect to the giving or withholding of an Approval, the obligations of the Concessionaire or the Grantor hereunder or the occurrence of a default hereunder, a Concessionaire's Default or a

Grantor's Default, such dispute shall be referred, in the first instance, by notice from either party to the other requiring the dispute to be resolved, to the Senior Responsible Official of the Grantor and the Senior Operating Officer of the Concessionaire for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within fifteen (15) Business Days (or such longer period as the parties may agree) following such notice, the dispute shall, by notice from either party to the other requiring the dispute to be resolved at a higher level, be referred to the then chief executive officer of the Concessionaire and the then responsible Minister of the Grantor or such Minister's designee. If the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following such latter notice, either party may by notice to the other require that the dispute be resolved by mediation as set out below.

25.3 Mediation

The mediation shall be held within thirty (30) Business Days following the end of the thirty (30) Business Day negotiation period. Within seven (7) Business Days following the end of such thirty (30) Business Day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be final and binding on them. If the parties fail to agree on a mediator within seven (7) Business Days or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

25.4 Initiation of Arbitration Proceedings

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request an arbitration. Within fifteen (15) Business Days following receipt of the Initiation Notice by the Responding Party, the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party, either party shall be entitled to make application under the *Arbitration Act*, 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator, and the provisions of the *Arbitration Act*, 1991 (Ontario) shall govern such appointment.

25.5 Qualified to Act

The Single Arbitrator or panel of arbitrators appointed to act hereunder (the "Arbitrator") shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

25.6 Submission of Written Statements

(a) Within fifteen (15) Business Days following the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send to the Responding Party and the Arbitrator a statement of claim (the "Statement of Claim") stating in sufficient detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims.

(b) Within thirty (30) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim, (collectively, the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.

(c) Within fifteen (15) Business Days following receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the Arbitrator a statement of reply and, if applicable, defence to counterclaim collectively, (the "Statement of Reply").

(d) Within fifteen (15) Business Days following receipt of the Statement of Reply, the Responding Party may send to the Initiating Party a statement of reply to counterclaim (the "Statement of Reply to Counterclaim").

(e) Every Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the party concerned relies.

(f) After submission of the Statement of Claim, the Statement of Defence, the Statement of Reply and the Statement of Reply to Counterclaim, if any, the Arbitrator shall forthwith meet with and give directions to the parties for the further conduct of the arbitration.

(g) There shall be no oral discovery unless ordered by the Arbitrator.

25.7 Meetings and Hearings

(a) Meetings and hearings of the Arbitrator shall take place in the City of Toronto or in such other place as the parties agree upon and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties adequate notice thereof. Subject to any adjournments which the Arbitrator allows, the arbitration hearing shall be continued on successive Business Days until it is concluded.

(b) All meetings and hearings shall be in private unless the parties otherwise agree.

(c) Each party may be represented at any meetings or hearings by legal counsel.

(d) Each party may examine and re-examine its witnesses and cross-examine those of the other parties at the arbitration.

25.8 The Decision

(a) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days following the conclusion of all hearings referred to in Section 25.7 unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reasons for the decision.

(b) If the Arbitrator is a panel, the decision of the majority of the panel shall be deemed to be the decision of the Arbitrator.

(c) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), and with the exception of monetary claims in excess of ten million dollars (\$10,000,000) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice.

(d) If the decision results in an award in excess of ten million dollars (\$10,000,000) the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

(e) If the decision is alleged to have been based upon an error in law, a party may appeal the decision in that regard pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

25.9 Jurisdiction and Powers of the Arbitrator

(a) The object of an arbitration hereunder shall be to ensure the just, expeditious, economical and final determination of any dispute.

(b) Without limiting the jurisdiction of the Arbitrator at law, a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to

- (i) determine any question of law arising in the arbitration,
- (ii) determine any question as to the Arbitrator's jurisdiction,
- (iii) determine any question of good faith or dishonesty arising in the dispute,
- (iv) order any party to furnish further details of its case, in fact or in law to the other parties,
- (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so,

- (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law,
- (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues pending the final resolution of any dispute hereunder,
- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of parties hereto,
- (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant,
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties,
- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
- (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

(c) The jurisdiction and powers referred to in Subsection 25.9(b) shall be exercised at the discretion of the Arbitrator subject to only to Laws and Regulations and the provisions of this Agreement.

25.10 Arbitration Act, 1991 (Ontario)

The *Arbitration Act, 1991* (Ontario) shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Article 25 or by agreement of the parties.

25.11 Provisional Remedies

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

25.12 Continuing Performance

- (a) At all times, notwithstanding the existence of any dispute, the Grantor and the Concessionaire shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement. For example, in the event of a dispute with respect

to the reasonableness of any Approval by the Grantor, the Concessionaire shall comply with such decision but shall have the right to submit the question of reasonableness to the Arbitrator pursuant to this Article 25.

- (b) Subject to the express provisions of this Agreement, where there is any dispute as to the amount of monies owing by any party to any other party hereunder, the portion of the amount owing that is not contested, disputed or challenged, if any, shall be paid when due hereunder, but without prejudice to the rights of the parties to contest, dispute or challenge the disposition of the remaining portion of the monies claimed hereunder.

25.13 Direction of Work

The Concessionaire shall undertake all Work directed by the Grantor, notwithstanding any dispute as to the entitlement of the Grantor to require such Work. The responsibility for the cost of such work shall be determined, if necessary, pursuant to this Article 25.

25.14 Rights Pending the Final Resolution of Disputes

If the party receiving a notice of termination of this Agreement disputes the right of the party giving such notice to terminate this Agreement by making application to the dispute resolution procedure in this Article 25, it must state in the notice of dispute if it elects to accept such termination without prejudice to its right to assert a claim for damages for the alleged wrongful termination of this Agreement or to any other rights to which it is entitled under this Agreement. Such election shall be irrevocable and the party making the election shall only be entitled to seek its damages, if any. If the disputing party does not so elect, subject to the rights of the Leasehold Mortgagee under Article 22, the termination of this Agreement shall occur upon the expiry of a period of thirty (30) days following a final decision of the Arbitrator to the effect that the right to terminate was validly exercised.

25.15 Costs of Arbitration

Pending determination by the Arbitrator, the parties shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator.

25.16 Leasehold Mortgagee to Participate in Arbitration

Provided that notice of the Leasehold Mortgage has been given to the Grantor pursuant to Subsection 22.1(iv), the Leasehold Mortgagee shall be entitled to notice of and, at the request of the Concessionaire, to participate in any arbitration conducted under this Article 25 in the place and stead of the Concessionaire, provided that, subject to Section 25.8, the Leasehold Mortgagee agrees to bound by the decision of the arbitrator hereunder.

ARTICLE 26 CONFIDENTIALITY

26.1 Confidentiality

Each party shall hold in confidence all documents and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents,

information supplied in the course of proceedings under the dispute resolutions procedure) and shall not publish or otherwise disclose the same otherwise than for the purposes contemplated by this Agreement, save

- (i) with the other party's written consent,
- (ii) as may necessarily be required by Laws and Regulations, or any relevant stock exchange or other competent regulatory authority,
- (iii) as the Grantor may require for the purpose of the Project in the event of termination of this Agreement, or
- (iv) that which is in or enters the public domain other than as a result of a breach of the obligations imposed by this Section 26.1,

provided that the provisions of this Section 26.1 shall not apply to the documents comprising this Agreement or the reports to be provided by the Concessionaire to the Grantor pursuant to this Agreement or restrict any party from passing such documents and information to its professional advisors and that the Concessionaire may, subject to appropriate confidentiality restrictions, pass to any Leasehold Mortgagee or prospective Leasehold Mortgagee such documents and other information as is reasonably required by such Leasehold Mortgagee or prospective Leasehold Mortgagee.

ARTICLE 27 MISCELLANEOUS

27.1 Notice

All notices, other communications and Approvals required or permitted by this Agreement shall be in writing and shall be delivered, sent by telecopier or by registered mail (return receipt requested) to:

in the case of the Grantor, at:

Address: 56 Wellesley Street West
Suite 600

Toronto, Ontario

M7A 1C1

Attention: CEO, Privatization Secretariat

Fax Number: (416) 325-4576

in the case of the Concessionaire, at:

Address: 200 King Street West
20th Floor

Toronto, Ontario

M5H 3T5

Attention: President

Fax Number: (416) 326-6460

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice, other communication or Approval shall be deemed to have been sent and received (i) on the day it is delivered or on the day on which transmission is confirmed by the sender's telecopier records, if telecopied, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or Approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by registered mail.

27.2 Time of the Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

27.3 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

27.4 Holding Over

If the Concessionaire remains in possession of the Project Lands after the expiration of the Term, such holding over shall not be deemed to extend the Term or to renew the concession and ground lease granted hereunder, but the Concessionaire shall be, and be deemed to be, occupying the Project Lands as a tenant from month to month at a monthly rent equal to one-sixth (1/6th) of the Toll Revenues received or collected during the immediately preceding twelve (12) months and otherwise subject to the provisions of this Agreement, modified as is appropriate to such monthly tenancy.

27.5 Interest

Any amount not payable when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus three percent (3%), from the date such payment is due until payment and both before and after judgment.

27.6 Costs

Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

27.7 Enurement and Binding Effect

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and assigns.

27.8 No Partnership

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Grantor and the Concessionaire.

27.9 Cumulative Remedies

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

27.10 Registration of Agreement

Subject to Approval by the Grantor, this Agreement or a notice thereof may be registered against title to the Highway 407 Lands.

27.11 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

27.12 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

27.13 Language

The parties hereto hereby confirm their request that this Agreement and all documents related directly or indirectly thereto be drafted in the English language. Les parties aux présentes reconnaissent avoir requis que la présente convention ainsi que tous les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

THE CROWN IN RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER WITHOUT
PORTFOLIO WITH RESPONSIBILITY FOR
PRIVATIZATION

By: _____

Name:
Title:

407 ETR CONCESSION COMPANY LIMITED

By: _____

Name: A. SCOTT CARSON
Title: DIRECTOR

**AMENDMENT NO. 1 TO THE HIGHWAY 407
CONCESSION AND GROUND LEASE AGREEMENT**

**THIS AMENDMENT NO.1 TO THE HIGHWAY 407 CONCESSION AND
GROUND LEASE AGREEMENT** is made as of the 22nd day of December 2000

B E T W E E N:

**THE CROWN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION**

(the "Grantor")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "Concessionaire")

WHEREAS the Crown in right of Ontario as represented by the Minister Without Portfolio with Responsibility for Privatization and the Concessionaire entered into the CGLA (as hereinafter defined);

AND WHEREAS responsibility as the Crown representative for the CGLA was transferred to the Minister of Transportation by Order-in-Council;

AND WHEREAS the parties wish to amend certain provisions of the CGLA with respect to the design and construction of Highway 407;

NOW THEREFORE, for consideration, the receipt and sufficiency of which are acknowledged by each of them, the parties hereto covenant and agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

"Agreement" means this Amendment No. 1 to the Highway 407 Concession and Ground Lease Agreement, including, for the avoidance of doubt, all schedules referred to herein, as the same may be amended, supplemented, restated or replaced from time to time.

M

“CGLA” means the Highway 407 Concession and Ground Lease Agreement made as of the 6th day of April, 1999 between the Crown in Right of Ontario, as represented by the Minister Without Portfolio with Responsibility for Privatization and the Concessionaire.

“Direction” means the direction dated June 16, 2000 issued by the Grantor pursuant to Subsection 6.4(a) of the CGLA, the letter dated December 27, 2000 from the Concessionaire to the Grantor and the letter dated December 28, 2000 from the Grantor to the Concessionaire.

1.2 Other Definitions

Unless defined herein or the context otherwise requires it, capitalized terms used in this Agreement have the meanings ascribed to them in the CGLA.

1.3 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

1.5 Meaning of Including

In this Agreement the words “include”, “includes” or “including” mean “include without limitation”, “includes without limitation” and “including without limitation”, respectively, and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

1.6 Calculation of Time

For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern standard time or Eastern daylight time, as the case may be) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern standard time or Eastern daylight time, as the case may be) on the next Business Day.

1.7 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

M

1.8 Headings

The division of this Agreement into articles, sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.9 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by the parties hereto.

1.10 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.11 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Section 6.10, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

1.12 Schedules

The following schedule forms part of this Agreement:

Schedule "A" Direction

**ARTICLE 2
PHM-125 DRAWINGS**

2.1 Highway 407 East Partial

Subsections 2.10(i) through 2.10(vi) of Schedule 6 of the CGLA are deleted therefrom and the following is substituted therefor:

- “(i) Where the Concessionaire is the road authority having jurisdiction over the intersection, it shall prepare PHM-125 Drawings and provide technical and legal approval for the traffic control signal system. For the avoidance of doubt, the Concessionaire shall be responsible for the design, construction, maintenance and operation of the traffic signal system at such locations.”
- (ii) Where the Ministry has jurisdiction over the intersection, the Concessionaire shall, at its sole cost and expense, prepare and submit PHM-125 Drawings to the Ministry for review and legal approval.”

2.1 Highway 407 West

Subsections 2.10(i) through 2.10(vi) of Schedule 9 of the CGLA are deleted therefrom and the following is substituted therefor:

- “(i) Where the Concessionaire is the road authority having jurisdiction over the intersection, it shall prepare PHM-125 Drawings and provide technical and legal approval for the traffic control signal system. For the avoidance of doubt, the Concessionaire shall be responsible for the design, construction, maintenance and operation of the traffic signal system at such locations.”
- (ii) Where the Ministry has jurisdiction over the intersection, the Concessionaire shall, at its sole cost and expense, prepare and submit PHM-125 Drawings to the Ministry for review and legal approval.”

**ARTICLE 3
KIPLING AVENUE AND CENTRE STREET INTERCHANGES**

3.1 Amendments to Paragraph 1 of Schedule 5 of the CGLA

Section 1 of Schedule 5 of the CGLA is amended by adding thereto the following:

“In this Schedule 5, “Study” means a study of the Kipling Avenue interchange and the Centre Street interchange to be conducted by an independent expert chosen jointly by the parties hereto for the purpose of determining whether the Commissioning and Opening and the Total Completion of such interchanges should be further deferred beyond 2020.”

3.2 Further Amendments to Schedule 5 of the CGLA

Schedule 5 of the CGLA is amended by adding thereto the following:

“4 Kipling Avenue and Centre Street Interchanges

4.1 Deferral

The Grantor and the Concessionaire acknowledge that the obligation of the Concessionaire to complete construction of the Kipling Avenue interchange and the Centre Street interchange, to Commission and Open the Kipling Avenue interchange and the Centre Street interchange and to Totally Complete the Kipling Avenue interchange and the Centre Street interchange shall be deferred until 2020.

For the avoidance of doubt, the Grantor shall not, prior to 2020, issue a Change Order, Direction or use any other provision contained in the CGLA to require the Concessionaire to complete construction of the Kipling Avenue interchange and the Centre Street Interchange, or any part thereof, to Commission and Open the Kipling Avenue interchange and the Centre Street interchange or to Totally Complete the Kipling Avenue interchange and the Centre Street interchange.

4.2 Study

During 2015 the Grantor and the Concessionaire shall jointly commission the Study. The Grantor and the Concessionaire shall agree upon the terms of reference of the Study which shall, in relation to the entire Highway 407, address the technical and financial viability of each of the Kipling Avenue interchange and the Centre Street interchange as they will be in 2020. The Study shall also determine, on the basis of technical and financial viability, whether the construction of either or both of such interchanges should be further deferred. If the Grantor and the Concessionaire shall not be able to agree on the independent expert to conduct the Study the independent expert shall be appointed by a court of competent jurisdiction pursuant to the *Arbitration Act, 1991*.

4.3 Further Deferral

Upon receipt of the Study, the Grantor and the Concessionaire may agree to a further deferral beyond 2020 of the Commissioning and Opening and the Total Completion of either or both of the Kipling Avenue interchange and the Centre Street interchange.

4.4 Additional Study

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If a further deferral is granted under Section 4.3, the Grantor and the Concessionaire shall, prior to the deferral year determined under Section 4.3, agree to commission an additional Study, on the same terms and conditions as set out in Section 4.2. Upon receipt of the additional Study, the Grantor and the Concessionaire may agree to a further deferral of the

Commissioning and Opening and the Total Completion of either or both of the Kipling Avenue interchange and the Centre Street interchange.

4.5 Costs of Study

The Concessionaire shall be responsible for all costs associated with the Study and any additional Study. The Concessionaire shall remain responsible for all design, construction and maintenance costs and other costs associated with the Commissioning and Opening and the Total Completion of the Kipling Avenue interchange and the Centre Street interchange in accordance with this Agreement. For the avoidance of doubt, the design of such interchanges shall be in accordance with the then current Ministry Safety Standards.

4.6 Exclusion

The Concessionaire and the Grantor may, at any time before the Grantor and the Concessionaire have commissioned the Study, agree to delete all or any part of either the Kipling Avenue interchange or the Centre Street interchange from the Work under this Schedule 5.

4.7 Governmental Authorizations

The Concessionaire shall be responsible for obtaining all necessary Governmental Authorizations to delete all or any part of either the Kipling Avenue interchange or the Centre Street interchange, or both, from the Work if agreed to pursuant to Section 4.6 of this Schedule 5."

ARTICLE 4 WOODBINE AVENUE INTERCHANGE

4.1 Amendments to Section 1 of Schedule 5 of the CGLA

Section 1 of Schedule 5 to the CGLA is amended by adding the following:

In this Schedule 5, "Approved DCR Design" means the final design and construction report submitted by the Concessionaire on October 27, 2000.

"In this Schedule 5, "Design" means the design for the northwest quadrant of the Woodbine Avenue interchange chosen by the Grantor from the three (3) design alternatives pursuant to Section 5.2, which is to be constructed by the Concessionaire.

In this Schedule 5, "Grantor's Delay" has the meaning ascribed thereto in Section 5.5."

In this Schedule 5, "Missed Date" has the meaning ascribed thereto in Section 5.5."

4.2 Further Amendments to Schedule 5 of the CGLA

Schedule 5 of the CGLA is amended by adding thereto the following:

"5 Woodbine Avenue Interchange

5.1 Obligation to Construct

The Concessionaire shall construct the Woodbine Avenue interchange at its sole cost and expense and in accordance with the provisions of this Agreement and within the time periods set out in this Agreement.

5.2 Northwest Quadrant

The Concessionaire acknowledges receipt of three (3) design alternatives for the northwest quadrant ramp of the Woodbine Avenue interchange. The Grantor shall advise the Concessionaire of the Design before February 28, 2001. The Grantor shall provide the Concessionaire with full access to the properties required to implement the Design on or before March 31, 2001.

5.3 Southwest Quadrant, Burncrest Road Side

The Grantor shall provide the Concessionaire with full access to the properties required to implement the Approved DCR Design for the southwest quadrant, Burncrest Road side, on or before March 31, 2001. The Concessionaire shall be responsible at its sole cost and expense for the termination of Burncrest Road in a cul-de-sac and the connection of Burncrest Road to Shields Court in compliance with the Approved DCR Design.

5.4 Southeast Quadrant, Miller Avenue Side

5.4 Property Request

M
The Grantor acknowledges receipt from the Concessionaire of a request for property that the Concessionaire considers necessary for construction of the Approved DCR Design for the southeast quadrant, Miller Avenue Side and for the relocation of Miller Avenue and its intersection with Woodbine Avenue in compliance with the Approved DCR Design. The Grantor shall provide the Concessionaire with full access to the properties required to implement the Approved DCR Design for the southeast quadrant, Miller Avenue side, on or before March 31, 2002. The parties acknowledge that any such property shall not be owned by the

Concessionaire and shall not be a part of the Highway 407 Lands. The Concessionaire shall be responsible at its sole cost and expense for the construction of the relocation of Miller Avenue and its intersection with Woodbine Avenue in compliance with the Approved DCR Design.

5.5 Grantor Delay

If the Grantor is delayed in performing any of its obligations under section 5.4 of this Schedule 5 for any number of Business Days, which delay is not caused by any action or omission of the Concessionaire or the Concessionaire's Advisors (the "Grantor's Delay") any date required to be met by the Concessionaire that is affected by the Grantor's Delay (the "Missed Date") shall be extended by an equal number of Business Days. If, however, the Grantor's Delay has the effect of extending a Missed Date beyond November 15th of any year, the number of Business Days' delay after November 15th shall be applied to extend the Missed Date to the date that is an equal number of Business Days after May 1st of the year following such year. In addition, the Grantor shall pay to the Concessionaire any incremental costs of construction of the Southeast Quadrant, Miller Avenue side of Woodbine Avenue interchange that result from a Grantor's Delay in providing access to the properties as provided in this section 5.4 of this Schedule 5. The Concessionaire shall only be entitled to the payment of such incremental costs, so long as such costs have been incurred in good faith and the Concessionaire has used commercially reasonable efforts to minimize such costs. The Concessionaire shall have no other Claims or remedies for the Grantor's Delay in performing any of its obligations under section 5.4 of this Schedule 5.

5.6 Concessionaire Delay

If the Concessionaire is delayed in performing any of its obligations under this Schedule 5 for any number of Business Days, any date required to be met by the Grantor that is affected by the Concessionaire's delay shall be extended by an equal number of Business Days.

5.7 Hazardous Substances

The Grantor confirms that all property in the Southeast Quadrant, Miller Avenue side to which access is to be provided pursuant to this Section 5 shall be free of Hazardous Substances to the extent that such Hazardous Substances would prevent construction and operation of the Miller Avenue relocation. If it is necessary to remove Hazardous Substances from the land, the land shall be reinstated to its original ground elevation with suitable clean fill, properly compacted after such removal if necessary for the construction of the Miller Avenue relocation. This work

is to be completed prior to the Concessionaire commencing the construction Work”

**ARTICLE 5
OTHER AMENDMENTS**

4.1 Amendments to Schedule 4 of the CGLA

Paragraph 1 of Schedule 4 of the CGLA is deleted therefrom and the following substituted therefor:

1.	Highway 407 Central Deferred Interchanges other than the Kipling Avenue, Centre Street and Woodbine Avenue Interchanges	(a)	Required Commencement of Construction Date – As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
		(b)	Required Commissioned and Opened Date – December 31, 2001
		(c)	Required Total Completion Date – December 31, 2001
1.1	Woodbine Avenue Interchange, Northwest Quadrant	(a)	Required Commencement of Construction Date – As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
		(b)	Required Commissioned and Opened Date – December 31, 2001
		(c)	Required Total Completion Date – December 31, 2001
1.2	Woodbine Avenue Interchange, Southwest Quadrant, Burncrest Road side	(a)	Required Commencement of Construction Date – As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
		(b)	Required Commissioned and Opened Date – December 31, 2001

		(c)	Required Total Completion Date – December 31, 2001
1.3	Woodbine Avenue Interchange, Southeast Quadrant, Miller Avenue side	(a)	Required Commencement of Construction Date – As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
		(b)	Required Commissioned and Opened Date – December 31, 2002
		(c)	Required Total Completion Date – December 31, 2002
1.4	Kipling Avenue and Centre Street Interchanges	(a)	Required Commencement of Construction Date – As soon as required following the completion of the Study (as defined in Schedule 5) and receipt of all Governmental Authorizations required for such Commencement of Construction
		(b)	Required Commissioned and Opened Date – as determined by Schedule 5.
		(c)	Required Total Completion Date – as determined by Schedule 5.

5.1 Further Amendment to Schedule 5 of the CGLA

Schedule 5 of the CGLA is amended by adding thereto the following:

“6 Ministry Safety Standards

6.1 Corrective Measures

The Concessionaire shall review items 1 through 8 in the following table and submit a report to the Grantor for its Approval. Such report shall identify what Work, if any, is required to make each item comply with Ministry Safety Standards. The Concessionaire shall, with respect to each such item, undertake and complete the Work Approved by the Grantor in accordance with the provisions of this Agreement at its sole cost and expense on or before the first anniversary of the date of execution of this Agreement. The Concessionaire shall undertake and complete the Work set out in the second column of items 9 and 10 of the following table, on or before the first anniversary of the date of execution of this Agreement.

Where the Concessionaire fails to include any item in the report or if the Grantor does not Approve of any such Work proposed by the Concessionaire, the Grantor reserves all rights it has pursuant to Section 6.4 of this Agreement with respect to such Work.

CONSTRUCTION ISSUES RELATED TO 407 CENTRAL

Item

Action Required if not in Compliance with Ministry Safety Standards

Highway 404

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| 1. Concrete barrier protection is too short for the high mast light pole & berm located on the right side just south of the advance turn off sign for Highway 7. | To be determined pursuant to Section 6.1. |
| 2. Concrete barrier protection is too short for the high mast light pole & berm located on the right side just south of the 404S-407W ramp structure. | To be determined pursuant to Section 6.1. |
| 3. "Safe-hit" devices located at the gore area for Highway 407W-404S ramp have been placed on both sides of the ramp; should only be on one side to allow for snow removal. | To be determined pursuant to Section 6.1. |
| 4. Highway 407 bridge piers may be within clear zone. | To be determined pursuant to Section 6.1 |

Highway 407

- | | |
|--------------------------------------------------------------------------------------------|-------------------------------------------|
| 5. Existing 6" crushed stone slope paving at bridges that are not protected by guide rail. | To be determined pursuant to Section 6.1. |
|--------------------------------------------------------------------------------------------|-------------------------------------------|

410S-Derry Rd. E/W

- | | |
|------------------------------------------------------------------------------------------------------|-------------------------------------------|
| 6. Temporary concrete barrier was installed to protect the bridge abutments of the 407E-W-410S ramp. | To be determined pursuant to Section 6.1. |
|------------------------------------------------------------------------------------------------------|-------------------------------------------|

Derry Rd. E/W-410N

- | | |
|-------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| 7. Temporary concrete barrier has been installed to protect for the 407E-410N structure. Permanent barrier is required. | To be determined pursuant to Section 6.1. |
|-------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|

CONSTRUCTION ISSUES RELATED TO 407 CENTRAL

<u>Item</u>	<u>Action Required if not in Compliance with Ministry Safety Standards</u>
8. The east side embankment south of the 410S-407E ramp appears to exceed recoverable slope criteria.	To be determined pursuant to Section 6.1.
<u>Highway 400 SB Signing</u>	
9. The "For Toronto Downtown use Highway 11A" sign in the vicinity of Highway 407W-400S ramp was taken down during construction and needs to be replaced.	Provide new sign.
<u>Highway 427 NB Signing</u>	
10. The turn off sign for Highway 407 indicates a two lane exit on the overhead sign. There are actually three lanes at the gore.	Review and modify markings and signing accordingly.

6.2 Waiver

The Concessionaire hereby waives any right it might have to be indemnified by the Grantor, including any right under paragraph 15.2(E) of the CGLA in relation to any Work referred to in this Article 6. The Concessionaire confirms that all Work required to be done pursuant to this Article 6 shall be done at the Concessionaire's sole cost and expense."

5.2 Further Amendment to Schedule 9 of the CGLA

Section 2.16 of Schedule 9 of the CGLA is amended by adding thereto the following:

"In addition to its obligation to be responsible for the costs of constructing the carpool lots, the Concessionaire shall be responsible for the additional costs related to the easterly relocation of the carpool lot along Highway 5 (Dundas Street). The Dundas Street East Highway 407 ramp shall not be modified from the Works designed and constructed as of October 2000."

5.3 Amendment to Schedule 22 of the CGLA

Section 1.1 of Schedule 22 of the CGLA is amended by adding thereto the following after the definition of "Specific User Charges":

“Specified Interchanges” means (i) the Woodbine Avenue interchange, the Kipling Avenue interchange and the Centre Street interchange as described in Schedule 5 of the Concession Agreement, and (ii) the Markham Road Bypass Interchange, the North Road Interchange and the Sideline 24 Interchange as set forth in Schedule 6 of the Concession Agreement.”

5.4 Further Amendment to Schedule 22 of the CGLA

Article 1 of Schedule 22 of the CGLA is amended by adding thereto the following:

“1.23 Section Commencement Dates

Notwithstanding the definition of Section Commencement Date, whether or not any of the Specified Interchanges are Totally Completed or Commissioned and Opened shall not affect the determination of any Section Commencement Date.”

**ARTICLE 6
GENERAL**

6.1 Reservation of Rights

For the avoidance of doubt, if the Concessionaire fails to complete any Work required by the amendments herein to the CGLA by the dates specified in such amendments, including the Woodbine Avenue interchange, the Kipling Avenue interchange and the Centre Street interchange, in addition to the remedies available for a Concessionaire’s Default the Grantor shall have all remedies available to it at law for such failure.

6.2 Release

The Concessionaire and the Grantor acknowledge that all of the disputes related to the design and construction of Highway 407 existing as of the date of execution of this Agreement in any way or in any manner whatsoever, relating to, or arising in respect of or in connection with the Direction, the commuter carpool lots or Woodbine Avenue, have been settled by the terms of this Agreement. Nothing in this Agreement or any document or agreement relating hereto constitutes an acknowledgement by the Grantor that any Claims or Delay Events exist.

The Concessionaire and the Grantor hereby each remises, releases and forever discharges the other from all Claims, including any Claims for Losses, arising out of or in connection with the Direction, the commuter carpool lots or Woodbine Avenue, existing at any time up to the date of execution of this Agreement, which either now has or may have against the other.

The Concessionaire and the Grantor each represent and warrant to the other that it has not assigned to any Person any Claim that it remises, releases or discharges under this Section 6.2.

Neither the Concessionaire nor the Grantor shall make any Claim or take any proceedings, including proceeding under the Dispute Resolution provisions of the CGLA, against any other Person who might claim contribution or indemnity in respect of the matters remised, released or discharged under this Section 6.2.

6.3 Effect on CGLA

Except as specifically set out in this Agreement none of the parties' rights or obligations under the CGLA are affected in any way by this Agreement.

6.4 Leasehold Mortgagee Consent

This Agreement shall not be effective until (i) each Leasehold Mortgagee, including any beneficiary of any deed of trust or similar instrument securing bonds or debentures representing a Leasehold Mortgage, has consented to this Agreement to the extent necessary under any Leasehold Mortgage, under Article 22 of the CGLA or under any agreement between the Grantor, the Concessionaire and any Leasehold Mortgagee pursuant to Article 22 of the CGLA; (ii) the Concessionaire has provided to the Grantor satisfactory evidence in writing of such consent; and (iii) the Concessionaire has provided to the Grantor a legal opinion from the Concessionaire's Counsel that all necessary consents have been obtained.

6.5 Notice

All notices, and other communications and Approvals required or permitted by this Agreement shall be in writing and shall be delivered, sent by telecopier or by registered mail (return receipt requested) to:

In the case of the Grantor, at:

Address: Ministry of Transportation
77 Wellesley Street West
3d Floor
Ferguson Block
Toronto, Ontario
M7A 1Z8

Attention: Assistant Deputy Minister, Policy, Planning and Standards Division
Telephone: (416) 327-8521
Fax Number: (416) 327-8746

In the case of the Concessionaire, at:

Address: 6300 Steeles Avenue West
Woodbridge, Ontario
L4H 1J1

Attention: Chief Financial Officer
Telephone: (905) 264-5222
Fax Number: (905) 265-4071

6.6 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party shall at any time and from time to time execute and deliver or cause to be executed and delivered such further documents and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

6.7 Enurement and Binding Effect

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and permitted assigns.

6.8 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

6.9 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

SCHEDULE "A"

DIRECTION

M

6.10 Dispute Resolution

Except for disputes with respect to Section 6.1, all disputes between the parties to this Agreement that relate to this Agreement shall be resolved as provided by the CGLA.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement.

**THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF
TRANSPORTATION**

Per: David Cumby
Title: Minister of Transportation

407 ETR CONCESSION COMPANY LIMITED

Per: KA
Name: Ken Walker
Title: CFO + Secretary

Per: José-Manuel Dupont de Fournier c/s
Name: José-Manuel Dupont de Fournier
Title: CEO + President

SCHEDULES

TO

HIGHWAY 407

CONCESSION AND

GROUND LEASE AGREEMENT

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SCHEDULE 1

AFFECTED HIGHWAY PROTOCOL

This Schedule describes the protocol for maintenance, repair and rehabilitation responsibilities of Highway 407 at interchanges, overpasses and underpasses.

1. Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule the following terms have the following meanings:

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement between the Crown in Right of Ontario as represented by the Minister without Portfolio with responsibility for Privatization and Ontario Transportation Capital Corporation pursuant to which the Concessionaire is granted a concession to operate Highway 407.

"Maintenance of the Surface" means minor repairs, cleaning and other regular, routine activities which are required to keep the Surface of a highway in a safe, usable condition, including shoulder gravelling, dragging and washout repairs; minor pavement and sidewalk repairs; pot-hole patching, crack sealing depression or settlement repairs; sweeping, washing or flushing of bridge surfaces and expansion joints; winter maintenance (e.g. snow plowing snow removal, de-icing and maintenance of continuous through lanes), repainting or restoration of pavement markings; sign repair and replacement; repair of damaged guide rails (including concrete barriers) and other roadside hazard protective devices; debris and litter pick-up; roadside vegetation control; repair or clean-out of drainage facilities such as sewers, catch basins, curbs and gutters, sub-drains, gutter outlets, and ditches; and relamping or repair of illumination systems.

"Management" means development, planning, design, construction, operation, maintenance and rehabilitation, and Manage has a corresponding meaning;

"Minister" means the minister of transportation for Ontario.

"Municipal Highway" means any Ontario highway or road owned by a municipality.

"Provincial Highway" means any Ontario highway owned by the Province.

"Rehabilitation" means major repairs, improvements and complete replacement of highway infrastructure elements and the upgrading of certain elements to a higher or more up-to-date standard including pavement resurfacing; bridge deck rehabilitation, replacement and waterproofing; repairs to structural components of the bridge including all repairs to the railing systems, parapet walls and barrier walls, expansion joints, approach slabs or supporting members; upgrading or complete replacement of guide rail or illumination systems; replacement of painted

pavement markings with durable markings; improving or replacing curb and gutter, storm sewers and catch basins; and improvements intended to remove operational, safety or geometric deficiencies.

“**Responsibility**” means the duty to do work or to ensure that such work is performed, as well as the obligation to pay the costs associated with any work, maintenance or rehabilitation, and Responsible has a corresponding meaning. While the duty related to performance of any work may be transferred to another party by mutual consent, the obligation to pay the costs of such work remains with the Responsible party.

“**Surface**” means the part of a highway required for the passage of vehicles and pedestrians, and includes traveled lanes and shoulders whether paved or not, boulevards, sidewalks, medians, and any appurtenances necessary for the illumination and drainage of the road surface, for the passage of vehicles and for the safety of road users.

2. Other Definitions

Capitalized terms used in this Schedule but not defined herein have the meaning ascribed to them in the Concession Agreement.

3. General

The Grantor shall continue to Manage all Provincial Highways. The Concessionaire shall be Responsible for the Management of Highway 407. Subject to the following sentence, the Grantor shall have the Responsibility for the Maintenance of the Surface of Provincial Highways which intersect or cross over or under Highway 407. The Concessionaire shall be Responsible for the costs of Management of Provincial Highways and Municipal Highways intersecting or crossing over or under Highway 407 when such Management is directly and specifically required because of the existence of Highway 407. The Concessionaire may negotiate alternate arrangements with the Grantor with respect to the performance of specified Management activities at specific locations. The obligation to pay for the costs and expenses of such Management shall be negotiated between the Grantor and the Concessionaire.

The Concessionaire, in consultation with the Grantor and the municipalities, shall develop any emergency response plans required by Laws and Regulations.

The Grantor and the Concessionaire shall work co-operatively on planning and engineering activities affecting areas of mutual concern. Prior to commencing Work on any Provincial Highway the Concessionaire shall submit drawings of any proposed Work to the Grantor for its Approval and will perform all Work in accordance with those Approved drawings. Prior to commencing any Work on any Provincial Highway that crosses Highway 407 the Grantor shall provide information relating to any such proposed Work to the Concessionaire and shall perform all such Work in accordance with the information provided.

The Concessionaire shall work co-operatively with any municipality on planning and engineering activities affecting areas of mutual concern with respect to Municipal Highways and Highway 407. The Concessionaire shall hold regular meetings with the transportation staff of the municipalities

traversed by Highway 407 in order to co-ordinate the operation of Highway 407 with municipal responsibilities relating to Municipal Highways.

The Concessionaire may negotiate alternate arrangements with a municipality with respect to the performance of specified maintenance and rehabilitation activities at specific locations. The payment of the costs of such maintenance shall be negotiated between the municipality and the Concessionaire.

The Responsibilities of the Grantor or municipality and the Concessionaire with respect to interchanges of Provincial Highways or Municipal Highways with Highway 407 shall be as shown in Figures 1 and 2.

4. Responsibilities If Provincial or Municipal Highways Intersect or Cross Over or Under Highway 407

The following are Responsibilities of the Grantor, a municipality and the Concessionaire for highway maintenance at locations where Provincial Highways or Municipal Highways intersect or cross over or under Highway 407.

The authority that has jurisdiction and control over the road crossing Highway 407 is Responsible for the Maintenance of the Surface of that highway.

The Concessionaire shall be Responsible for:

- maintenance, repair and rehabilitation of Highway 407, and the cost of maintenance, repair and rehabilitation required on Provincial Highways and Municipal Highways (including interchange ramps, and speed change lanes) because of the existence of Highway 407;
- maintenance, repair, and rehabilitation of structures that are part of Highway 407 or deemed to be part of Highway 407 pursuant to the *Highway 407 Act*, including bridge structures, footings, abutments, piers, bearings, expansion joints, ballast walls, approach slabs, retaining walls, parapet walls and handrails;
- winter maintenance of auxiliary or speed change lanes adjacent to the Provincial Highways and Municipal Highways that lead to or from Highway 407 interchange ramps;
- costs of maintenance, operation, rehabilitation and energy for traffic signals and illumination systems on Provincial Highways and Municipal Highways, if they are directly and specifically required because of Highway 407;
- costs of maintenance and rehabilitation of Highway 407 signage on Provincial Highways and Municipal Highways;

- costs of maintenance of pavement markings specifically related to interchange ramp connections to the Provincial Highways and Municipal Highways, e.g. stop blocks, crosswalks, and turn arrows; and
- inspection and identification of deficiencies on Highway 407 for which the Concessionaire has maintenance and rehabilitation Responsibility.

The Grantor or municipality shall be Responsible for:

- maintenance of the Surface of any Provincial Highway or Municipal Highway that crosses Highway 407, except for items specified above as the Concessionaire's Responsibility;
- winter maintenance of the continuous through lanes of Provincial Highways or Municipal Highways in interchanges;
- rehabilitation of the Surface of Provincial Highways or Municipal Highways, excluding bridge structures which are a part of or deemed to be a part of Highway 407;
- maintenance and energy costs of illumination systems on Provincial Highways or Municipal Highways that are not directly and specifically required because of the existence of Highway 407;
- all other maintenance and repair activities related to Provincial Highways or Municipal Highways not specifically mentioned above; and
- inspection and identification of deficiencies on all Provincial Highways or Municipal Highways and on provincial or municipal portions of interchanges for which it has maintenance and Rehabilitation Responsibility.

The Concessionaire, the Grantor and any municipality shall co-ordinate operation and maintenance activities in the vicinity of Provincial Highway or Municipal Highway intersections or crossings to ensure the travelling public does not experience abrupt changes to driving conditions.

Beyond the Highway 407 ramp exit bullnose and in advance of the Highway 407 ramp entrance bullnose, where a Highway 407 ramp runs parallel to a Provincial Highway or a Municipal Highway, the boundary of Responsibility shall be two (2) metres to the right of the ditch line between the roadways, or two (2) metres to the right of the toe of the slope where no identifiable ditch exists. Each party shall maintain its roadway and the roadside area to the right of the roadway down to the first ditch plus two (2) metres beyond, such that all culverts, catch basins and ditch inlets in the ditch form part of the Responsibility.

Major drainage structures such as box culverts and storm sewer tunnels, which pass under either a Provincial Highway or a Municipal Highway and Highway 407 shall be treated as follows:

- maintenance of the inlet and outlet of the structure shall be done by the party within whose roadside area the inlet or outlet is located.

- regular inspection and taking inventory of the entire drainage structure shall be done by the party within whose roadside areas the inlet or outlet are located.
- major repairs and rehabilitation costs of drainage structures shall be apportioned on the basis of how much of the length of such drainage structures lies under the roadway of each party. Determination of who performs the work shall be done at the time that such work occurs.

Within the following Provincial Highway interchanges, the Concessionaire shall have Responsibility for the following items, to the extent set out below:

Highway 400 interchange

Southbound ramp lanes exiting to Highway 407 beginning at Station 12+700 as a single lane developing into two (2) right lanes and eventually into a third either/or lane at the bullnose at Station 12+166.

The roadside area to the right of the above zone, which includes a concrete barrier wall and a paved boulevard separating the ramp lanes from the Grantor collector lane, out to but not including the back face of the concrete barrier on the Grantor southbound collector.

Southbound ramp lanes entering from Highway 407 beginning at bullnose at Station 19+350 as two lanes, which taper to one (1) lane at the south limit of Highway 407 at Station 18+734.

Northbound ramp lanes exiting, to Highway 407 beginning at Station 18+685 as a single lane, developing, into a second either/or lane at the bullnose at Station 19+275.

Northbound lanes entering from Highway 407 beginning at the bullnose at Station 12+1200 as 3 lanes enter, tapering to 2 lanes at the end point at Station 12+730.

From Station 12+200 to Station 12+360 for the concrete barrier wall and paved boulevard area to the right of the ramp lanes, out to but not including the back face of the concrete barrier wall along the Grantor northbound collector.

Highway 404 Interchange

Southbound ramp lanes exiting to Highway 407 beginning at the Highway 7 southbound exit bullnose at approximately Station 14+680, as a single lane which widens to two lanes at the bullnose at Station 14+140 just south of Highway 7).

Southbound ramp lanes entering from Highway 407 beginning at bullnose at Station 12+790, where two lanes enter and taper down to one (1) lane at the end point at Station 12+340.

Northbound ramp lanes exiting to Highway 407 beginning at Station 1 1+995 as a single lane that widens to two (2) lanes at bullnose Station 12+340.

Northbound ramp lanes entering from Highway 407 beginning at bullnose at Station 14+063, where two (2) lanes enter and taper down to none at the end point at Station 14+700 just south of the Highway. 7 northbound entrance ramp bullnose.

Highway 427 Interchange

Northbound ramp lanes exiting to Highway 407 beginning at Station 16+850 as a single lane, widening to three (3) lanes at bullnose at Station 17+290.

Northbound ramp entering from Highway 407 eastbound beginning at bullnose Station 18+135, tapering to nothing at Station 18+210.

Northbound ramp entering from Highway 407 westbound beginning at bullnose Station 18+645, ending where three (3) continuous lanes begin at Station 18+830.

Southbound ramp lane exiting to Highway 407 westbound beginning at start of taper Station 18+882, continuing to single lane exit at bullnose Station 18+537.

Southbound ramp lane exiting to Highway 407 eastbound beginning at start of taper Station 18+100, continuing to single lane exit at bullnose Station 17+975.

Southbound ramp entering from Highway 407 beginning at bullnose Station 17+435 where two (2) lanes enter, continuing to beginning of three (3) continuous lanes at Station 17+065.

Highway 410 Interchange

Northbound ramp lanes exiting to Highway 407 beginning at start of taper Station 7+632 developing a single lane and then widening to two (2) lanes at the bullnose Station 8+155.

Northbound ramp entering from Highway 407 beginning at bullnose Station 9+977 where two (2) lanes enter, tapering to a single lane at the end point Station 10+350 (where 4th continuous lane begins).

Southbound ramp lanes exiting to Highway 407 beginning at Station 10+200 as a single lane, widening to two (2) lanes at bullnose Station 9+722.

Southbound ramp entering from Highway 407 beginning at bullnose Station 3+075 where two (2) lanes enter, tapering down to nothing at the end point Station 7+320.

Highway 401 Interchange

Eastbound 401 ramp lane exiting to Highway 407 eastbound beginning at the start of taper at 401 Station 17+470, developing a single must-exit lane, which ends at bullnose at Station 18+007.

Eastbound 401 ramp lane exiting to Highway 407 southbound (westbound) beginning at start of taper at 401 Station 16+755, developing a single exit lane, which ends at bullnose at Station 17+100.

Westbound 401 ramp lane exiting to Highway 407 southbound (westbound) beginning at end of continuous auxiliary lane at 401 Station 18+915 and ending at bullnose at Station 18+77 1.

Ramp lane entering westbound 401 from Highway 407 westbound beginning at bullnose at 401 Station 17+334 and ending at end of taper Station 16+887.

Ramp lane entering westbound 401 from Highway 407 northbound (eastbound) beginning at bullnose at 401 Station 18+181 and ending at end of taper Station 17+807.

Ramp lane entering eastbound 401 from Highway 407 northbound (eastbound) beginning at bullnose at 401 Station 18+603 and ending at the beginning of the continuous auxiliary lane at Station 18+833.

Hwy. 403 Interchange

Eastbound 403 ramp lane exiting to Highway 407 northbound (eastbound) beginning at start of taper at Station 9+770 and ending at bullnose at Station 10+305 (ramp chainage).

Westbound 403 ramp lane exiting to Highway 407 northbound (eastbound) beginning at end of continuous auxiliary lane at Station 10+000 and ending at bullnose at Station 10+164 (ramp chainage).

Ramp lane entering eastbound 403 from Highway 407 southbound (westbound) beginning at bullnose at 403 Station 10+523 and ending at end of taper Station 10+968 (ramp chainage)

Ramp lane entering southbound (westbound) 403 from Highway 407 southbound (westbound) beginning at bullnose at 403 Station 12+065 and ending at end of taper Station 12+514 (ramp chainage).

5. Property Acquisition

The Province retains the power of expropriation for property needed for the Management of Highway 407 by the Concessionaire. The Province agrees to exercise its rights of expropriation upon the request of the Concessionaire in accordance with Section 2.22 of the Concession Agreement. All property expropriated shall be delivered to the Concessionaire in accordance with Section 2.23 of the Concession Agreement.

6. Coordinating with Municipalities

Without limiting the ability of the Grantor to issue Change Orders, the Concessionaire shall meet with officials of the Grantor and adjacent municipalities as required, but no less than twice per year, co-operatively to co-ordinate Management activities on Highway 407, and to negotiate joint cost sharing arrangements where applicable.

7. Interchange Work

When the construction or reconfiguration of an interchange or intersection with Highway 407 or any underpass, overpass or tunnel over or under Highway 407 is required by the Grantor or a municipality in the interest of an integrated transportation network, the Concessionaire is required to permit such work to proceed. Where such work is identified in the Concession Agreement as Work to be completed by the Concessionaire or where the Concessionaire initiates such work, the Concessionaire shall pay the full cost of such work subject to and in accordance with the provisions of the Concession Agreement. When the construction or reconfiguration of an interchange or intersection with Highway 407 or any underpass, overpass or tunnel over or under Highway 407 is required by the Concessionaire and a municipality in the interest of an integrated transportation network, the Concessionaire shall obtain the Grantor's Approval for such work.

If the Grantor wants to advance the construction of any such work which is identified in the Concession Agreement as Work to be completed by the Concessionaire, the Grantor shall pay the increase in costs (including, without limitation, any increased costs associated with advancing the financing such work) resulting from advancing such work. If a municipality wants to advance the construction of any such work which is identified in the Concession Agreement as Work to be completed by the Concessionaire, the municipality shall pay or provide security which the Concessionaire deems satisfactory for the payment of the increase in costs (including, without limitation, any increased costs associated with advancing the financing such work), resulting from advancing such work. The Concessionaire shall not be required to commence such work until the municipality provides such payment or security.

If any Work is initiated by the Grantor the Grantor shall pay the costs and expenses of such Work. If any Work is initiated by a municipality the Concessionaire shall not be required to commence such work until the municipality shall agree to pay the costs and expenses of such Work and provide security for such payment which the Concessionaire deems satisfactory. If it is determined that any such Work initiated by a municipality or the Grantor will have a negative effect on Toll Revenues, the municipality or the Grantor shall pay for any Losses caused by such Work. Calculation of Losses attributable to any Work shall take into account the time value of money based on the Concessionaire's cost of funds, including the cost of any funds required to undertake such Work. Before the Concessionaire is obligated to undertake any Work, the Concessionaire shall provide a detailed budget to the party requesting the Work setting out the costs of such Work and the projected effect such Work will have on Toll Revenues. The party requesting the Work shall review and comment on this budget. If the parties cannot agree on any element of the budget, the matter shall be arbitrated as provided in Section 8.

If such work will result in a net increase in Toll Revenues which would not have occurred in the absence of the completion of such work, the Concessionaire shall pay to the Grantor a fair and equitable portion of the actual cost of engineering, design and construction of such work (the "Concessionaire's Share"). In no event, however, shall the Concessionaire's Share exceed the net present value of the net increase in Toll Revenues referred to above.

The amount of the Concessionaire's Share and terms of payment shall be agreed upon between the Grantor and the Concessionaire. Failing such agreement, the obligation of the Concessionaire to pay any amount pursuant to this section and the amount of any Concessionaire's Share for which the Concessionaire is liable shall be determined by dispute resolution as provided in Article 25 of the Concession Agreement.

Subject to any agreement made between the Grantor and the Concessionaire as to the terms of payment for the Concessionaire's Share, the Concessionaire shall have the option to pay the Concessionaire's Share to the Grantor forthwith after the amount of the Concessionaire's Share is finally determined or on an amortized basis in equal annual installments over the 20 year period following the date of final determination of the Concessionaire's Share. In the event that the Concessionaire elects to pay the Concessionaire's Share on such amortized basis, payments shall be made annually in 20 equal installments commencing on the first anniversary date after of final determination of the Concessionaire's Share. Such annual installments shall include interest on the unpaid balance of the Concessionaire's Share at the Bank Rate in effect at the end of the first day of the last month of the quarter preceding the quarter in which the date of final determination of the Concessionaire's Share falls, plus three (3%) per cent, calculated semi-annually not in advance.

8. Traffic Information

The Concessionaire shall provide, at no cost to the Grantor, the following traffic information to the Grantor:

1. Ramp Counts at Intersecting Provincial Highways

Hourly breakdowns are required for a full 7-day period. In order to provide seasonal variation of these counts, these counts are to be provided 3 times per year (spring, summer and fall).

2. Hwy 407 Mainline Link volumes at Intersecting Provincial Highways

Calculation of average annual daily traffic, summer average daily traffic, summer average weekday traffic, and winter average daily traffic volumes including directional split, design hourly volume percent and commercial percent. These volumes are required on both approaches to each intersecting Provincial Highway.

3. Detailed Count Data for Mainline Sections at Intersecting Provincial Highways

Hourly, directional counts over a 7-day period. These counts are required 3 times per year (spring, summer and fall). These volumes are required on both approaches to each intersecting Provincial Highway.

4. Traffic Information

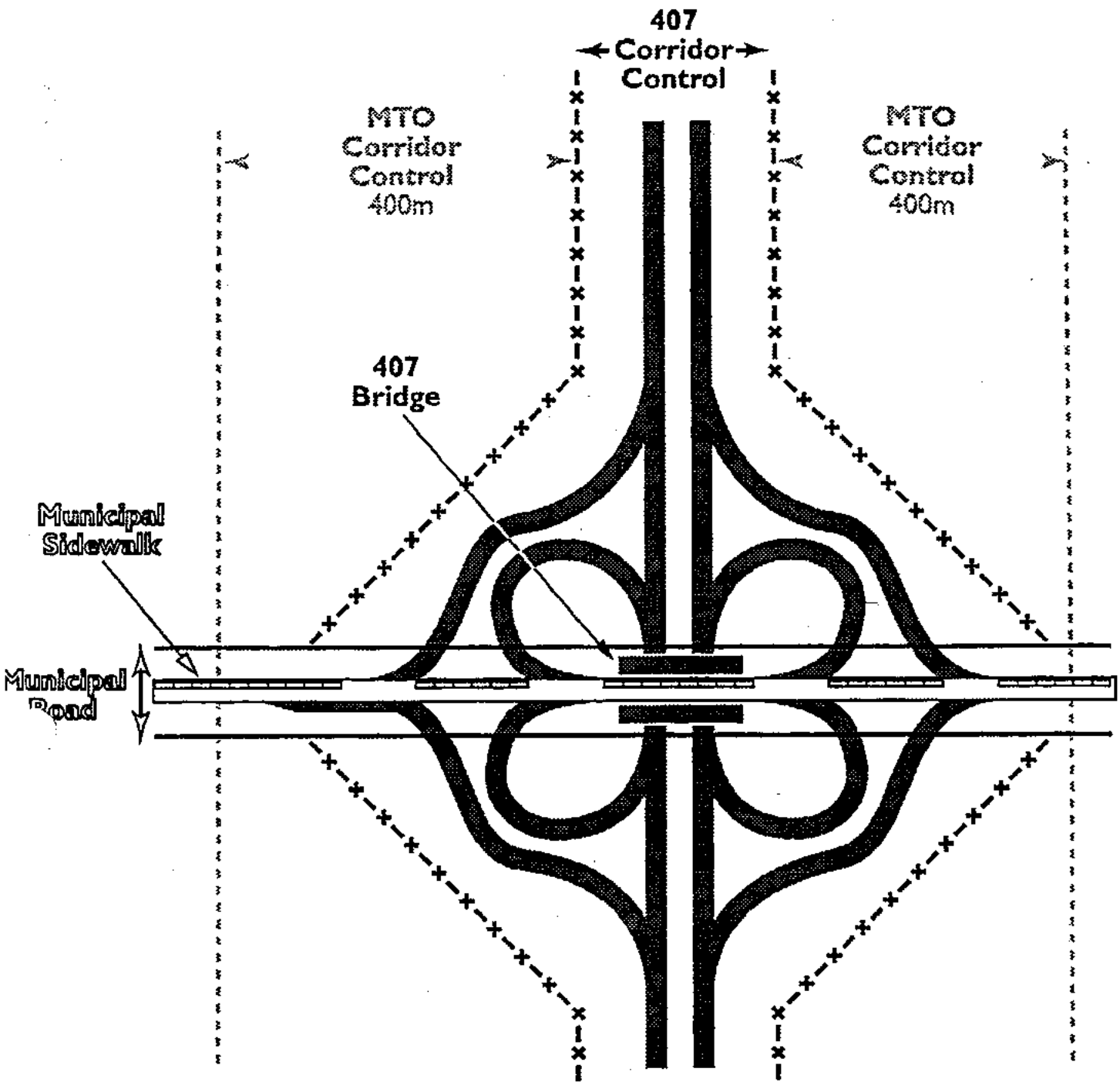
The Concessionaire shall also provide, at no cost to the Grantor, the same type, format and frequency of information required in subsections 8(1), 8(2) and 8(3) at intersecting Municipal Highways, if requested by the municipality or by the Grantor.

9. Dispute Resolution

Where the Concessionaire is not able to resolve a dispute with a municipality related to one of the matters which are permitted by the *Highway 407 Act* to be referred to the Minister, the Concessionaire may advise the municipality that the matter may be referred to the Minister and thereafter the Concessionaire may refer such matter to the Minister. When any such matter is referred to the Minister, the Minister may authorize the Concessionaire to undertake the proposed action including authorizing the Concessionaire to do anything that the Minister of Transportation of Ontario would be permitted to do under section 6 of the *Public Transportation and Highway Improvement Act*.

With respect to any matter referred to the Minister, the Minister shall not determine the damages to which either party is entitled. With respect to any unresolved dispute over damages with a municipality, or with respect to any other disputes, the Concessionaire shall, by notice, offer the municipality the opportunity to use a form of alternative dispute resolution, such as mediation, binding or non-binding arbitration or the dispute resolution provisions of Article 25 of the Concession Agreement. If within thirty (30) days of receipt of the Concessionaire's notice the municipality has not indicated that it agrees to use such alternate dispute resolution, then any party to the dispute may use any other alternative permitted by Laws and Regulations, including an application to a court.

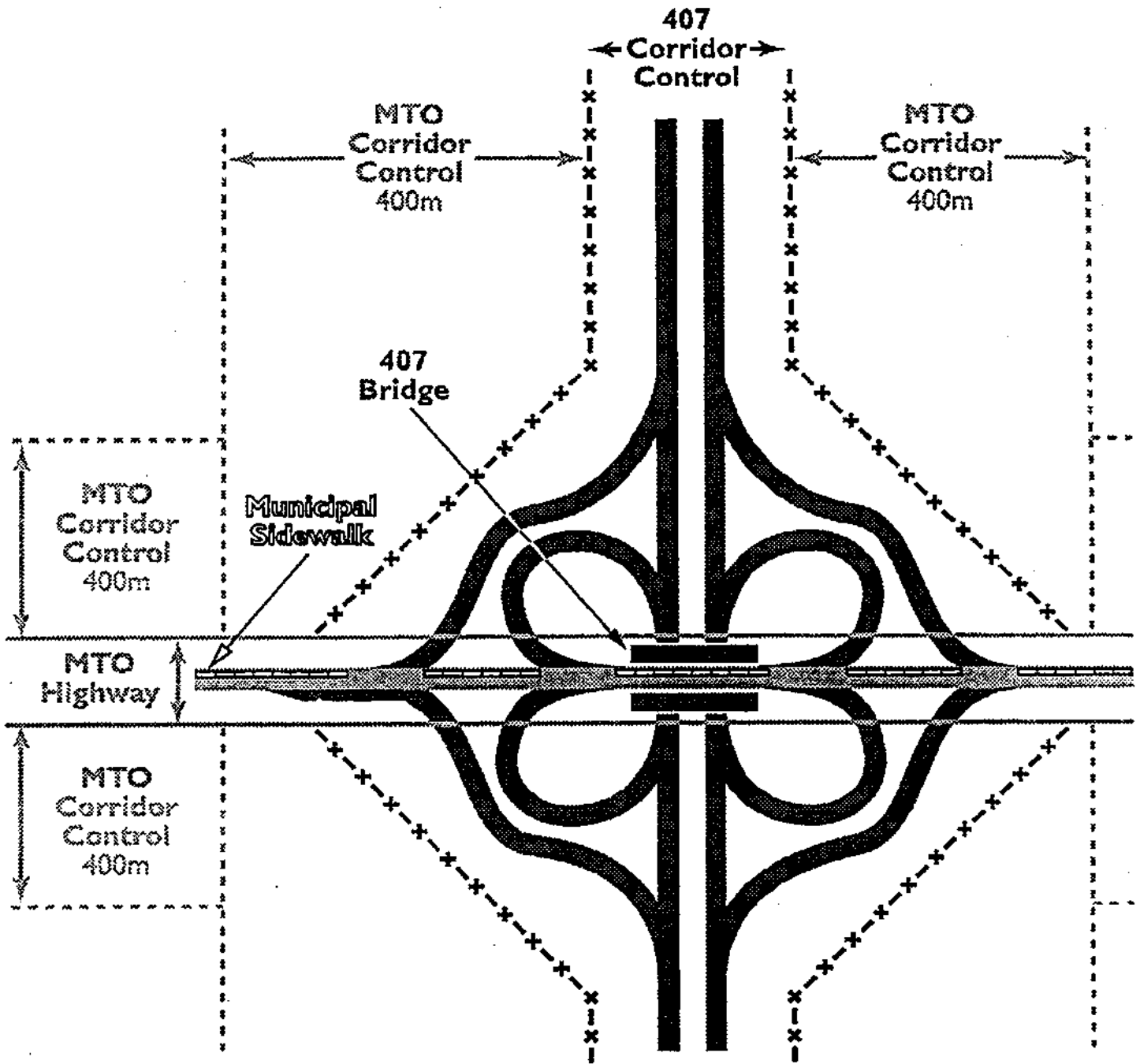
Figure 1






- 407 Responsibilities
- Municipal Responsibilities

**407 / Municipal Road
Corridor Management
Maintenance Responsibilities**

 **Ontario**
 Ministry of Transportation
 Engineering Standards Branch
 Corridor Policy Office



-  407 Responsibilities
-  MTO Responsibilities
-  Municipal Responsibilities

**407 / MTO Highway
Corridor Management
Maintenance Responsibilities**

 **Ontario**
Ministry of Transportation
Engineering Standards Branch
Corridor Policy Office

SCHEDULE 2

AFFECTED LANDOWNER DISPUTE RESOLUTION

Where the Concessionaire is not able to resolve a dispute with an affected landowner related to one of the matters which are permitted by the *Highway 407 Act* to be referred to the Minister of Transportation of Ontario (the "Minister") the Concessionaire may advise the affected landowner that the matter may be referred to the Minister and thereafter the Concessionaire may refer such matter to the Minister. When any such matter is referred to the Minister, the Minister may authorize the Concessionaire to undertake the proposed action including authorizing the Concessionaire to do anything that the Minister would be permitted to do under section 6 of the *Public Transportation and Highway Improvement Act*.

With respect to any matter referred to the Minister, the Minister shall not determine the damages to which either party is entitled. With respect to any unresolved dispute over damages with an affected landowner, or with respect to any other disputes, the Concessionaire shall, by notice, offer the affected landowner the opportunity to use a form of alternative dispute resolution, such as mediation, binding or non-binding arbitration or the dispute resolution provisions of Article 25 of the Concession Agreement. If within thirty (30) days of receipt of the Concessionaire's notice the affected landowner has not indicated that it agrees to use such alternate dispute resolution procedure, then any party to the dispute may use any other alternative permitted by Laws and Regulations, including an application to a court.

SCHEDULE 8

Highway 407 Lands Availability Schedule

The Highway 407 Lands Availability Schedule consists of the information contained in Appendix 8 Property Acquisition Status Chart, in the Request for Proposals - Development And Design-Build For The Western Extension of the 407 Express Toll Route (ETR), and Appendix 8, Property Acquisition Status Chart in the Request for Proposals - Development and Design-Build for the Highway 407 East Partial Extension both of which are attached hereto.

The Grantor may not have acquired all of the Highway 407 Lands by the Effective Date. Those Highway 407 Lands not acquired by the Effective date are called the "Remaining Lands"). The Grantor covenants to acquire the Remaining Lands and make them available to the Concessionaire, subject only to Province Permitted Encumbrances, by December 31, 1999. The Grantor agrees to use its commercially reasonable efforts to terminate all leases of Highway 407 Lands by August 31, 1999. Any failure by the Grantor to provide vacant possession of any portion of the Highway 407 Lands within the time provided in the Highway 407 Lands Availability Schedule which has a material effect on the timing of the performance of the Work shall, notwithstanding anything contained in the Concession Agreement, be deemed to constitute a Delay Event

**HIGHWAY 407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
PROPERTY NOT YET ACQUIRED**

PROPERTY OWNER	OWNER # LOCATION	LOT	CON.	PROPERTY ACQUIRED	PROP. AGREE. ON FILE	REF. & ORG PLAN	PROP. LEASED ORC FILE #	REMARKS
Markham Glen Inc. and Minto (Markham) Ltd.	1 Markham	5 to 8	8	N		65R-19315 and 65M-3134		Negotiations have been initiated, but will likely have to go to expropriation unless a Section 30 agreement is taken.
	2 Markham			N				Negotiations have been initiated, but will likely have to go to expropriation unless a Section 30 agreement is taken.
	3 Markham			N				Negotiations have been initiated, but will likely have to go to expropriation unless a Section 30 agreement is taken.
Toronto Catholic Cemetery Association	4 Markham	7 and 8	9	N		65R-18847		Negotiations have been initiated. If a land exchange falls through, it will likely have to go to expropriation.
City of Toronto (formerly Municipality of Metropolitan Toronto)	5 Pickering	12 to 16	5	N		40R-17441		Negotiations have been initiated, but will likely have to go to expropriation.

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ministry of Transportation	1	7 and 8	8	Y		65R-19313	N	Vacant land
Ministry of Transportation	2	7 and 8	8	Y		65R-19319	N	Vacant land
Ontario Realty Corporation	3	10	9	Y	H020		Y	Leased to 436261 Ontario Limited under # MEE-403
Ontario Realty Corporation	4	8	9	Y	H017		Y	
Ontario Realty Corporation	5	8 and 9	9	Y	H016 and H019		Y	

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORG PLAN	PROP. LEASED ORG FILE #	REMARKS
Ontario Realty Corporation	6	8 to 10	9	Y	Various H1009 Etal.		Y	Leased to Reesor Farms Ltd. under #M-422, M-423 and M-424
Ontario Realty Corporation	7	8	10	Y	H098		Y	
Ontario Realty Corporation	8	8	10	Y	H035		Y	
Ontario Realty Corporation	9	8 to 10	10	Y	Various H033 Etal.		Y	
Ontario Realty Corporation	10	10	10	Y	H157		Y	

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	11	10	10	Y	H158		Y	
Ontario Realty Corporation	12	11	10	Y	J030		Y	
Ontario Realty Corporation	13	11 and 12	10	Y	J030		Y	
Ontario Realty Corporation	14	35	5	Y	A032		Y	
Ontario Realty Corporation	15	35	5	Y	Various A018 Etal.		Y	

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	16	35	5	Y	Various A032 Etal.		Y	
Ontario Realty Corporation	17	34	5	Y	A015		Y	
Ontario Realty Corporation	18	33	5	Y	A012B		Y	
Ontario Realty Corporation	19	33	5	Y	A012B		Y	Leased to Seaton Valley R/C Model Corporation under #S-107
Ontario Realty Corporation	20	31 and 32	5	Y	Various A006 Etal.		Y	

HIGHWAY #407 EAST PARTIAL EXTENSION
 APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
 ONTARIO REALTY CORPORATION HOLDINGS

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORG PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	21	31	5	Y	A002		Y	
Ontario Realty Corporation	22	31	5	Y			Y	
Ontario Realty Corporation	23	31	5	Y	A430		Y	
Ontario Realty Corporation	24	30	5	Y	Various A201 Etal.		Y	
Ontario Realty Corporation	25	28 and 29	5	Y	Various B036 Etal.		Y	

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	26	27	5	Y	B034 and B035		Y	
Ontario Realty Corporation	27	26	5	Y	B031		Y	
Ontario Realty Corporation	28	25	5	Y	Various B025 Etal.		Y	Leased to John Doner Ltd. Under S-118
Ontario Realty Corporation	29	25	5	Y	B025		Y	
Ontario Realty Corporation	30	25	5	Y	B055		Y	

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	31	24	5	Y	Various B031 Etal.		Y	
Ontario Realty Corporation	32	24	5	Y	B021		Y	
Ontario Realty Corporation	33	23	5	Y			Y	
Ontario Realty Corporation	34	23	5	Y	B016		Y	Leased to Pickering Rod and Gun Club under S-135
Ontario Realty Corporation	35	22	5	Y	Various B006 Etal.		Y	

HIGHWAY #407 EAST PARTIAL EXTENSION
 APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
 ONTARIO REALTY CORPORATION HOLDINGS

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. OF FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	36	21	5	Y	B047		Y	
Ontario Realty Corporation	37	20	5	Y	B046		Y	
Ontario Realty Corporation	38	20	5	Y	B004		Y	
Ontario Realty Corporation	39	19 and 20	5	Y	Various B003 Etal.		Y	
Ontario Realty Corporation	40	18 and 19	5	Y	B002 and K004		Y	

**HIGHWAY #407 EAST PARTIAL EXTENSION
APPENDIX 8: PROPERTY ACQUISITION STATUS CHART
ONTARIO REALTY CORPORATION HOLDINGS**

PROPERTY OWNER	OWNER #	LOT	CON.	PROPERTY ACQUIRED	PROP. NO. ON FILE	REF. & ORC PLAN	PROP. LEASED ORC FILE #	REMARKS
Ontario Realty Corporation	41	19	5	Y	B003		Y	
Ontario Realty Corporation	42	17 and 18	5	Y	Various B031 Etal.		Y	
Ontario Realty Corporation	43	18	5	Y	Various K005 Etal.		Y	
Ontario Realty Corporation	44	18	5	Y	K023		Y	
Ontario Realty Corporation	45	18	5	Y	K005		Y	
Ontario Realty Corporation	46	18	5	Y			Y	

Note #1: C. P. Rail line crosses Highway #407 East Partial Extension in Markham (Lot 8, Con. 10)

Note #2: Portions of road allowances traversing Highway #407 East Partial Extension will be either assumed if opened and part of road or compensated for if unopened or closed.

Road allowances requiring compensation are as follows:

- Road Allowance between Lots 34 and 35 (Pickering)
- Road Allowance between Lots 32 and 33 (Pickering)
- Road Allowance between Lots 28 and 29 (Pickering)
- Road Allowance between Lots 26 and 27 (Pickering)
- Road Allowance between Lots 22 and 23 (Pickering)

APPENDIX B: PROPERTY NOT YET ACQUIRED

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.I. Nully & Expiry Date	Remarks
	6				N				Negotiations have been initiated, but will likely have to go to expropriation.
	11				N				Negotiations have been initiated, but will likely have to go to expropriation.
Ontario Hydro	18	406-85-00	13	2	N				West side of Trafalgar Rd. Property has been acquired from (Owner # 67), however still need to expropriate Ontario Hydro's easement rights. Expropriation plans have been prepared.
Ontario Hydro	18	412-85-00	7	2	N				Additional property required due to re-design of Oakville Link Interchange. Negotiations are underway. See also new access to IPPL Valve Station west of Oakville Link IC through Ontario Hydro Trafalgar Transformer Station lands. See Item #131, Appendix #6.
Ontario Hydro	28	413-85-00	32	1	N				Negotiations have been initiated, but will likely have to go to expropriation.
Ontario Land Corporation	34	412-85-00	28	1	N		20R-11431 853-301L		T.L.I. for Lot 30. Part of OLC land acquired by ORC for Lots 30 and 29 only. Remainder outside of OLC. OLC will give permission to enter for construction (acquisition not needed).
Ontario Land Corporation	34	412-85-00	27	1	N		20R-11431 853-301L		T.L.I. for Lot 30. Part of OLC land acquired by ORC for Lots 30 and 29 only. Remainder outside of OLC. OLC will give permission to enter for construction (acquisition not needed).
Ontario Land Corporation	49	412-85-00	20	2	N		20R-11633		Nothing resolved/acquired yet. Negotiations have been initiated but will likely have to go to expropriation.
Ontario Land Corporation	52	412-85-00	18	2	N		20R-11833		Small sliver of property still to be acquired. Negotiations have been initiated, but will likely have to go to expropriation.

Property Own.	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. On File	A. & ORG Plans	T.L.I. Notify & Expiry Date	Remarks
34721 Investment Ltd.	53	412-85-00	17	2	N		20R-11815		Negotiations have been initiated.
leib Farm Inc. (542052 Ont. Ltd.)	54	412-85-00	17	2	N				Not required at this time, but once design is completed, this property may still be required. Selected Respondent to determine if this property is required for the project.

APPENDIX 8: PROPERTY SAL AGREEMENT CONDITIONS

Property Owner	Owner #	CWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.R. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
inbuilt Development Inc.	1	199-77-00	14	1	Y	Y	20R-11066		N 670144	Purchase and Temporary Limited Interest closed Sept. 3, 1993.
	2				Y	N			N 670144	Lease expired Oct. 31/93.
	3				Y	Y			Y 670515	May require additional property at this location for stormwater management purposes - Contractor to confirm. Purchase approved and accepted, dated March 9, 1978.
Investments Ltd.	4	413-85-00	12	1	Y	Y	20R-445 N/A		Y 67060	Offer to sell was accepted and approved on April 30, 1975.
Development Ltd. and Merle Baker Holdings Ltd. (used to be Merle Baker Holdings & Essential Developments Ltd.)	5	410-85-00	11	1	Y	Y	20R-11154 853-137L		N 670986	Fee simple purchase, closed July 15, 1994.

AGREEMENT CONDITIONS

APPENDIX 8: PROPERTY SAI

Property Owner	Owner #	GWP	Lot	Conc. NDB	Property Acquired	Prop. Agree. on File	Ref. & OIRC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ OIRC File	Remarks
	6				Y	Y			N 670902	Fee simple purchase closed April 29, 1993.
	7				Y	Y			N 6701030	Management Board of Cabinet purchase, under Section 30 of the Expropriations Act, closed Dec. 15/95. Vendor has the right to farm until the lands are required by the Crown for construction.
	8				N				N/A Not Available	Negotiations have been initiated, but will likely have to go to expropriation.
ican Holdings Ltd.	9	413-85-00	6	1	Y	Y	052-2L		Y 67061	Property acquired on October 10, 1975.
kalda Farms Ltd.	10	413-85-00	7	1	Y	Y	20R-11469 852-145L		N 6701003	Fee Simple Purchase closed Mar. 16, 1995. Vendor has the right to farm until the lands are required by the Crown for construction.

APPENDIX 8: PROPERTY SALVAGEMENT CONDITIONS

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Property Owner	Owner #	GWP	Lot	Cons. NDS	Property Acquired	Prop. Agreed on File	Ref. & ORC Plans	T.L.I. Nollity & Expiry Date	Prop. Leased/ ORC File	Remarks
Ida Farms Ltd.	10	410-85-00	6	1	Y	N	20R-11181 852-138L		N 6701003	Fee Simple Purchase closed April 15, 1995. Vendor has the right to farm until the lands are required by the Crown for construction.
Ida Farms Ltd.	10	410-85-00	5	1	Y	N	20R-11389 852-142L	N/A 09/01/1999	N 6701017	Temporary Limited Interest. Fee Simple Purchase closed April 15, 1995. Vendor has the right to farm until the lands are required by the Crown for construction. Vendor may remain on the property until construction commences.
Ida Farms Ltd.	10	410-85-00	4	1	Y	N	20R-11309 852-142L	N/A 09/01/1999	N 6701017	Temporary Limited Interest. Fee Simple Purchase closed April 15, 1995. Vendor has the right to farm until the lands are required by the Crown for construction. Vendor may remain on the property until construction commences.
	11				N				N/A Not Available	Negotiations have been initiated, but will likely have to go to expropriation.
on Sons Ltd.	12	410-85-00	6	1	Y	Y	20R-11181 853-138L		N Not Available	Fee Simple Purchase, closed June 29, 1994. Vendor has the right to farm until the lands are required by the Crown for construction.

AGREEMENT CONDITIONS

APPENDIX B OF PROFORMA OPA

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	Permit & ORC Plans	T.L.L. Nollly & Expiry Date	Prop. Leased/ ORC File	Remarks
Jeff Properties Ltd. & Parkway Investments Inc.	13	410-05-00	6	1	Y	Y	20R-11101 853-130L		N 670907	Fee Simple Purchase closed July 15, 1994.
Delta International (Clock Investments Ltd.)	14	410-85-00	5	1	Y	Y	20R-11389 852-142L	02/28/1999 08/31/1999	N 6701009	Fee Simple Purchase and Temporary Limited Interest, closed September 30, 1994.
	15				Y	Y		N/A 11/06/2000	N Not Available	Temporary Limited Interest (access during construction). Closed Nov. 7/95.
	16				Y	Y			N Not Available	Temporary Easement for Lot 3 (access during construction & berm construction). Property Agreement also specifies requirements and conditions to be assumed by the Contractor for both the temporary berm and access road construction, and for permanent berm construction. Fee Simple Purchase, closed July 31, 1995.
	16				Y	Y		N/A 07/31/2000	N Not Available	Temporary Easement for Lot 3 (access during construction & berm construction). Property Agreement also specifies the requirements and conditions to be assumed by the Contractor for both the temporary berm and access road construction, and for the permanent berm construction. Fee Simple Purchase, closed July 31, 1995.

APPENDIX 8: PROPERTY SALE AGREEMENT CONDITIONS

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Property Owner	Owner #	GWP	Lot	Conc. NOS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	16				Y	Y			N	Temporary Easement for Lot 3 (access during construction & berm construction). Property Agreement also specifies the requirements and conditions to be assumed by the Contractor for both the temporary berm and access road construction, and for the permanent berm construction. Fee Simple Purchase, closed July 31, 1995.
	17				Y	Y			N	Fee simple purchase closed August 30, 1994.
	17				Y	Y		N/A	N	Temporary Limited Interest. Fee simple purchase and licence agreement, closed August 30, 1994.
	17				Y	N		09/01/1999	6701002	
	18	410-85-00	35	1	Y	Y	20R-11278 853-299E		N	Expropriation plan on file. T.L.I. on Part 1 and Fee on Part 2. Expropriated on September 14, 1994.

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	Re. ORG Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORG File	Remarks
o Hydro	18	406-85-00	13	2	N				N	West side of Trafalgar Rd. Property has been acquired from Ontario Hydro's easement rights. However still need to prepare Expropriation plans have been prepared.
o Hydro	18	012-86-00	12	2	Y	Y	20R-6316 853-271E		N N/A	East side of Trafalgar Rd. Expropriation plan 853-271E on file. Expropriated on March 5, 1984. (Needed additional property from Ontario Hydro. Expropriation plan 853-322E covers this and is also on file. Additional property expropriated on February 16, 1986.)
o Hydro	18	412-85-00	7	2	N				N/A N/A	Additional property required due to re-design of Oakville Link interchange. Negotiations are underway. See also new access to IPP Valve Station west of Oakville Link IC through Ontario Hydro Trafalgar Transformer Station lands. See item #131, Appendix #B.
o Hydro	18	412-85-00	7	2	Y	N/A			N N/A	Land Exchange with Ontario Hydro. No expropriation required.
o Hydro	18	412-85-00	6	2	Y	Y	20R-6114 853-259E		N N/A	Expropriation plan on file. Expropriated on January 17, 1984.

Property Owner	Owner #	GWP	Lot	Conc. NDS	Properly Acquired	Prop. Agree. on File	ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
to Hydro	18	000-00-00	5	2	N/A		854-250E		N/A N/A	
to Hydro	18	000-00-00	4	2	N/A		854-250E		N/A N/A	
to Hydro	18	000-00-00	3	2	N/A		854-250E		N/A N/A	
to Hydro	18	410-85-00	2	1	Y	Y	20R-11257 852-141E		N N/A	Please refer to Item #129, Appendix #6 for details on access to towers from Hwy 407 West, west of Tremelna Rd. Expropriation plan on file. Expropriated on September 14, 1994.
to Hydro	18	000-00-00	2	2	N/A				N/A N/A	

Property Own.	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	J. & ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
Ontario Hydro	18	410.85-00	1	1	Y	Y	20R-11257 852-141E		N N/A	Please refer to Item #129, Appendix #6 for details on access to towers from Hwy 407 West, west of Tremaine Rd. Expropriation plan on file. Expropriated on September 14, 1994.
Ontario Hydro	18	000.00-00	1	2	N/A				N/A N/A	
	19				Y	N			N Not Available	
	20				Y	Y			N Not Available	Fee Simple Purchase, closed January 8, 1993.
	21				Y	Y		N/A 09/30/1999	N 6701005	Fee Simple Purchase and Temporary Limited Interest (5 yrs and no extension provision), closed Sept. 30, 1994.

LEASING CONDITIONS

APPENDIX B: PROPERTY SAI

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
Thompson Developments Ltd.	22	410-85-00	35	1	Y	Y	20R-6542		N	Offer to sell was approved and accepted on March, 19, 1994. Lease terminated December 31, 1992.
							853-275L		670866	
	23				Y	Y		N/A	N	Fee Simple Purchase and Temporary Limited Interest, closed Apr. 27, 1994.
								09/01/1999	6701016	
	24				Y	Y		N/A	N	Fee Simple Purchase and Temporary Limited Interest, closed May 25, 1994.
								09/01/1999	Not Available	
Luz Pat Farms	25	413-85-00	34	1	Y	Y	20R-4596		N	The offer to sell was signed, accepted and approved on September 21, 1979.
							853-173L		670674	
Luz Pat Farms	25	413-85-00	33	1	Y	Y	20R-4596		N	The offer to sell was signed, accepted and approved on September 21, 1979.
							853-173L		670674	

APPENDIX B: PROPERTY SALVAGE SETTLEMENT CONDITIONS

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.I. Nollly & Expiry Date	Prop. Lease/ ORC File	Remarks
Regional Municipality of	28	413-85-00	33	1	Y	Y	20R-4807 853-276L		N 670882	The land was acquired on October 30, 1984.
	27				Y	N			N 670667	
90 Ninety Developments Ltd.; Danaberry Developments Ltd.; Newmark Developments Ltd.	28	413-85-00	32	1	N				N/A Not Available	Negotiations have been initiated, but will likely have to go to expropriation.
7504 Ont. Ltd.;	29				Y	Y			N 670537	Expropriation plan and Settlement Agreement on file. Expropriated September 14, 1994. Settlement Agreement dated June 15, 1996.
	30				Y	Y			N 6701013	Fee Simple Purchase, closed on Dec. 30, 1994.

APPENDIX 8: PROPERTY SALES AGREEMENT CONDITIONS

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	ref. & ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	31				Y	Y		N/A 12/31/1999	N Not Available	Land exchange of Part 1 on plan 853-301L, from O.R.C. to M.B.S., closed June, 1994, Agreement dated March 1994 for Purchase and Licence Agreement.
	32				Y	Y			N Not Available	Expropriation plan and Settlement Agreement on file. Expropriated on September 14, 1994. Settlement Agreement dated December 1, 1996.
	33				Y	Y			N Not Available	Expropriation plan on file. Expropriated on September 14, 1994.
Ontario Land Corporation	34	412-85-00	30	1	Y	Y	20R-11431 853-301L	12/31/1999 N/A	Y 8106	T.L.I. for Lot 30. Part of OLC land acquired by ORC for Lots 30 and 29 only. Remainder outside of. belongs to OLC. OLC will give permission to enter for construction (acquisition not needed).
Ontario Land Corporation	34	412-85-00	29	1	Y	Y	20R-11431 853-301L		Y 0106	Temporary Limited Interest for Lot 30. Part of OLC land has been acquired by ORC for Lots 30 and 29 only. Remainder outside of. belongs to OLC. OLC will give permission to enter for construction (acquisition not needed).

APPENDIX B: PROPERTY DATA

Property Owner	Owner #	DWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	Ord. & ORC Plans	T.L.L. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
Intario Land Corporation	34	412-85-00	28	1	N	N	20R-11431 853-301L		Y 8107	T.L.L. for Lot 30. Part of OLC land acquired by ORC for Lots 30 and 29 only. Remainder outside of belongs to OLC. OLC will give permission to enter for construction (acquisition not needed).
Intario Land Corporation	34	412-85-00	27	1	N	N	20R-11431 853-301L		Y 8101	T.L.L. for Lot 30. Part of OLC land acquired by ORC for Lots 30 and 29 only. Remainder outside of belongs to OLC. OLC will give permission to enter for construction (acquisition not needed).
	35				Y	Y			N 6701040	Deal closed between June 5 and July 31, 1996.
Morraine Investments Inc.	36	412-85-00	28	2	Y	Y	20R-11786 853-328L		N Not Available	Sec. 30 to close April 30, 1996. Cul-de-sac for Burnhamhorpe Rd. at the southwest corner of this property is to be constructed as per Item #130, Appendix #6.
Morraine Investments Inc.	36	412-85-00	27	2	Y	Y	20R-11786 853-328L		N Not Available	Sec. 30 to close April 30, 1996. Cul-de-sac for Burnhamhorpe Rd. at the southwest corner of this property is to be constructed as per Item #130, Appendix #6.

PROPERTY CONDITIONS

APPENDIX 9. PROPERTIES

Property Owner	Owner #	GWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	Re. ORC Plans	T.L.I. Nollly & Expiry Date	Prop. Leased/ ORC File	Remarks
	37				Y	Y			N 6701027	Fee Simple Purchase, closed Oct. 6, 1995.
	38				Y	N			Y 6708	Temporary Limited Interest. Potential Heritage Home.
	39				Y	N			Y 6708	Temporary Limited Interest.
	39				Y	N			N 670792	Landlocked with closure of Burnhamhorpe Rd. The land was acquired January 14, 1982.
	39				Y	Y			Y 670789	Landlocked with closure of Burnhamhorpe Rd. The Offer to Sell was signed, approved and accepted on September 4, 1981.

Property Own.	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	I. & Div. Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	39				Y	N			N 670792	Landlocked with closure of Burnhamthorpe Rd. The land was acquired January 14, 1902.
ever Castle Investments Ltd.	40	412-05-00	25	2	Y	Y	20R-4173 853-161L		Y 670600	The offer to sell was signed, approved and accepted on January 16, 1979. Currently being leased to P. Gabriele & Sons Ltd. for 5 years (with one year cancellation) that excludes the property required for the Highway R.O.W.
ever Castle Investments Ltd.	40	412-05-00	23	2	Y	Y	20R-4173 853-161L		Y 670600	The offer to sell was signed, approved and accepted on January 16, 1979. Currently being leased to P. Gabriele & Sons Ltd. for 5 years (with one year cancellation) that excludes the property required for the Highway R.O.W.
	41				Y	Y			N 6705	Offer to sell was signed, approved and accepted on January 16, 1979.
	42				Y	Y			Y 670450	The offer to sell was approved and accepted on July 2, 1977. Currently being leased to P. Gabriele & Sons Ltd. for 5 years (with one year cancellation) that excludes the property required for the Highway R.O.W.

APPENDIX B: PROPERTY OWNERS

Property Owner	Owner #	GWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	43				Y	N			N 670600	
	44				Y	N			N 67098	The Deed to the Crown was registered on August 30, 1974. Unleased - 78.4 ac.
	44				Y	N			Y 67098	The Deed to the Crown was registered on August 30, 1974. Potential Heritage Home.
	45				Y	Y			N Not Available	The offer to sell was signed, approved and accepted on January 20, 1982.
	46				N/A	N			N/A N/A	Land not required at this time.

Property Owner	Owner #	OWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	U.L. & ORG Plans	T.I.L. Notify & Expiry Date	Prop. Leased/ ORG File	Remarks
	47				Y	Y			N 6701020	Fee Simple Purchase, closed June 1, 1995.
	48				Y	Y			N 670241	The offer to sell was approved and accepted on August 10, 1976. Property leased to John Samcoo. Lease terminated on Sept. 30, 1996.
	48				Y	Y			N 670241	The offer to sell was approved and accepted on August 10, 1976. Property leased to J. Samcoo. Lease terminated on Sept. 30, 1996.
Forham Holdings Inc.	49	412-85-00	20	2	N		20R-11833		N/A Not Available	Nothing resolved/acquired yet. Negotiations have been initiated but will likely have to go to expropriation.
	50				Y	Y			N 670202	The offer to sell was signed, approved and accepted on March 17, 1976. Property leased to John Samcoo. Lease termination Sept. 30, 1996.

APPENDIX B: PROPERTY OWNERS

Property Owner	Owner #	GWP	Lot	Cont. ND9	Property Acquired	Prop. Agree. on File	ORC Plans	T.L.L. Nully & Expiry Date	Prop. Leased/ ORC File	Remarks
Ontario Ltd.	51	412-85-00	19	2	Y	Y	20R-11033 853-329L		N Not Available	Fee Simple Purchase, closed on April 3, 1997.
more Holdings Ltd.	52	412-85-00	18	2	N		20R-11033		N/A 670245	Small sliver of property still to be acquired. Negotiations have been initiated, but will likely have to go to expropriation.
more Holdings Ltd.	52	412-85-00	18	2	Y	Y	20R-2931 853-49L		N 670245	The offer to sell was signed, approved and accepted on September 13, 1976. Property leased to. Lease terminated on Sept 30, 1996.
721 Investment Ltd.	53	412-85-00	17	2	N		20R-11615		N/A Not Available	Negotiations have been initiated.
rb Farm Inc. (542052 Ont. Ltd.)	54	412-85-00	17	2	N				N/A Not Available	Not required at this time, but once design is completed, this property may still be required. Selected Respondent to determine if this property is required for the project.

Property Owner	Owner #	GWP	Lot	Cond. NDS	Property Acquired	Prop. Agree. on File	ORG Plans &	T.L.L. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
Kulyneo Excavating & Grading	55	406-85-00	16	2	Y	Y	20R-11505 853-304L		N 670097	Fee Simple Purchase, closed on Dec. 2, 1994.
Investments	56	406-85-00	16	2	Y	Y	20R-11432 853-304L		N Not Available	Fee Simple Purchase and Sale, closed Dec. 20, 1994.
City of Milton	57	406-85-00	16	2	Y	Y	20R-11432 853-304L		N Not Available	Fee Simple Purchase and Sale, closed June. 10, 1995. Not shown on photoflex.
City of Oakville	58	406-85-00	16	2	Y	Y	20R-11505 853-304L		N Not Available	Fee Simple Purchase and Sale, closed Dec. 15, 1994. Not shown on photoflex.
	59				Y	Y			Y 6701008	Fee Simple Purchase, closed March 17, 1995. Potential Heritage Home.

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APPENDIX 8: PROPERTY SAL

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agres. on File	Rev. & ORC Plans	T.L.L. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
Dak Inv. Ltd. (272139 Ontario	60	406-85-00	15	2	Y	Y	20R-6284 853-314E		N Not Available	Expropriation plan on file. Expropriated on November 3, 1994.
	61				Y	Y			N	Expropriation plan on file. Expropriated on November 3, 1994.
37 Ontario Ltd.	62	406-85-00	15	2	Y	Y	20R-6284 853-268E		N Not Available	Expropriation plan on file. Expropriated on March 5, 1994.
ech Medical Inc.	63	406-85-00	15	2	Y	Y	20R-11420 853-303L		N 6701007	Fee Simple Purchase, closed on Dec. 15, 1994.
	64				Y	N			N 67036	The property was acquired and registered on November 22, 1974.

APPENDIX B: PROPERTY SAI AGREEMENT CONDITIONS

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agreed on File	Ref. & ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	64				Y	N			N 67036	The property was acquired and registered on November 22, 1974.
	65				Y	N			N 670169	
	65				Y	N			N 670169	
	66				Y	N			Y 67020	The property was acquired and registered on May 9, 1975.
	67				Y	Y			N 6701022	Expropriation plan on file for initial property acquisition. Expropriated on March 5, 1984. (See also Ontario Hydro (Owner #18) entry for

APPENDIX B: PROPERTY DATA

PERMIT CONDITIONS

Property Owner	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	ORG Plans	T.L.L. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	67				Y	Y	20R-11458 853-305L	N/A 09/01/2000	N 6701022	Fee Simple Purchase and License Agreement for additional property requirements, closed July 4, 1995. License Agreement allows for an additional 24 month "Extended Term" commencing August 1, 1998. (See also Ontario Hydro (Owner #18) entry for
	68				Y	Y	20R-11458 853-305L		N 6709996	Fee Simple Purchase, closed Oct. 31, 1994.
	69				Y	N	20R-1257		Y 67013	Property was acquired and registered on April 9, 1975. Potential Heritage Home. Entrance will be affected by interchange construction.
	69				Y	N	20R-1257		Y 67013	Property was acquired and registered on April 9, 1975. Potential Heritage Home. Entrance will be affected by interchange construction.
	70				Y	Y	20R-6316 853-270E		N 670873	Expropriation plan on file for Initial property acquisition. Expropriated on March 5, 1984.

Property Owner	Owner #	GWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.L. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	70				Y	Y			N 670073	Fee Simple Purchase dated Nov. 25, 1994 for additional property requirements.
	71				Y	N			N 6702	The property was acquired and registered on March 5, 1975.
Oakgate Corporation Ltd.	73	412-05-00	10	2	Y	Y	20R-6200 853-255L		N 670852	The offer to sell was signed, approved and accepted on July 29, 1983.
	74				Y	Y			N 670856	The offer to sell was signed, approved and accepted on November 23, 1983.
Headlight Holdings Ltd.	75	412-85-00	10	2	Y	N			N 670160	

Property Owner	Owner #	GWP	Lot	Comp. NDS	Property Acquired	Prop. Agree. on File	of. & ORC Plans	T.L.I. Nollity & Expiry Date	Prop. Leased/ ORC File	Remarks
Headlight Holdings Ltd.	75	412-05-00	0	2	Y	N			N 670160	
Admath Holdings Ltd.	76	412-85-00	9	2	Y	Y	20R-6153 853-250L		N 670846	The offer to sell was signed, approved and accepted on June 24, 1983.
	77				Y	Y			N Not Available	Additional property required due to re-design of Oakville Link Interchange. Closed January 15, 1997.
	77				Y	Y			N 670549	Expropriation plan on file for initial property acquisition. Expropriated on January 17, 1984.
Upper Fourth Ltd.	78	412-85-00	7	2	Y	Y	20R-6153 853-250L		N 670842	The offer to sell was approved and accepted on March 9, 1976.

Property On	Owner #	GWP	Lot	Conc. NDS	Property Acquired	Prop. Agree. on File	Ref. & ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
Setled Estates Ltd.	79	412-85-00	7	2	Y	N	2DR-238 853-19E		N 670167	The offer to sell was signed, approved and accepted on October 6, 1978.
Mejoben Investments Ltd.	80	412-85-00	6	2	Y	N			N 67047	
	81				Y	Y			N 670739	The offer to sell for the first parcel was signed, accepted and approved on July 25, 1980. The offer to sell for the second parcel was signed, accepted and approved on December 12, 1983.
	81				Y	Y			N 670739	Expropriation plan on file. Expropriated on January 17, 1984.
	82				Y	N			N 670165	

Property Owner	Owner #	OWP	Lot	Cont. NDS	Property Acquired	Prop. Agree. on File	L. & P. Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
The Cadillac Investment Company	83	197-99-06	6	2	Y	Y	20R-6006 853-246L		N 670843	The offer to sell was signed, approved and accepted on May 31, 1983.
The Cadillac Fairview Corporation	84	000-00-00	5	2	Y	N	854-107L		N 67063	
The Cadillac Fairview Corporation	84	000-00-00	4	2	Y	N	43R-6024 854-107L		N 67063	Lead east of Ninth Line.
The Cadillac Fairview Corporation	84	000-00-00	3	2	Y	N	854-107L		N 67063	
The Cadillac Fairview Corporation	84	000-00-00	1	2	Y	N	43R-6710		N 67063	East of Ninth Line.

Property Owner	Owner #	GWP	Lot	Colic. NDS	Property Acquired	Prop. Agree on File	ORC Plans	T.L.I. Notify & Expiry Date	Prop. Leased/ ORC File	Remarks
	85				Y	Y			N	The offer to sell was signed, approved and accepted on February 11, 1984.
									670860	

AGREEMENTS OF PURCHASE AND SALE
CONTAINED IN SOUTH DATA ROOM
FOR HIGHWAY 407 WEST

Ref.	Vendor/Licensor	Agreement Date
B1/T1	Dunburlton Developments Ltd.	28 June 93
B1/T2		21 Aug. 76
B1/T3	Rinata Investments Ltd.	30 Apr. 76
B1/T4	Jovic Developments Ltd., Marie Baker Holdings	15 May 94
B1/T5		8 Feb. 93
B1/T6		21 Nov 95
B1/T7	Eastcan Holdings Ltd.	15 May 75
B1/T8	Mikalda Farms Limited	15 Feb. 95
B1/T11	Mikalda Farms Limited	29 Apr. 94
B1/T12	Norton Sons Limited	7 Feb. 95
B1/T13	Norton Sons Limited	29 Apr. 94
B1/T14	Mikalda Farms Limited	15 Feb. 95
B1/T15	Mikalda Farms Limited	29 Apr. 94
B1/T18	Kaneff Properties Ltd., Parkway Commerce Inc.	25 May 94
B1/T19	Paletta International Corporation	3 June 94
B1/T21		30 June 95
B1/T23		30 June 95
B2/T1		30 June 94
B2/T1		17 June 94
B2/T2	Ontario Hydro	5 Nov. 92
B2/T4		26 June 92
B2/T5		29 Aug. 94
B2/T6	Fanhampton Developments Ltd.	26 Mar. 84
B2/T7		22 Feb. 94
B2/T8		7 Mar. 94
B2/T9	Lazy Pat Farms Ltd.	30 Oct. 79
B2/T10	The Regional Municipality of Halton	30 Oct. 84
B2/T11	Rosko Investment and Development Limited,) in trust and	15 June 96
B2/T12		31 Oct. 94
B2/T13	Ontario Land Corp.	14 June 93
B2/T13	Ontario Realty Corp.	15 Mar. 94
B3/T1		17 Dec. 96
B3/T3		4 Apr. 96
B3/T4	Morraine Investments Ltd.	5 Mar. 96
B3/T5		8 Aug. 95
B3/T7		15 Sept. 81
B3/T8	Hever Castle Investments Ltd.	2 Mar. 79
B3/T9		12 Aug. 77
B3/T11		19 Mar. 82
B3/T12		15 Mar. 95
B3/T13		16 Sept. 76

**AGREEMENTS OF PURCHASE AND SALE
CONTAINED IN SOUTH DATA ROOM
FOR HIGHWAY 407 WEST**

B3/T14		19 Mar. 76
B3/T15	833625 Ontario Limited	19 Feb. 97
B3/T16	Bradmore Holdings Limited	21 Oct. 76
B3/T17	William Kutynec Excavating and Grading Limited	12 Sept. 94
B3/T18	ENO Investment Limited	13 Oct. 94
B3/T19	The Corporation of the Town of Milton	15 Sept. 94
B3/T20	The Corporation of the Town of Oakville	4 Oct. 94
B4/T1		28 Oct. 94
B4/T3	Truetech Medical Inc.	1 Nov. 94
B4/T6		12 Apr. 95
B4/T7		29 Aug. 94
B4/T9		6 Sept. 94
B4/T11	Oakgate Corporation Ltd.	24 Aug. 83
B5/T1		21 Dec. 83
B5/T2	Admath Holdings Limited	11 July 83
B5/T3		12 Dec. 96
B5/T4	Upper Fourth Limited	2 June 83
B5/T4	Upper Fourth Limited	12 Mar. 76
B5/T5	Settled Estates Limited	20 Nov. 78
B5/T6		8 Sept. 80
B5/T6		21 Dec. 83
B5/T7	Gledhill Investment Company	16 June 83
B5/T9		7 Mar. 84.

SCHEDULE 7

HIGHWAY 407 LANDS - HIGHWAY 407 CENTRAL

- (a) in the City of Brampton, the Town of Halton Hills, the Town of Milton and the City of Mississauga consisting of,
- (i) Part of Lot 13, Concession 3, West of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto, County of Peel), designated as Parts 1, 2, 5, 6, 7, 8, 9, 10, 11, 12 and 13 on Plan 43R-23411,
 - (ii) Part of Lot 13 and 14, Concession 4, West of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto, County of Peel), and Part of Lot 12, Concession 4, West of Hurontario Street, in the City of Mississauga, Regional Municipality of Peel (formerly in the Geographic Township of Toronto, County of Peel), designated as Parts 1, 2, 3, 4, 5, 6, 7 and 8 on Plan 43R-23412,
 - (iii) Part of Lots 13 and 14, Concession 5, West of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto, County of Peel), designated as Parts 1, 2, 3, 4, 5, 6, 7 and 8 on Plan 43R-23413,
 - (iv) Part of Lots 14 and 15, Concession 6, West of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto, County of Peel), designated as Parts 1, 2 and 3 on Plan 43R-23414,
 - (v) Part of Lots 14 and 15, Concession 10, New Survey and Part of Lots 14 and 15, Concession 11, New Survey, in the Town of Halton Hills, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as

- Parts 1, 2, 3, 5, 6, 7 and 8 on Plan 20R-13136,
- (vi) Part of Lot 15, Concession 9, New Survey and Part of Lot 15, Concession 10, New Survey, in the Town of Halton Hills, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3 and 4 on Plan 20R-13135,
 - (vii) Part of Lots 1 to 10 (both inclusive) and all of Nelson Avenue (not opened), Registered Plan 162 and Part of Lots 6 and 7, Concession 2, North of Dundas Street and Part of the Original Road Allowance between Lots 5 and 6, Concession 2, North of Dundas Street, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 on Plan 20R 13128,
 - (viii) Part of Lots 1 and 2, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1 and 2 on Plan 20R-13131,
 - (ix) Part of Lots 3 and 4, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2 and 3 on Plan 20R-13129,
 - (x) Part of Lots 5 and 6, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 on Plan 20R-13127,
 - (xi) Part of Lot 7 and 8, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Part 1 on Plan 20R-13134,
 - (xii) Part of Lot 14, Concession 10, New Survey, in the City of Mississauga, Regional Municipality of Peel (formerly in the Geographic Township of Trafalgar), designated as Part 1 on Plan 43R-23417,
 - (xiii) Part of Lots 12, 13 and 14, Concession 9, New

Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3, 4, 5, 6, 7 and 8 on Plan 20R-13133,

- (xiv) Part of Lots 11 and 12, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3, 4, 5, 6, 7 and 8 on Plan 20R-13130,
- (xv) Part of Lots 9 and 10, Concession 9, New Survey, in the Town of Milton, Regional Municipality of Halton (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20 and 21 on Plan 20R-13132, and
- (xvi) Part of Lots 1 and 5, Registrar's Compiled Plan No. 15442, in the City of Mississauga, Regional Municipality of Peel (formerly in the Geographic Township of Trafalgar), designated as Parts 1, 2, 3, 4 and 5 on Plan 43R-23415.

(b) in the City of Brampton, consisting of,

- (i) Lot 1, Concession 9, Northern Division, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto Gore), designated as Parts 1 and 2 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05A filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (ii) Part of Lot 1 and Lot 2, Concession 8, Northern Division and Part of Lots 1, 2, 3 and 4, Registered Plan 378, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto Gore), designated as Parts 1, 2, 3, 4 and 5 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-B filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (iii) Part of Lot 1, Concession 7, Northern Division, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of

Toronto), designated as Parts 1, 2 and 3 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-CE filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,

- (iv) Part of Lot 7, Concession 7, Northern Division and Parts of Blocks 11 and 12, Registered Plan 43M-931 and Parts of Blocks 2, 3, 5 and 6, Registered Plan 43M-891, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto Gore), designated as Parts 2, 4, 5 and 6 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-CW filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (v) Part of Blocks 16, 18 and 19, Registered Plan 43M-643 and Block 29 (0.30 Reserve), in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-D filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (vi) Part of Lot 15, Concession 6, East of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto), designated as Parts 1, 2 and 3 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-E filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (vii) Part of Lots 14 and 15, Concession 5, East of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3, 4, 5, 6 and 7 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-FE filed in the Regional Office of the Ministry of

Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,

- (viii) Part of Lots 14 and 15, Concession 5, East of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3 and 4 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-FW filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (ix) Part of Lots 13 and 14, Concession 4, East of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3, 4, 5 and 6 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-G filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (x) Part of Lots 13 and 14, Concession 3, East of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3, 4, 5, 6 and 7 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 855-293L filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (xi) Part of Lots 12 and 13, Concession 3, East of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3, 4, 5, 6, 7, 8 and 9 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 855-294L filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,
- (xii) Part of Lots 12 and 13, Concession 1, East of Hurontario Street, and Block 186 (0.30 Reserve) and Block 187, Registered Plan 43M-615, and Blocks 228 and 229 (0.30 Reserve), and Blocks 230

and 231, Registered Plan 43M-614, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto), designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-J filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999,

- (xiii) Part of Lots 12 and 13, Concession 1, West of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Chinguacousy), designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-K filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999, and
- (xiv) Block 204, Registered Plan 43M-1160 and Part of Lot 13, Concession 2, West of Hurontario Street, in the City of Brampton, Regional Municipality of Peel (formerly in the Geographic Township of Toronto), designated as Parts 3, 4, 5, 6 and 7 on a Draft Reference Plan prepared by J.D. Barnes Limited bearing Reference No. 97-28-287-05-L filed in the Regional Office of the Ministry of Transportation in Downsview and identified by a stamp of the Registrar of Regulations dated March 29, 1999.

(c) in the City of Vaughan consisting of,

- (i) Part of Lots 1 and 2, Concession 9, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Part 1 on Plan 65R-20960,
- (ii) Part of Lots 1 and 2, Concession 8 and Part of Lots 1 and 2, Concession 9, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1 and 2 on Plan 65R-20962,
- (iii) Part of Lots 1 and 2, Concession 8, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Part 1 on Plan 65R-20958,

- (iv) Part of Lots 1 and 2, Concession 8, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Part 1 on Plan 65R-20949,
- (v) Part of Lots 16 and 29, Registrar's Compiled Plan 9691, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3, 4, 5, 6 and 7 on Plan 65R-20977,
- (vi) Part of Lots 1, 14 and 17, Registrar's Compiled Plan 9691 and Part of Lot 8, Registrar's Compiled Plan 9831, City of Vaughan, Regional Municipality of York, designated as Parts 1, 2, 3, 4, 5 and 6 on Plan 65R-20982,
- (vii) Part of Lots 2 and 3, Concession 6, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1 and 2 on Plan 65R-20953,
- (viii) Part of Lots 3 and 4, Concession 6, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Part 1 on Plan 65R-20951,
- (ix) Part of Lots 2, 3, 4 and 5, Concession 5, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3, 4, 5 and 6 on Plan 65R-20961,
- (x) Part of Lots 3 and 4, Concession 5, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Part 1 on Plan 65R-20956,
- (xi) Part of Lot 3, Concession 4 and Part of Lot 13, Registered Plan 8070, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1 and 2 on Plan 65R-20976,
- (xii) Part of Lots 2, 3, 4 and 5, Concession 5, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3, 4, 5, 6 and 7 on Plan 65R-20975,
- (xiii) Part of Lots 3 and 4, Concession 4, in the City of Vaughan, Regional Municipality of York

- (formerly in the Geographic Township of Vaughan), designated as Parts 1 and 2 on Plan 65R-20964,
- (xiv) Part of Lots 3 and 4, Concession 3, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1 and 2 on Plan 65R-20948,
- (xv) Part of Lots 3 and 4, Concession 3, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3 and 4 on Plan 65R-20952,
- (xvi) Part of Lots 4 and 5, Concession 3 and Part of Lot 22 and Concord Road, Registrar's Compiled Plan 10309, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3, 4 and 5 on Plan 65R-20950,
- (xvii) Part of Lots 7 and 8, Concession 3 and Part of Lot 22, Registrar's Compiled Plan 10309, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2 and 3 on Plan 65R-20954,
- (xviii) Part of Lot 8, Concession 3 and Part of Block B, Registered Plan M-1832, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2 and 3 on Plan 65R-20959,
- (xix) Part of Lots 9 and 10, Concession 2, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1 and 2 on Plan 65R-20971,
- (xx) Part of Lots 9 and 10, Concession 2, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3, 4 and 5 on Plan 65R-20973, and
- (xxi) Part of Lots 9 and 10, Concession 2, in the City of Vaughan, Regional Municipality of York (formerly in the Geographic Township of Vaughan), designated as Parts 1, 2, 3 and 4 on Plan 65R-20957.
- (d) in the City of Vaughan and the Town of Richmond Hill consisting of,

- (i) a right-of-way of irregular shape, to accommodate a full interchange with Bathurst Street,
 - (ii) a right-of-way of linear shape and approximately 125 metres in width, to accommodate no more than 10 through lanes, commencing at an interchange with Bathurst Street, and running more or less in an easterly direction to an interchange with Yonge Street,
 - (iii) a right-of-way of irregular shape, to accommodate two stormwater management ponds, one on the north side of Highway 407 between Bathurst Street and the East Don River, and the other on the south side of Highway 407 between the East Don River and Yonge Street,
 - (iv) a right-of-way of irregular shape on the south side of Highway 407 between the East Don River and Yonge Street, to accommodate an aboriginal cemetery, and
 - (v) a right-of-way of irregular shape, to accommodate a full interchange with Yonge Street;
- (e) in the Town of Richmond Hill and the City of Markham consisting of,
- (i) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, commencing at an interchange with Yonge Street, and running more or less in an easterly direction, crossing the CNR line and Cedar Avenue, to an interchange with Bayview Avenue,
 - (ii) a right-of-way of irregular shape, to accommodate a full interchange with Bayview Avenue,
 - (iii) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, continuing from an interchange with Bayview Avenue, and running more or less in an easterly direction to an interchange with Leslie Street,
 - (iv) a right-of-way of irregular shape, to accommodate three stormwater management ponds, one on the south side of Highway 407 between Bayview Avenue and German Mills Creek, a second on the south side of Highway 407 between German Mills Creek and German Mills Creek tributary, and the third

on the south side of Highway 407 between German Mills Creek tributary and Leslie Street,

- (v) a right-of-way of irregular shape, to accommodate a partial interchange with Leslie Street,
 - (vi) a right-of-way of irregular shape, to accommodate a stormwater management pond on the south side of Highway 407 between Leslie Street and Highway 404,
 - (vii) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, continuing from an interchange with Leslie Street, and running more or less in an easterly direction to an interchange with Highway 404, and
 - (viii) a right-of-way of irregular shape, to accommodate a full interchange with Highway 404, including a stormwater management pond outside the southeast quadrant of the interchange;
- (f) in the City of Markham consisting of,
- (i) a right-of-way of linear shape and approximately 300 metres in width, to accommodate no more than 10 through lanes, commencing at an interchange with Highway 404, and running more or less in an easterly direction to an interchange with Woodbine Avenue,
 - (ii) a right-of-way of irregular shape, to accommodate a stormwater management pond on the south side of Highway 407 between Highway 404 and Woodbine Avenue,
 - (iii) a right-of-way of irregular shape, to accommodate the current partial and ultimate full interchange with Woodbine Avenue,
 - (iv) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, continuing from an interchange with Woodbine Avenue, and running more or less in an easterly direction, crossing Roddick Road, to an interchange with Warden Avenue,
 - (v) a right-of-way of irregular shape, to accommodate two stormwater management ponds, one on the north side of Highway 407 between Woodbine Avenue and Beaver Creek tributary, and the other on the

south side of Highway 407 between Beaver Creek tributary and Warden Avenue,

- (vi) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, continuing from an interchange with Warden Avenue, and running more or less in an easterly direction, crossing Birchmount Road and the CNR Line, to an interchange with Kennedy Road,
- (vii) a right-of-way of irregular shape, to accommodate the current partial and ultimate full interchange with Kennedy Road,
- (viii) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, continuing from an interchange with Kennedy Road, and running more or less in an easterly direction to an interchange with McCowan Road,
- (ix) a right-of-way of irregular shape, to accommodate a stormwater management pond on the north side of Highway 407 between Kennedy Road and McCowan Road,
- (x) a right-of-way of irregular shape, to accommodate a noise berm on the north side of Highway 407 between Kennedy Road and McCowan Road,
- (xi) a right-of-way of irregular shape, to accommodate the current partial and ultimate full interchange with McCowan Road,
- (xii) a right-of-way of irregular shape, to accommodate two stormwater management ponds, one on the north side of Highway 407 between McCowan Road and the Rouge River drainage channel, and the other on the north side of Highway 407 between the Rouge River drainage channel and Markham Road, and
- (xiii) a right-of-way of linear shape and approximately 150 metres in width, to accommodate no more than 10 through lanes, continuing from an interchange with McCowan Road, and running more or less in an easterly direction, to the current intersection with the Markham Road detour and the ultimate full interchange with Markham Road;

SCHEDULE 6

Description of Highway 407 East Partial

1. CURRENT STATUS OF HIGHWAY 407 EAST PARTIAL

1.1 Environmental Assessment Status

On June 24th, 1998, the Environmental Assessment (the "EA") for Highway 407 East Partial from Markham Road to Highway 7 just east of Brock Road received approval to proceed subject to Conditions of Approval attached to Order in Council 1704/98 referenced in Schedule 17 to the Concession Agreement (the "EA Approval"). These conditions include compliance with all provisions of the Environmental Assessment as submitted and with the objectives/future commitments identified in Section 6.4 of the Environmental Assessment and revised by the Ministry of Transportation letter to the Ministry of Environment dated August 26, 1997 included in Appendix Five, "MTO response to Government/Public Comments", of the December, 1997 Ministry of Environment (MOE) "Review Under the *Environmental Assessment Act* prepared by Ministries and Agencies of the Province of Ontario".

1.2 Status of Design Work

Figure 2 depicts Highway 407 East Partial.

The Environmental Assessment for the Highway 407 East Partial received approval for a conceptual plan of Highway 407 and adjacent transitway. The plan was based on the standard design criteria for an ultimate 10 lane freeway with a basic minimum right-of-way of 100 metres.

Planning of the adjacent transitway protected for passenger heavy rail technology having 60 metre minimum Right-of-Way (ROW). The design of interchanges was based on the conceptual footprint of a Standard Parclo A4 with allowances made for skew. The conceptual plan and profile was based on 1:10,000 Ontario Base Mapping. Geometric design was to have occurred at the preliminary design phase using 1:2,000 base mapping. As a result, alignments, profiles and ROW requirements in the Environmental Assessment are conceptual estimates only and do not include adjustments associated with drainage and hydrology studies, stormwater management planning or structural design.

To date, the Ministry of Transportation has initiated and/or completed a significant amount of pre-engineering work for Highway 407 East Partial. This includes the "Design Criteria & Concept Development Highway 407/Transitway (Nov 1998)" study, the Conceptual Preliminary Design Report, geotechnical investigations and Soils Report, Pavement Design Report, foundations investigations for all major structures, culverts and high cut/fill locations, as listed in Schedule 17.

While the conceptual preliminary design has been prepared consistent with the terms and conditions contained in the EA Report, limited preliminary municipal / agency consultation has been undertaken during this work. No public consultation has been undertaken during this work.

As such, it is the responsibility of the Concessionaire to complete all design and obtain approvals in accordance with the EA and the Concession Agreement.

2. WORKS TO BE COMPLETED

When used in this Schedule, "Work" refers to the design and construction of Highway 407 East Partial and includes all development, design, materials and construction for Highway 407 East Partial and appurtenances required to open a completed electronic toll highway to vehicular traffic. The Work also includes all supporting highway infrastructure/components, including but not limited to, grading, granular base, paving, structures, drainage system(s) including watercourse realignments, guiderail, illumination, traffic signals, pavement markings, signing, sign gantries, traffic management, landscaping, noise and other environmental measures.

Highway 407 East Partial has been planned as an ultimate 10 lane freeway with an urban concrete tall wall median barrier. Regardless of what may be depicted in the Reference Documents, a basic 4 lane freeway with a rural cross section is to be designed and built with provision for widening in future.

Highway 407 East Partial shall be designed and built in accordance with Ministry Safety Standards and other regulatory agency standards, specifications, guidelines, policies and practices. Highway 407 East Partial shall be designed to 120 km/hr, freeway design standards. Where appropriate, acceleration, deceleration and auxiliary lanes shall be included. Fully paved shoulders and rumble strips shall be provided on both sides of the roadway.

Parclo A4 interchanges are to be provided at Markham Road and Durham Regional Road 30. There are two additional interchanges located within the Seaton Lands (conceptually identified in the EA as North Road and Sideline 24), and a future interchange at the Markham By-Pass. A partial interchange (north oriented moves) is to be provided at 9th line.

In addition to these interchanges, the works to be constructed also include a grade separation at 10th line, a rail crossing at the CPR line, and major water crossings at the Rouge River, Little Rouge, West Duffins Creek, West Duffins Tributary, Urfe Creek and Brougham Creek. Further information regarding each of these structures and interchanges is provided in Sections 2.6 and 2.8.

The Concessionaire shall ensure that its design and construction of Highway 407 does not impede the future construction of a transitway, and that no property required for the future transitway be used for highway purposes.

2.1 Project Limits

The Work to be constructed includes all Work required to effectively tie in Highway 407 East Partial with connecting highways and intersecting roads. The limits consist not only of the physical roadway connection but incorporate all other highway infrastructure needs such as right-of-way grading, paving, drainage, traffic signals, illumination, fencing and signing. Signing needs

include advance signing and route markers some distance away from the interchange itself. The construction limits of north/south arterial roads and intersecting highways will be the end of ramp tapers or matching grade points, whichever is greater. Work also includes any work necessary to comply with environmental approvals.

In order to provide an interchange at Durham Regional Road 30, the Concessionaire shall realign Highway 7 from just east of Locust Hill to Green River. As such, the limits of construction shall include Highway 7 and extend approximately 500 m east of Regional Road 30 and 500 m west of the CPR structure in order to enable the construction of the realignment.

2.2 Alignment

The alignment for Highway 407 East Partial shall be designed and constructed in accordance with Ministry Safety Standards for Comparable Controlled Access Highways with a design speed of 120 km/h. A conceptual design for the highway alignment is contained in the "Highway 407 East Partial Conceptual Preliminary Design Report", identified in Schedule 17 to the Concession Agreement. Interchange ramps shall be designed in accordance with the design parameters specified in the Conceptual Preliminary Design Report.

All side road alignments shall be designed in accordance with Ministry Safety Standards for the design speed indicated in the Conceptual Preliminary Design Report.

Design parameters contained in the Design Criteria shall be used in finalizing the alignment.

For all detours or temporary roadworks, all detour design speeds shall be in accordance with the above for new works.

As part of the preliminary engineering work for Highway 407 East Partial, the Ministry of Transportation undertook consultation with various agencies and municipalities for various watercrossings. At the West Duffins Creek crossing, various review agencies expressed concerns with the location of the structure crossing, and two alternatives were developed. For the final design of this crossing the selection of the final alignment will be subject to further negotiations by the Concessionaire with affected agencies and the public in accordance with the terms of the Concession Agreement.

2.3 Cross Section

The cross section for the initial extension, Highway 407 East Partial shall be a 4 lane, divided freeway with fully paved 3 m shoulders on the outside and 2.5m shoulders on the median side. Ultimately, Highway 407 East Partial will be expanded to a 10 lane cross section, with a 7.5 m urban median, and 3 m fully paved outside shoulders. At structure locations, an ultimate median width of 8.5 m shall be provided. This cross section is similar to the design provided for Highway 407 west of Markham Road and is detailed in the Ministry of Transportation's Conceptual Preliminary Design Report.

Highway 407 East Partial will terminate at an at-grade intersection at Highway 7. As such, it will be necessary to transition Highway 407 from the rural median divided freeway to a 4 lane divided semi-urban freeway/high speed arterial. The cross section for the section between Brock Road and Highway 7 shall be designed to a 120 km/h design speed where possible, and shall include a 4 lane cross section divided by a 2 m raised median. However this section of Highway 407 shall be posted at 80 km/h. Details for this transition are included in the Ministry of Transportation's Conceptual Preliminary Design Report.

The conceptual preliminary design completed by the Ministry of Transportation has assumed that there will initially be an at grade intersection at Brock Road and not an interchange as originally provided for in the EA. This revision will require that a transition from a high speed freeway to a high speed arterial occur west of Urfe Creek. This change to the EA has been included in the Ministry of Transportation's Conceptual Preliminary Design Report, however it does not have the concurrence of any regulatory agency, and differs from original discussions that took place between the Ministry of Transportation and various agencies during the preparation of the Design Criteria and Concept Development Report identified in Schedule 17 to the Concession Agreement. The Concessionaire will be responsible for preparing a revised design and environmental mitigation/compensation plan for regulatory review and approval.

As noted in Section 2.6, Highway 7 shall be realigned between Locust Hill and Green River. The initial cross section for this highway shall be two lanes with standard shoulders and other cross section elements for a rural King's Highway with a design speed of 100 km/h. At the intersection of the new Highway 7 and Durham Road 30, the Concessionaire shall provide the necessary auxiliary lanes as indicated in the Conceptual Preliminary Design Report.

Details regarding the required cross section for other sideroads and interchanges are provided in the Conceptual Preliminary Design Report.

2.4 Pavement Structure

The Ministry of Transportation has provided soils information, as well as pavement and geotechnical designs in the Reference Documents. The Concessionaire is not obliged to use these pavement designs in the Work.

Steel slag shall not be used in the pavement structure anywhere within the Highway 407 Lands.

2.5 Drainage

The Work includes the drainage and hydrology design to accommodate the construction of Highway 407 East Partial. The Work is to be undertaken in accordance with the Highway 407 Drainage and Hydrology Guideline.

The Ministry of Transportation has completed a Preliminary Design Criteria and Concept Development for Highway 407 East Partial, from Markham Road to Highway 7 east of Brock Road (November 1998). The report and supporting appendices provide a comprehensive strategy

for the proposed stormwater quality, quantity and erosion treatment, as well as a preliminary strategy (type of structure and size) for the major watercourse crossings. The stormwater/drainage facilities to be built by the Concessionaire shall be in accordance with the strategy provided by the Grantor which is based on a basic 10 lane ultimate configuration, including the future transitway extension. If the Grantor does not build the transitway in accordance with the stormwater/drainage strategy provided to the Concessionaire, adjustments to existing stormwater/drainage facilities shall be the responsibility of the Grantor.

External stakeholder agencies (including regulating agencies) participated in the design criteria and concept development assignment. The external stakeholder groups concur/approve with a majority of the stormwater treatment and crossing strategies. The Concessionaire is responsible for securing all required regulatory agency approvals for its final stormwater management and watercourse crossing strategy including the detail design of the drainage infrastructure.

The Concessionaire shall undertake appropriate level of hydrologic/hydraulic modelling and drainage calculations for the detail design of the drainage elements.

2.6 Interchanges and Intersections

As provided in the Environmental Assessment Report and Conceptual Preliminary Design Report, the Concessionaire shall be responsible for the design and construction of interchanges at the following crossing roads:

- Markham Road
- Ninth Line (Partial)
- Durham Regional Road 30

At Ninth Line, the Concessionaire shall provide an interchange that will only permit moves to and from the north. However, the design and construction of Highway 407 East Partial shall ensure that all moves at the interchange can be provided at a future date.

The Conceptual Preliminary Design Report includes a design for the future Markham By-Pass interchange. The Concessionaire will design and construct an interchange at the Markham By-Pass not later than five years from the Effective Date, and immediately following the construction of the Markham By-Pass by the municipality. As part of the initial construction of Highway 407 East Partial, the Concessionaire shall ensure that the design and construction of the Work will permit the future construction of this interchange as provided in the Ministry of Transportation's Conceptual Preliminary Design Report.

The Environmental Assessment Report provides for an interchange at Brock Road. However, the Concessionaire shall provide an at-grade intersection at Brock Road. Details for this intersection design are included in the Conceptual Preliminary Design Report. Changes to the preliminary design to reflect this decision do not have the approval of the public or regulatory agencies. The Concessionaire must meet the requirements of the conditions of approval and the Environmental Assessment and obtain the approval of all interested parties and stakeholders.

The EA Report also identifies conceptual interchanges at North Road and Sideline 24. As part of the initial construction of Highway 407 East Partial, the Concessionaire shall design and construct North Road and Sideline 24 as underpasses (i.e. both roads go over Highway 407). The Concessionaire shall design and construct one interchange within five years of the Effective Date, and the second interchange between five and ten years from the Effective Date. The final location of these interchanges will be subject to negotiations and agreement between the Concessionaire, the local municipalities and affected stakeholders. The alignment for North Road and Sideline 24 shall be as indicated in the Conceptual Preliminary Design Report. The structures shall be designed in accordance with the requirements identified in the Conceptual Preliminary Design Report.

An interim termination of Highway 407 shall be provided at Highway 7 as identified in the Conceptual Preliminary Design Report and Environmental Assessment Report. The design and construction of the intersection shall be such that future expansion of the intersection to provide for westbound double left-turn lanes on Highway 7 westbound to Highway 407 westbound can be accommodated. Such provisions will include construction of the Highway 407 eastbound to Highway 7 eastbound channelized right turn lane, provisions for signals and illumination in the ultimate location. The Concessionaire shall undertake any stakeholder consultation necessary to obtain environmental approvals for any change from previously discussed options and the final design/mitigation measures/compensation.

The above noted termination will also require Highway 7 to be realigned to the south and the profile to be raised. Properties which currently gain access to Highway 7 within the limits of this realignment shall have access maintained onto the existing highway, with the existing highway being modified to connect to the realigned Highway 7. Beyond the limits necessary to maintain private access, the existing highway shall be barricaded, with appropriate signing provided.

At Brock Road, the Concessionaire shall provide an at-grade intersection, which provides for all moves including a northbound to westbound double-left turn lane. Details of the intersection design are included in the Conceptual Preliminary Design Report.

The Highway 7 realignment from Green River to Locust Hill will include the construction of a new intersection at Regional Road 30. Local residents in Green River are concerned with the construction of this intersection in close proximity to the community, and have requested that the intersection be relocated south and west of the community. As part of the Ministry of Transportation's conceptual preliminary design, alternatives for the relocation of the intersection were examined. However, no consultation has taken place with the public to determine a preferred alternative. The Concessionaire shall consider local concerns and the potential for relocation of the intersection, and realignment of sideroads.

South of Highway 407 at Regional Road 30, a similar realignment of Markham Concession Road 11 will be required.

Other intersections and ramp terminals, including traffic signal requirements, shall be designed and constructed in accordance with Ministry Safety Standards.

2.7 Roadside Safety

The Concessionaire shall ensure that the design and construction of Highway 407 East Partial and sideroads meet Ministry Safety Standards. At all locations where guide rail is warranted along the Highway 407 East Partial or associated interchanges, steel beam guide rail shall be the considered the minimum acceptable treatment.

Since Highway 407 East Partial will terminate at an at-grade intersection, it will be necessary to transition between a 4 lane divided freeway condition to a 4 lane divided high-speed arterial. With Brock Road being constructed as an at-grade intersection, the conceptual preliminary design completed by the Ministry of Transportation has provided this transition west of Brock Road. In addition to the safety initiatives included in the conceptual preliminary design, the Concessionaire shall employ innovative traffic measures and "human-factor" initiatives in the design and construction of this transition to alert drivers of this changing driving environment. The use of similar traffic safety measures will also be necessary to the termination of Highway 407 at Highway 7.

2.8 Structures

Within the limits of Highway 407 East Partial, the Concessionaire shall design and construct the following bridge structures:

- Markham Road Underpass
- Rouge River Crossing
- 9 th Line Underpass
- 10 th Line Overpass
- CPR Overhead
- Little Rouge Crossing
- Regional Road #30 Underpass
- West Duffin Creek Crossing
- West Duffin Creek Tributary Crossing
- North Road Underpass
- Sideline 24 Underpass
- Urfe Creek Crossing
- Brougham Creek Crossing
- Brock Road Underpass*

- * For the Brock Road underpass, the initial design shall be done in accordance with the Conceptual Preliminary Design Report which does not provide a structure, but an at grade intersection. However, the Concessionaire shall ensure that the design and construction of this intersection shall minimize the future costs of upgrading this intersection to either a full interchange or future underpass structure.

In this section, Overpass structure shall mean a bridge structure providing grade separation where the freeway is over the crossing road. Underpass structure shall mean a bridge structure

providing a grade separation where the freeway is under the crossing road. Overhead structure means a bridge structure providing a grade separation between a crossing road or freeway with a railway where the crossing road or freeway is over the railway. Subway structure means a bridge structure providing a grade separation where the freeway is under the crossing road. Overhead structure means a bridge structure providing a grade separation between a crossing road or freeway with a railway where the crossing road or freeway is under the railway.

The Preliminary General Arrangement drawings are included in the Highway 407 East Partial Conceptual Preliminary Design. The Concessionaire is not obliged to utilize the bridge designs provided by the Ministry of Transportation.

The Concessionaire shall also develop, design and build the concrete culvert structures as identified in the Reference Documents across the Highway 407 ultimate platform.

The Concessionaire shall design and build the structure(s) associated with embankment stabilization and protection for the steep cliff located at north side of Highway 407 to the east of the Rouge River Crossing and other structures associated with high fill or deep cut at various locations along Highway 407.

The Concessionaire shall design and construct all overhead sign structures required for traffic signing. This will include, but may not be limited to an overhead sign structure at the termination of Highway 407 at Highway 7, and in advance of the transition from the divided to undivided section of Highway 407 west of Brock Road. Overhead sign structures shall be designed such that they can be accommodated in the ultimate highway requirements.

For all underpass structures, the Concessionaire shall carry out discussion with the local municipalities for the inclusion of raised pedestrian sidewalk(s) on the bridge deck within the foreseeable future and provide raised sidewalk(s) as necessary or reserve the space for the future sidewalk(s). Any costs associated with installing sidewalks on the structures shall be negotiated between the Concessionaire and municipality.

The Concessionaire shall ensure that in addition to the requirements stated above, each structure barrier wall incorporates one 50mm and one 70mm spare duct and appropriate access points must also be provided to these ducts.

All overpass structures shall be designed to accommodate the ultimate lane requirements of the crossing roads according to the classification of crossing roads. All underpass structures shall be designed to the ultimate cross-section of Highway 407 East Partial. Railway overhead structures shall accommodate the clearance requirements of the railway authority. River crossings, have to satisfy the requirements from hydrology investigation and navigable requirements. The Concessionaire shall be responsible for the application and securing the approval of the permit(s) under *Navigable Waters Protection Act* and any other Environmental Laws.

2.9 Arterial Crossing Roads

Except as contemplated by the Concession Agreement, the Concessionaire will be responsible to

secure all municipal approvals and approvals from adjacent land owners required to carry out all construction on the arterial road crossings.

The arterial road crossings shall be designed and constructed in accordance with the existing design speed of the road. A summary of the design speeds for arterial roads is included in the Conceptual Preliminary Design Report.

As noted in the EA Report, an interim connection of Highway 407 East Partial is to be provided at Highway 7 immediately east of Brock Road. As such, the underpass structure identified in the EA report for Sideline 16 cannot be provided at this time. The Concessionaire shall provide a connection to Highway 407 as part of the design to allow for all moves at Sideline 16. The Concessionaire shall ensure that the tolling infrastructure that is installed will not result in tolling charges for any continuous travel on Sideline 16.

2.10 Illumination and Traffic Signals

All temporary and permanent illumination shall be provided in accordance with Ministry Safety Standards. The Highway 407 East Partial termination at Highway 7, Sideline 16 intersection, Brock Road, and all ramp intersections where signals are warranted shall be illuminated in accordance with Ministry Safety Standards.

The Concessionaire is responsible for designing, supplying and installing traffic signals at all intersections that meet traffic signal warrants, in accordance with Ministry Safety Standards. The control equipment shall be to the requirements of the road authority that will be assuming the future maintenance and operation of the traffic signal system.

The Concessionaire shall prepare and submit traffic signal layout drawings in accordance with the following:

- i. The Concessionaire prepares PHM-125 drawings and submits it to Ministry of Transportation Central Region Traffic Office for technical and legal approval. Once approved, the Central Region Traffic Office will submit the drawings to the road authority that will be assuming the future maintenance and operation of the traffic signal system for technical comments.
- ii. The road authority that will be assuming the future maintenance and operation of the traffic signal system is to test equipment, inspect installation, commission and take over maintenance upon activation.
- iii. The road authority that will be assuming the future maintenance and operation of the traffic signal system undertakes the timing for signals.
- iv. The road authority that will be assuming the future maintenance and operation of the traffic signal system maintains controller cabinet.
- v. Until activation of the traffic signal system, the Concessionaire is responsible for

the maintenance of the installation.

- vi. The Concessionaire supplies controller cabinets and co-ordinates the purchase of the controller cabinets in accordance to the requirements of the road authority that will be assuming the future maintenance and operation of the traffic signal system.

The obligations with respect to operation, maintenance and power consumption charges for traffic signal and illumination installations are outlined as follows:

1. Temporary Installations (traffic signal and illumination)

Where required, the Concessionaire will supply, install, maintain and remove (until permanent installation is activated) the temporary installation. Where the temporary installation replaces an existing installation, the costs of maintenance and power charges will remain with the authority having jurisdiction over the existing installation. Where the temporary installation is a new installation, not relocated "in kind", the costs of maintenance and power charges shall be paid by the Concessionaire.

2. Permanent Installations (traffic signal and illumination)

The Concessionaire will supply and install the permanent installation ready for activation. The installation will be energized for use as warranted with the permission and approval of the respective agency. Following activation of the installation, the respective agency will assume all responsibilities for the cost of operation, maintenance and power consumption of the installation.

2.11 Electrical

The replacement of power supply equipment and the lighting system shall be done to Ministry Safety Standards.

The electrical work consists primarily of illumination, traffic signals and permanent vehicle presence detectors. Temporary signals and detour illumination may be required as part of the electrical design Work depending upon the construction staging of the electrical work, design features and other parameters specified for the electrical work.

All electrical equipment shall be selected so that their installation/locations provide adequate safety for aircraft using the Buttonville airport. All electrical equipment shall not extend into the designated landing thresholds as determined by Transport Canada or their assigns.

All electrical work shall be performed in accordance with the Ministry Safety Standards.

Negotiations with different hydro authorities, municipalities and roadway authorities as appropriate shall be carried out with the view of:

- a) selecting suitable power supply equipment and their locations at the appropriate interchanges
- b) formulating a legal agreement with each hydro authority for the supply of electrical energy and for establishing the cost and billing arrangements for power consumed, and applicable engineering standards.
- c) determining the requirements for traffic signal interconnection, equipment, standards, material costs, etc.

Embedded electrical Work in the form of conduits, junction boxes and miscellaneous electrical fittings is required on both sides of each new structure and for installation of future underpass illumination equipment. Where required, pole bases shall be provided on applicable structures for future installation of lighting poles.

The Concessionaire shall conduct negotiations with the appropriate road authority charged with the responsibility for maintaining each traffic signal system in order to determine type of equipment, system operation, requirements for interconnection and traffic signal legal approval procedures, and build same.

The Concessionaire shall be responsible for the design, supply and installation and the electrical underground power distribution system for the Toll System. This electrical work shall include, but is not limited to the following: power supply systems, power supply cabinets, conduits, manholes, electrical junction boxes and power cables.

In addition to doing the electrical work, the Concessionaire shall be responsible for the design, supply and installation of the civil Work necessary

2.12 Signing and Pavement Markings

The Concessionaire will be responsible for sign layouts, designing, manufacturing and installing all signs, including but not limited to: regulatory, warning, hazard, information, temporary, advance, toll highway signs, trail blazer, name of crossing roads, 500 metre, and snow plow markers, and supporting frames in accordance with Ministry Safety Standards.

The Concessionaire will be responsible for the supply, placement, inspection and maintenance of all signage (including crossing roads).

For the purpose of this Schedule, the term signs and markers includes the necessary supporting frame structures or supporting poles. All walkways on overhead sign frames shall cover the ultimate width of the roadway.

For any signage on intersecting highways and municipal facilities, the Concessionaire will be responsible for obtaining Approval for sign layout and location from the applicable authority, such as Ministry of Transportation and municipalities.

The Concessionaire shall supply all necessary Temporary Advance Information Signs (TC-64's). These signs shall be installed a minimum of seven calendar days and a maximum of fourteen

calendar days prior to any lane reductions or closures. All 'TC-64' shall conform to the guidelines specified in the MUTCD and "Central Region Freeway Detour Signing" booklet (January 1994). Guidelines for the standard of reflectorization, size and fonts can be obtained from these manuals.

An overhead sign structure will be required at the transition from the freeway design to a high speed arterial road west of Brock Road and at the termination of Highway 407 at Highway 7. Additional overhead signing that may be required as a result of visibility and safety issues shall also be provided.

Signing Considerations

In addition to Ministry Safety Standards for highway signing identified in Schedule 20, the following highway signing guidelines are to be provided:

- 1) In cases of unusual lane or ramp configurations, priority must be placed on conveying the message on the guide sign to ensure an optimal safe operation of Highway 407 East Partial. Attention shall be given to areas of anticipated weaving within a decision making zone (i.e. drivers wishing to exit within an entrance ramp with considerable volume).
- 2) The location of the overhead guide signs takes precedence over the location of the tolling gantries. In instances where communication restrictions dictate placement of the gantry system within the immediate vicinity of an overhead guide sign, enhanced guide signing is required.
- 3) In cases where visibility of a guide sign is reduced by a bridge structure, consideration must be given to enhanced signing (i.e. diagrammatic signs). Every effort should be made to ensure maximum sight distance of the guide sign especially in instances of unusual lane arrangement, geometric conditions, or heavy weaving volumes.
- 4) The current G.f-4/G.f-104 standard within the Kings Highway Guide Signing Policy Manual (KHGSPM) is no longer used by Ministry of Transportation - Central Region. Layout details for these signs can be obtained from the Ministry of Transportation Central Region Traffic Management Office.
- 5) Careful consideration must be given to the use of chevron (Wa-9) and "diamond reflector" delineation signing. Wa-9 should be installed on highway exit ramps where the combination of multiple changes in horizontal alignment, vertical alignment, and super-elevation causes a loss in driver perception of the horizon. Chevrons shall be used at all inner loop ramps.
- 6) Concessionaire shall install all M lane designation signs (Rb-41 through Rb-47) on all ramps to assist the driver in choosing the correct lane to minimize weaving at the terminus of the ramp.
- 7) Wa-132 must be used on freeway to freeway ramp lane drops instead of Wa-32.
- 8) All crash cushion attenuator devices and end treatments require hazard markers.

- 9) Combining overhead guide signs with ground mounted guide signs for a given sequence of turn off signs, is an unacceptable practice. The sign designer must select either all guide signs within a single turn off sequence to be mounted overhead or on the ground depending on the criteria of the KHGSPM.
- 10) Wb-102 signal ahead signs are required on all signalized freeway exit ramps.
- 11) G.r-12 advance turn off signs must include an advance turn arrow instead of a straight arrow as shown in the KHGSPM.
- 12) Placement of all new signs on crossing highways must consider maintaining visibility of existing signs. Placement of any new signs must consider any existing object such as a light pole, signal pole, trees, and bridge parapet wall.
- 13) All new 407 signs on crossing facilities must be fully covered with a completely opaque tarp until Highway 407 East Partial is opened. Blocking parts of the sign with partial tarps or tabs is unacceptable.
- 14) All low speed freeway to freeway ramps will require enhanced advisory signing (i.e. for low speed inner loop ramps).
- 15) Advisory speed limits should be determined utilizing "Ball-Bank" testing.
- 16) Destinations have been used on several freeways when the geographic directions conflict with official route designations. Official destination(s) should be selected by the Ministry of Transportation Traffic Office and guide signs should either include the destination or at least include provisions for a future destination.

3. TRAFFIC MANAGEMENT

The Concessionaire shall be responsible for traffic safety and management during field work and construction of the Work and during the installation and testing of toll equipment. The Work includes the management of traffic during construction with minimal impacts on the traveling public. In addition to the requirements set out in this section, the following minimum requirements are to be implemented during the Work:

- a. Traffic may not be staged on a granular surface at any time during construction. Where construction operations necessitate the working area be less than 4m from the traffic, the Concessionaire shall erect barriers or delineators along the edge of the traveled lane. In no case shall the distance between traffic and working areas be less than 1.5m unless protected by temporary concrete barriers and delineators.
- b. The Concessionaire shall schedule the Work so that there will be no open excavation adjacent to a lane carrying traffic overnight and on non-working days, except where

protected by temporary concrete barriers. Excavations within 4m of lanes carrying traffic shall be backfilled with the final granular and/or asphalt material up to profile grade and compacted prior to closing down operations.

- c. Materials and equipment shall not be stored within 4m of the travelled portion of any roadway. The Concessionaire shall seek approval from the respective municipal authorities for traffic management plans associated with Work on municipal roads, from Ministry of Transportation for associated Work on Ministry of Transportation roads.
- d. Where the Concessionaire must work adjacent to traveled lanes on a freeway, the Concessionaire must maintain a minimum lane width of 3.4m with a 1.0m paved shoulder where no parallel run of barrier exists, or a 0.5m shoulder where a parallel run of barrier is used. All operations, with the exception of final paving, must take place behind temporary concrete barrier.

The Concessionaire shall seek approval from the respective municipal authorities for traffic management plans associated with Work on municipal roads, and from the Ministry of Transportation for associated Work on Ministry of Transportation roads.

Traffic management shall be in accordance with Ministry Safety Standards.

Regarding the approval of speed reductions, the Ministry of Transportation is responsible for approving legal speed reductions on King's Highways. The appropriate municipality, through changes to its by-laws, is responsible for approving legal speed reductions on municipal roads. The Concessionaire is responsible for applying for, and obtaining all approvals.

Permitted Time for Lane Closures (Highway 7)

Traffic lanes may be closed for construction only during the following times:

of existing lanes 1 per direction Direction: eastbound and westbound

Lane Closure	Monday or a Day Following a Holiday	Tuesday to Thursday Except on Days Following and Preceding Holidays	Friday or a Day Preceding a Holiday	Saturday	Sunday
One Lane Closure	00:00-06:00 09:00-15:00 19:00-23:59	00:00-06:00 09:00-15:00 19:00-23:59	00:00-06:00 09:00-15:00 19:00-23:59	00:00-23:59	00:00-15:00 18:00-23:59

Two Lane Closure	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
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4. PROPERTY

As part of the design Work, the Concessionaire will be responsible for ensuring that designs minimize land locking and the severing of Crown land or private property.

The Concessionaire is responsible to provide and install full chain link fencing on both sides of the Highway 407 East Partial. All fences within and bordering the Highway 407 Lands are the responsibility of the Concessionaire.

At the Core Agency Review meeting of April 15th, 1998, 2 alternatives were developed for the West Duffins Creek crossing. As agreed between the Ministry of Transportation and review agencies, both of these alternatives (EAR-2 and Alternative R-4) would be carried forward to the next phase in design. It is the responsibility of the Concessionaire to negotiate the final alternative for this structure with the agencies and public, and reach a mutually acceptable alternative. If Alternative R-4 eventually becomes the preferred alternative, the Grantor will have to terminate its leases with several of the property owners. This termination will require approximately 12 months to complete. As such, the Concessionaire must include adequate time in its schedule to accommodate these lease terminations.

In addition to the area noted above, if during the course of the Concessionaire's design and construction, it is determine that additional property is required on leased lands owned by ORC, it is expected that termination of the lease will require 12 months.

Any failure by the Grantor to provide vacant possession of any portion of the Highway 407 Lands within the time provided in the Highway 407 Lands Availability Schedule which has a material effect on the timing of the performance of the Work shall, notwithstanding anything contained in the Concession Agreement, be deemed to constitute a Delay Event

5. ENVIRONMENTAL REQUIREMENTS

The Concessionaire shall be responsible to meet any outstanding obligation as the "proponent" as defined under the *Environmental Assessment Act* (the "EA Act") and for complying with all of the conditions under any EA Approval, and, to the extent required, under any other applicable provincial and federal environmental legislation.

In undertaking the Work, the Concessionaire shall, to the extent required, address any environmental requirements including: environmental inventory, assessment of impacts, public consultation, design of mitigation, preparing and submitting design and construction reports and other environmental documentation, obtaining of environmental approvals, provision of formal environmental clearance/approvals, provision of mitigation, full compliance with the conditions of

the EA Approval, monitoring and other environmental services. Complying with the conditions of the EA Approval does not preclude more restrictive or additional conditions or requirements being imposed under other statutes.

The Concessionaire will be responsible for completing any additional submissions, addenda or other work, regardless of who completed previous work and submissions. Consultation and preliminary design has been undertaken with respect to specific environmental issues with stakeholders. The commitments made by the Ministry of Transportation shall be complied by the Concessionaire when undertaking this project unless these commitments are modified through approvals, amendments to approvals or additional consultation with stakeholders. These commitments are contained in the EA Approval, the EA report and preliminary design work. The Ministry of Transportation has not obtained environmental approvals under any statute other than the *EA Act*. The consultations and design work stated in the draft preliminary design work have not been completed or approved. The Concessionaire shall consult as required by any conditions of the EA Approval, or otherwise, in undertaking the Work. Any uncompleted negotiations and discussions to date do not preclude any additional requirements that may be necessary to obtain any required further approvals.

When the Concessionaire is required to undertake the assessment and evaluation of environmental impacts, the Concessionaire shall, in such assessment and evaluation, consider, among others, the following factors:

- sensitivities identified;
- significance of expected condition changes/effects, level of effects, duration and certainty of effects;
- degree to which condition changes/effects can be mitigated (based on previous and concurrent experience); and
- degree of mitigation incorporated in the generation of alternatives.

The Concessionaire shall consider utilizing a wide range of environmental protection measures to address potential environmental impacts identified as described above. Although site specifics have the greatest influence on the selection of environmental measures, the approaches to environmental protection can be generally categorized in order of decreasing preference, as follows:

- avoidance/prevention;
- control/mitigation (reducing the severity of environmental impacts);
- compensation (provision of "equivalent" or countervailing environmental features);
- enhancement (improvement over previous environmental conditions); and
- combinations of the above.

The Concessionaire shall address environmental protection with respect to the following aspects, among others, of planning, design and construction:

- generation and assessment of alternatives;
- evaluation and selection of preferred alternatives; and

- development of the plan/design/approach.

For environmental protection with respect to planning, design and construction the Concessionaire shall undertake, among others, the following activities:

- identification of environmental constraints;
- identification of environmental deficiencies;
- identification of environmental protection strategies;
- identification of environmental design elements;
- identification of environmental mitigation; and
- identification of environmental construction/maintenance constraints.

SCHEDULE 5

Description of Highway 407 Central

Highway 407 Central

1. General

Highway 407 Central is the portion of Highway 407 built from Highway 403 in Oakville (Oakville Link Interchange) to Highway 48 in Markham (Markham Road). It is approximately 69 km in length.

2. Completed Works

Highway 407 is constructed and is open to traffic between the Oakville Link Interchange and McCowan Road. Constructed works are described in the as-constructed record drawings listed under section 3.2.1.8 of the Sale Data Room Catalogue of Available Documents.

3. Highway 407 Central Deferred Interchanges to be Completed

The Highway 407 Central Deferred Interchanges to be completed are described below.

The following items are covered for each of the interchanges:

- the originally planned layouts;
- the components of the interchanges which were deferred; and
- the construction which will be required to complete all of the movements at the interchanges.

a) *Britannia Road*

A full Parclo-A4 interchange was planned at Britannia Road.

All of the six interchange ramps were deferred. The Britannia Road overpass over Highway 407 has been constructed.

To complete the balance of the interchange it will be necessary to construct Ramp S-E,W, Ramp N-E,W, Ramp E-S, Ramp E-N, Ramp W-S, Ramp W-N. The structure may have to be widened.

b) *Mavis Road*

A full Parclo-A4 interchange was planned at Mavis Road.

The complete interchange was deferred as the municipalities had not completed the connecting sections of Mavis Road. During the construction of Highway 407 it was decided to construct a partial interchange with east facing ramps as Peel Region and the City of Mississauga were completing Mavis Road on the approaches to Highway 407.

To complete the balance of the interchange it will be necessary to construct Ramp S-W, Ramp N-W, Ramp N-E and Ramp W-N,S. The structure will have to be widened. There may be some utilities involved as the interchange ramps cross the Utility Corridor and the Ontario Hydro Corridor south of Highway 407.

c) *Kipling Avenue*

A full Parclo-A4 interchange was planned at Kipling Avenue.

The complete interchange was deferred. There was no construction of ramps, the overpass or the realigned arterial.

To construct the interchange it will be necessary to construct Ramp S-W, Ramp S-E, Ramp N-W, Ramp N-E, Ramp W-N,S, Ramp E-N,S, Kipling Avenue, realignment of local streets, the Kipling Avenue/Highway 407 structure and the Kipling Avenue/CNR Structure.

d) *Centre Street*

The interchange complex planned at Centre Street included an underpass for Highway 407 over Centre Street; west facing ramps at Centre Street; ramps extending from Dufferin Street to provide a set of west facing ramps at Highway 407; and two grade separations carrying Ramp Dufferin S-407S over Dufferin Street and Highway 407.

An underpass was constructed at Centre Street but the west facing ramps were deferred.

To complete the interchange, it will be necessary to construct Ramp 407W-CentreE; Ramp CentreE-407W; Ramp 407W-DufferinS; Ramp DufferinS-407W including a continuous auxiliary lane on Highway 407 westbound to the Keele Street off ramp; a structure for Ramp DufferinS-407W over Dufferin Street; a structure for Ramp DufferinS-407W over Highway 407, widening of the Highway 407/West Don River structure and widening of the Highway 407/Centre structure.

e) *Woodbine Avenue*

A full Parclo-A4 interchange was planned at Woodbine Avenue. Due to the proximity of the Highway 407/404 interchange, the west facing ramps would have crossed the east facing ramps from Highway 404 so a basketweave arrangement was planned.

The west facing Woodbine Avenue ramps were deferred but the east facing ramps and a six-lane overpass for Woodbine Avenue over Highway 407 were constructed.

To complete the balance of the Woodbine Avenue interchange it will be necessary to construct Ramp WoodbineN-407W; Ramp WoodbineS-407W; Ramp WoodbineN,S-407W; realigned Ramps 407E-404N and 407E-404S; Ramp 407W-WoodbineN,S; the basketweave structure for Ramp N,S-W over Ramp 407E-404N,S and the basketweave structure for Ramp 407W-WoodbineN,S over Ramp 404N,S-407E.

The initial Ramps 407E-404N and 407E-404S have been built in a temporary location so the basketweave bridge for Ramp WoodbineN,S-407W can be built without affecting traffic. Staging of traffic can be accommodated by constructing the ultimate Ramps 407E-404N and 407E-404S over the basketweave followed by Ramp WoodbineN,S-407W.

(f) *Kennedy Road*

A full Parclo-A4 interchange was planned at Kennedy Road with an underpass for Highway 407 over Kennedy Road.

The east facing Kennedy Road ramps were deferred. The west facing ramps were constructed and a structure carrying Kennedy Road over Highway 407 was constructed.

To complete the balance of the interchange it will be necessary to construct Ramp S-E; Ramp E-N,S; Ramp N-E including the widening of Kennedy Road.

g) *McCowan Road*

A full Parclo-A4 interchange was planned at McCowan Road.

The east facing McCowan Road ramps were deferred. The west facing ramps and the McCowan Road structure over Highway 407 were constructed.

To complete the balance of the interchange it will be necessary to construct Ramp S-E; Ramp E-N,S; Ramp N-E including the widening of McCowan Road and the McCowan/ Highway 407 structure.

SCHEDULE 4

Delivery Plan

1. Highway 407 Central Deferred Interchanges	(a) Required Commencement of Construction Date — As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
	(b) Required Commissioned and Opened Date – December 31, 2001
	(c) Required Total Completion Date – December 31, 2001
2. Highway 407 West	(a) Required commencement of Construction – As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
	(b) Required Commissioned and Opened Date – July 31, 2001
	(c) Required Total Completion Date – December 31, 2001
3. Highway 407 East Partial	(a) Required commencement of Construction – As soon as possible following the completion of the purchase and sale of the shares of OTCC and receipt of all Governmental Authorizations required for such Commencement of Construction
	(b) Required Commissioned and Opened Date – December 31, 2001
	(c) Required Total Completion Date – July 31, 2002

SCHEDULE 3

CORRIDOR MANAGEMENT PROTOCOL

1. Definitions
- 2.

Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule the following terms have the following meanings:

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement between the Crown in Right of Ontario as represented by the Minister without Portfolio with Responsibility for Privatization and Ontario Transportation Capital Corporation pursuant to which the Concessionaire is granted a concession to operate Highway 407.

"Corridor Management Policies" means the policies, procedures and standards of the Ministry relating to the Management of the Corridor Lands including the Corridor Control and Permit Procedures Manual (available from Ronan House Publications), and Ministry Directive B101; LOGOS, TODS and Landscape Advertising Policies and Procedures; and the King's Highway Guide Signing Policy Manual (all available in the sales data room), as the same may be changed and amended from time to time.

"Field Advertising Signs" means billboards or other advertising devices, located on or adjacent to the Right of Way, but does not include regulatory or warning signs, highway guidance signs, location signs, TOD signs, LOGO signs, Special Event Signs, Municipal Identification Landscape Displays or Landscape Advertising Displays.

"Landscape Advertising Displays" means floral or landscape displays located inside the Right of Way, designed to attract the attention of motorists for the purpose of providing information.

"Location Signs" means signs identifying a business or service located on the same property as the sign but does not include regulatory or warning signs, highway guidance signs, Field Advertising Signs, TOD signs, LOGO signs, Special Event Signs, Municipal Identification Landscape Displays or Landscape Advertising Displays.

"LOGO Signs" means signs designed to provide directional information to drivers to food, fuel and accommodation establishments, accessible via intersecting roads at the interchange, provided such signs meet the Ministry's requirements under the program established in 1998, known as the LOGOS Program.

"Management" means development, planning, design, construction, operation, maintenance and rehabilitation and "Manage" has a corresponding meaning.

"Minister" means the Minister of Transportation for Ontario.

“Ministry” means the Ministry of Transportation of Ontario

“Municipal Highway” means a highway owned by a municipality or a regional municipality.

“Municipal Identification Landscape Displays” means floral or landscape displays located inside the Right of Way, designed to attract the attention of motorists for the purpose of identifying a municipality.

“O/O Permits” means permits issued by the Ministry regulating oversize/overweight vehicles.

“OSCLIS” means the Ontario Structures Clearance and Load Information System.

“Provincial Highway” means a highway owned by the Province.

“Right of Way” means the Highway 407 Lands.

“Special Event Signs” means signs erected for short duration special events which are endorsed by the municipality in which the event is occurring.

“TOD Signs” means tourism oriented destination signs located on the Right of Way in the vicinity of intersections and interchanges, designed to provide information which directs drivers to tourist attractions provided that such signs meet Provincial requirements under the program established in 1997, known as the TODS Program.

“Utility” means a publicly or privately owned structure, facility or conduit designed to convey or relay telephone calls, radio signals, electrical power, liquid or gaseous fuels, drinking water, storm water, sewage, television signals, communications cable or other signals or physical materials.

2. Other Definitions

Capitalized terms used in this Schedule but not defined herein shall have the meaning ascribed to them in the Concession Agreement.

3. General

The Grantor shall be responsible for the administration of Corridor Management Policies with respect to lands that are outside the Right of Way. The Concessionaire shall be responsible for the Management of the Right of Way.

4. Grantor Responsibilities for Corridor Management

The Grantor shall continue to enforce Provincial requirements with respect to Management activities relating to the Corridor Lands.

(i) Land Development Adjacent to the Right of Way.

Notwithstanding the lease of the Right of Way to the Concessionaire, the Grantor shall continue to be responsible for Management activities outside the Right of Way including:

Comments on Official Plans
Comments on Official Plan Amendments including Secondary Plans
Comments on Plans of Subdivision, and satisfying of conditions of draft approval
Site Plan agreements
Review of drainage plans
Review of traffic plans
Zoning amendments
Building and Land Use Permits
Entrance Permits (if applicable)

The Grantor shall continue to review planning applications with respect to interests of the Province to the extent it deems appropriate. The Grantor may circulate the planning applications to the Concessionaire for comment. The Concessionaire shall rely on its own review of these matters with respect to its interests. Nothing in this Section shall prohibit the Concessionaire from making written submissions or oral representations or otherwise intervening in the planning process. If the Concessionaire is not satisfied with any decision respecting any of the above matters, it may pursue the matter as provided by Laws and Regulations.

5. Concessionaire Responsibilities for Corridor Management

(i) Compliance with Corridor Management Policies

Subject to the requirements of this Schedule, the Concessionaire shall in carrying out its responsibilities relating to the Management of Highway 407, comply with Corridor Management Policies. The Concessionaire shall comply with such Corridor Management Policies only if they apply to Comparable Controlled Access Highways operated by the Grantor. The Grantor shall not be responsible for compensation to the Concessionaire when Corridor Management Policies change from time to time, even if such changes impact the Concessionaire's costs and revenues.

(ii) Utilities on the Right of Way

The Concessionaire shall not install or permit installation of any linear gas and oil pipelines, on the Right of Way.

Where a Utility needs to cross over or under the Right of Way, it shall be permitted to cross at a location mutually acceptable to the Utility and the Concessionaire. The Grantor shall delegate to the Concessionaire the right to negotiate or otherwise deal with any Utility with respect to any Utility crossing of Highway 407. Pursuant to such delegation, the Concessionaire may seek from the Utility any compensation available at law for any Losses resulting from such Utility crossing. The Concessionaire may charge the Utility its reasonable costs of administration for issuing permits to allow such crossing.

Where any land within the Parkway Belt Plan, also known as the Parkway Belt West Plan, referred to in Section 22 of the *Ontario Planning and Development Act, 1994* parallels Highway 407, linear Utilities must be located in the utility corridor within the Parkway Belt Plan and not on the Right of Way, except for the purposes of crossing the Right of Way.

Where land within the Parkway Belt Plan does not parallel Highway 407, the Concessionaire may permit Utilities other than gas or oil pipelines on the Right of Way. In such cases, in carrying out its responsibilities, the Concessionaire shall be governed by Corridor Management Policies as they apply to Comparable Controlled Access Highways.

(iii) Field Advertising Signs, Location Signs and Landscape Displays on the Right of Way

Field Advertising Signs and Location Signs, including those owned by the Concessionaire, shall be managed in accordance with Corridor Management Policies which at present do not permit Field Advertising Signs or Location Signs on the Right of Way. Location Signs are permitted outside the Right of Way, but only in accordance with Corridor Management Policies. The Concessionaire shall promptly remove any Field Advertising Signs or Location Signs installed on the Right of Way. The Concessionaire shall advise the Grantor of any Field Advertising or new Location Signs outside the Right of Way of which the Concessionaire becomes aware.

The Concessionaire shall participate in the TOD and LOGO Sign Programs and shall permit TOD and LOGO Signs on Highway 407 in accordance with the policies and procedures established by the Ministry. The rates charged by the Concessionaire for TOD and LOGO Signs on Highway 407 shall be the same as those charged by the Ministry on Comparable Controlled Access Highways.

The Concessionaire may permit Landscape Advertising Displays and Municipal Identification Landscape Displays on the Right of Way, in accordance with Corridor Management Policies. The Concessionaire may charge fees in its discretion for Landscape Advertising Displays and Municipal Identification Landscape Displays. The Grantor shall continue to be responsible for issuing commercial sign permits outside the Right of Way.

The Concessionaire shall issue permits for Special Event Signs on the Right of Way, in accordance with Ministry Corridor Management Policies.

(iv) Comments on Municipal Action or Works

The Concessionaire may take part in any planning and approval process with respect to applications that may impact on Highway 407. In the event that the Concessionaire disputes the approval of an application or any other decision of an approving authority, the Concessionaire may negotiate directly with such approving authority. If the Concessionaire is not satisfied with any decision respecting any of the above matters, it may pursue the matter as provided by Laws and Regulations.

6. Air and Sub-Surface Rights and Transitway

The Grantor shall retain possession of air and sub-surface rights over and under the Right of Way and the Grantor reserves the right to cross and use the Right of Way with a transitway in the future at no cost to the Grantor in accordance with section 2.12 of the Concession Agreement. In the exercise of the Grantor's air and subsurface rights over and under Highway 407 the Grantor shall use its commercially reasonable efforts to minimize physical disruption to the operation of Highway 407 including disruption of tolling and communications systems, or physical damage to the Project. The Grantor shall compensate the Concessionaire only for its Losses directly relating to the Project resulting from any physical and tolling and communications systems disruption. No exercise of the air and subsurface rights over and under Highway 407 shall be exercised in such a manner as to prevent or materially impede the operation of Highway 407 or the Expansion or Extension of Highway 407 as is permitted by Section 9.1 of the Concession Agreement.

7. Corridor Management Audits

The Concessionaire shall be required to document and retain records of its activities relating to Corridor Management Policies for six (6) years.

On or before January 31 of each year of the Term, the Concessionaire shall retain the services of an independent firm of chartered accountants to review the Concessionaire's compliance with Corridor Management Policies. Such accounting firm shall prepare a report documenting any instances of non-compliance with Corridor Management Policies and forward a copy of the report to the Concessionaire and to the Grantor by March 31 of each year. By April 30 of each year, the Concessionaire shall prepare and forward a copy of a workplan to the Grantor detailing measures it shall take to correct any non-compliance, including the removal of non-conforming Utilities, signs or displays on the Right of Way and the time periods for such corrective action. The Grantor shall review and discuss the workplan with the Concessionaire and may require changes to the workplan if necessary.

If non-compliance with Corridor Management Policies is found, the Grantor may give notice to the Concessionaire requiring the Concessionaire to correct such non-compliance within ninety (90) days. If the Concessionaire does not correct the non-compliance and comply with the modified workplan within the specified period, the Grantor may, until all instances of non-compliance have been corrected, assume all or part of the Concessionaire's Management responsibilities relating to corridor management of the Highway 407 Lands, correct any non-compliance and bill the Concessionaire for any net costs and expenses including an administration fee of fifteen (15%) per cent.

8. Oversize/Overweight Vehicle Permits

The Ministry shall issue O/O Permits for Highway 407, in accordance with the requirements in that regard which apply to comparable Controlled Access Highways. The only difference in the normal Ministry routine for issuing O/O Permits will be the requirement for the Ministry to obtain and consider the advice and information of the Concessionaire when Highway 407 forms part of a route for which an O/O Permit is being sought.

9. Grantor Responsibility

In connection with the issuing of O/O Permits the Grantor shall be responsible for the following:

- including the Concessionaire in a review of any O/O Permit application which includes Highway 407 as a portion of the route;
- carrying out the review of the proposed route from the standpoint of lateral and vertical clearances (including bridges, overhead sign trusses, toll gantries and any other structures over Highway 407) and loads;
- when an application for an O/O Permit includes a proposed load of 120,000 kg or more, the Grantor shall require the applicant to retain a consulting structural engineer to do detailed analysis of structures on the proposed route. The Grantor shall provide a copy of the consultant's report to the Concessionaire and shall review and discuss the report with the Concessionaire with respect to Highway 407 bridges. The Grantor shall advise the Concessionaire with respect to its decision regarding the application for such O/O Permit;
- the Grantor shall provide to the Concessionaire a copy of each permit issued that includes Highway 407 as part of its route as soon as such permit is issued.

10. Concessionaire Responsibility

In connection with the issuing of O/O Permits the Concessionaire shall be responsible for the following:

- providing information (lateral and vertical clearances and other structural characteristics) to OSCLIS and keeping such information up-to-date at all times; at the same time, informing the Ministry Weight and Load Engineer of updates to OSCLIS;
- providing advice and information to the Grantor, upon request, concerning appropriate times, locations or other conditions that should be considered for O/O Permit moves;
- reporting to the Grantor any obvious non-compliance with conditions of O/O Permits by the holders of such O/O Permits; and
- supplying required structural drawings and data to an applicant's consultant with respect to O/O Permit applications that include a proposed load of one hundred and twenty thousand (120,000) kilograms or more.

11. Collection of Fees

Permit fees collected by the Grantor for O/O Permits shall be retained by the Grantor. In return for the fees retained, the Grantor shall provide administration and services relating to O/O Permits.

12. Utility Dispute Resolution

With respect to any unresolved dispute over costs of administration pursuant to section 5(ii) with a Utility the Concessionaire shall, by notice, offer the Utility the opportunity to use a form of alternative dispute resolution, such as mediation, binding or non-binding arbitration or the dispute resolution provisions of the Concession Agreement. If within thirty (30) days of receipt of the Concessionaire's notice the Utility has not indicated that it agrees to use such alternate dispute resolution, then any party to the dispute may use any other alternative permitted by Laws and Regulations, including an application to a court.

13. Concessionaire Dispute Resolution

The Concessionaire shall accept and shall have no recourse to contest the reasonableness, appropriateness or content of any Corridor Management Policy; however, other disputes shall be resolved in accordance with the provisions of Article 25 of the Concession Agreement.

SCHEDULE 9

Description of Highway 407 West

1. CURRENT STATUS OF HIGHWAY 407 WEST

Figure 2 depicts Highway 407 West. The Ministry of Transportation has initiated and/or completed a significant amount of engineering and construction Work on Highway 407 West. Figures 3, 4 and 5 of Schedule 16 to the Concession Agreement depict the status of the Work.

Highway 407 West between the Freeman Interchange and the Oakville Link Interchange was originally planned as Highway 403. This Highway 403 designation appears on numerous plans, reports and documentation. The Highway 403 designation between these limits should be interpreted to be Highway 407 West.

1.1 Environmental Assessment Status

The section of Highway 407 West, east of Highway 5, is part of the Parkway Belt West and as such was included in the *Environmental Assessment Act* exemption order covering activities in the Parkway Belt (M. TE1-3). The development of the corridor from Highway 5 easterly to the Oakville Link Interchange has been exempted from the full application of the *Environmental Assessment Act* through an EA Exemption under Order-in-Council No. 2487/80 (MTC Exemption 21/2), and Order-in-Council No. 2865/83 (MTC Exemption 52) , as listed in Schedule 17 to the Concession Agreement.

The section of Highway 407 West between the QEW and Highway 5 is outside of the Parkway Belt and was exempted from the full application of the *Environmental Assessment Act* through an EA Exemption under Order-in-Council No. 3002/81 (Ontario Regulation 736/81 MTC Exemption 47) dated October 23, 1981.

The above exemptions under the *Environmental Assessment Act* are collectively referred to as the ("EA Exemptions")

Ministry of Transportation compliance to date with the conditions of exemption regarding environmental status statements has been through the following submissions:

1. "Preliminary Design Report Highway 403 from Freeman Interchange to Highway 403, Oakville Link, May 1984", covering planning and preliminary design and related environmental issues; and
2. design and construction reports, covering detailed design and construction and related environmental issues of the Crown Completed Designs, identified as listed in Schedule 17.

1.2 Status of Crown Completed Designs

A Preliminary Design Report was produced in July 1983 (addendum May 1984) for Highway 403 between the Freeman Interchange and the Oakville Link Interchange. The report recommended the construction of a new controlled access highway connecting the Freeman Interchange to the Oakville Link Interchange. The report also outlines the project location and rationale, background information, environmental assessment process, existing and future conditions, alternatives and evaluation, environmental effects and mitigation, design proposals, traffic requirements, preliminary property requirements and utilities at a preliminary level of detail. The report includes preliminary design plates of the plan and profile at a scale of 1:5000.

A Pre-Design study was completed in 1985 which details information necessary to proceed into detail design and contract preparation. The Pre-Design study was based on a rural 16m median cross section. The Pre-Design study includes 1:1000 roll plans and profiles and geometry data sheets.

The Ministry of Transportation has undertaken three detail designs (the "Crown Completed Designs") under the following work projects:

- W.P. 199-77-06 Roadway and structures between Q.E.W. and Highway 5
- W.P. 410-85-00 Structures between Walker's Line and Highway 25
- W.P. 406-85-00 Structures between Sixteen Mile Ck. and Trafalgar Road (not including Neyagawa Blvd.)

The Crown Completed Designs were undertaken a number of years ago and will require updating. Note that the latest revisions have not been incorporated into the final documents and therefore these documents should not be considered complete packages. The available documents for the three Crown Completed Designs, are identified in Schedule 17. The Crown Completed Designs will require modifications to satisfy current Ministry Safety Standards.

The preparation and development of the Crown Completed Designs included discussion and negotiation of the designs with commenting and approving agencies. Approval/agreement of the design was based on conditions documented in the design. The approvals may include expiry dates or limitations such as those under the *Navigable Waters Protection Act*. Other conditions include environmental mitigation measures and utility relocation agreements. The Concessionaire will be responsible to either confirm and meet these conditions, and/or renegotiate the conditions of approval with the respective agencies as required. The Concessionaire will also be responsible for actual costs/conditions incurred as a result of their negotiations with these agencies, regardless of the costs/conditions identified in previous negotiations between the Ministry of Transportation and the agencies.

1.3 Status of Crown Completed Facilities

Construction of the Brant Street, Guelph Line and Highway 5 structures over Highway 407 West

have been completed.

Ministry Contract 93-89 is completed at the Freeman Interchange. This work included construction of the Highway 407 West ramp structures at the interchange. Not included in this work are three structures over the North Service Road and the N-W, W-N and N-S ramp connections (part of W.P. 199-77-06 design), which shall be part of Highway 407 West.

A number of ramps and structures have already been constructed at the Oakville Link Interchange. The Highway 407 Central contract included construction of the Ninth Line and the ramps and structures that connect the Highway 407 Central section to existing Highway 403.

The Crown Completed Facilities are those facilities for which construction has been completed as depicted in Figures 3,4 and 5 of Schedule 16 to the Concession Agreement and shown in Table 1 appended to this Schedule 9.

1.4 Changes to Highway 407 West plans, designs, reports and documents

The previously generated plans, designs, reports, documents and construction for Highway 407 West have been changed as noted below and listed in Schedule 17.

- The Oakville Link Interchange as identified in the Preliminary Design Report and Pre-Design study has been re-configured to maintain mainline continuity of Highway 407. The Highway 407 Central contract incorporated these changes. The Concessionaire will be required to design and build the interchange to this new configuration.
- In order to provide enhanced motorist safety, the Concessionaire shall design and build Highway 407 West using an urban cross section with a centre tall wall concrete median barrier and storm sewers. The tall wall concrete median shall include appropriate ducts and junction boxes to accommodate future high mast lighting. It is noted that the Crown Completed Designs and Crown Completed Facilities will require modification to incorporate the urban median.
- The Concessionaire will be required to install tall wall concrete median barrier in the curve section of Highway 407 at the Oakville Link Interchange. The tall wall concrete median barrier shall be offset to maximize stopping sight distance around the curve, as described in the "Highway 407/Highway 403 Interchange, Functional Design Study" (referenced in Schedule 17).
- A new interchange will be constructed at Neyagawa Blvd. in accordance with the requirements outlined in Section 2.6.
- The "race track" type design for the truck inspection stations has been changed to a "layby" type design. The requirements of which are described in Section 2.12.

- The road and cul-de-sac north of Highway 5 on the west side of Highway 407 West as shown in the Highway 403 Preliminary Design Report are not required.
- Burnhamthorpe Road, on the west side of Bronte Creek, will not be extended on a new alignment on the north side and parallel to Highway 407 West, as shown on the Preliminary Design Report and Pre-Design Study drawings. Burnhamthorpe Road shall terminate in a cul-de-sac at Highway 407 West right of way as described on the plan that is listed in Schedule 17.
- The Crown Completed Designs for W.P. 199-77-06 do not reflect the most current ground elevations and earth excavation requirements. Under Ministry Contract 93-89 changes were made to the amount and location of earth removal within the highway corridor. As built information on grade changes is included in the documents listed in Schedule 17 to the Concession Agreement; however, the Province does not make any guarantee with respect to the validity of the information. The Concessionaire is responsible to confirm changes in the field.
- A developer has constructed a temporary diversion of the West Rambo Creek to East Hager Creek on the east side of the Highway 407 West corridor, south of Brant Street. This falls within the limits of W.P. 199-77-06. The Concessionaire will be responsible for determining the status of this temporary diversion and incorporating any resulting changes into the Work. Pertinent documentation (including maintenance responsibilities for the temporary diversion until such time as the permanent diversion is constructed under this contract), is included with the W.P. 199-77-06 documents, listed in Schedule 17.
- There are changes to barrier installation as shown in W.P. 199-77-06 along existing Highway 403 in Burlington in the vicinity of the King Road structure. These changes are needed to provide protection for a Freeway Traffic Management System (FTMS) structure installed under Contract CRC 20-96-401. Pertinent documentation is included with W.P. 199-77-06, listed in Schedule 17.
- The FTMS components identified in W.P. 199-77-06 have been modified. The changes are documented in an OTCC memo-to-file dated November 8, 1996 and listed in Schedule 17.

2. WORKS TO BE COMPLETED

When used in this Schedule, "Work" refers to the design and construction of Highway 407 West and includes all development, design, materials and construction for Highway 407 West and appurtenances required to open a completed electronic toll highway to vehicular traffic. The Work also includes all supporting highway infrastructure/components, including but not limited to, grading, granular base, paving, structures, drainage system(s) including watercourse realignments, guiderail, illumination, traffic signals, pavement markings, signing, sign gantries,

truck inspection stations, carpool lots, traffic management, landscaping, noise and other environmental measures.

Highway 407 West is to be designed and built as a 6 lane controlled access highway with an urban cross section and tall wall concrete median. The design and construction must accommodate provision for widening to 8 lanes in future.

Highway 407 West shall be designed and built in accordance with Ministry Safety Standards and other regulatory agency standards, specifications and guidelines, policies and practices. Highway 407 West shall be designed to 120 km/hr, freeway design standards. Where appropriate, acceleration, deceleration and auxiliary lanes shall be included. Fully paved shoulders and rumble strips shall be provided on both sides of the roadway.

2.1 Project Limits

The works to be constructed include all Work required to effectively tie in Highway 407 West with connecting highways and intersecting roads. The limits consists not only of the physical roadway connection but incorporate all other highway infrastructure needs such as: ramp tapers, matching grade points, grading, paving, drainage, traffic signals, illumination, fencing and signing. Signing needs include advance signing and route markers some distance away from the interchange itself.

At the west end (Burlington), the Concessionaire will be required to tie in Highway 407 West to the existing Highway 403 and the Q.E.W. At the east end (Oakville-Mississauga boundary), the Concessionaire will be required to tie in Highway 407 West to Highway 407 Central and Highway 403.

2.2 Alignment

The alignment of Highway 407 West shall be based on the most current information available. The alignment for Highway 407 West shall be designed and constructed in accordance with Ministry Safety Standards for Comparable Controlled Access Highways with a design speed of 120 km/h.

The Concessionaire must ensure that the stopping sight distance is not compromised by the tall wall concrete median on horizontal curves. If alignment changes cannot be made to correct the stopping sight distance, the tall wall concrete median may be shifted off centre line so as to maximize the stopping sight distance. However, a minimum 2.5m shoulder must be maintained at all times.

The current vertical alignment has some minimum crest and sag curves between the Freeman Interchange and Highway 5. Consideration should be given to improving these curves if cut and fill balances are to be recalculated.

2.3 Cross Section

Highway 407 West cross section has been changed from that identified in the earlier Ministry of Transportation designs, plans and documentation. The Concessionaire will be required to construct a 6 lane urban cross section (tall wall concrete median), as identified in documents listed in Schedule 17 including but not limited to any transitions that are needed to facilitate ties to existing infrastructure, or modifications to the Crown Completed Designs and Crown Completed Facilities. The location of Ministry of Transportation designed ramp alignments shall be retained (suitable for future 8 lane widening); ramp bullnoses shall be shifted accordingly.

The cross section shall be designed to allow provision for an ultimate 8 lane urban highway.

Grading to the top of subgrade and ditching shall be designed and built to the ultimate 8 lane cross section.

2.4 Pavement Structure

The Work includes the construction of the pavement structure for the entire length of Highway 407 West including all ramps, lanes, structures, truck inspection stations, and carpool lots. Pavement and geotechnical designs are shown in the Consolidated Pavement Design Report listed in section Schedule 17. The Concessionaire is not obliged to use these pavement designs in the Work.

The pavement shall be designed and constructed to accommodate future widening requirements.

2.5 Drainage

The Concessionaire will be responsible to provide stormwater quality and quantity drainage requirements for the Work. The Concessionaire will be responsible for securing external agency approvals for all outstanding stormwater management and watercourse crossing strategies. The scope of Work to be undertaken in accordance with the Highway 407 Drainage and Hydrology Guideline referenced in Schedule 17.

Pavement drainage design and stormwater management must conform to Ministry Safety Standards. The drainage quantity and quality design must be able to accommodate the future 8 lane cross section, including paved shoulders, tall wall concrete median barrier, car pool lots, truck inspection stations and storm sewer system. Drainage structures and ditches, where appropriate, shall be located to suit the ultimate 8 lane cross section.

The construction of a tall wall concrete median will necessitate the design and construction of a storm sewer system under the median. The storm sewer system must be off-set from the concrete barrier so as to avoid a possible conflict with future high mast lighting pole foundations.

External stakeholder agencies (including regulating agencies) must participate in the design criteria and concept development. The Concessionaire will be responsible for securing external agency approvals for the final stormwater management and watercourse crossing strategy. Drainage management of the highway is focused on the prevention or mitigation of adverse environmental impacts upstream, within the Highway 407 Lands and downstream of Highway 407.

2.6 Interchanges and Grade Separations

Parclo A4 interchanges shall be provided at Highway 5, Appleby Line, Highway 25, and Trafalgar Road. Arterial road interchanges shall be designed using urban standards, with a minimum 50m inner loop radius and 0.08 m/m superelevation (designs based on the minimum standard shall only be used where constraints exist). Ramp terminals that are situated across from carpool lot entrances shall be designed and built in accordance with the lane arrangement shown on the typical carpool lot drawings provided in Schedule 17.

A new interchange, shall be designed and built at Neyagawa Blvd. The preliminary design for the interchange shown in the Environmental Study Report and the Highway 403 Preliminary Design Report has since been value engineered. Therefore, the preliminary plan listed in Schedule 17 supersedes any other preliminary plans for the interchange.

Grade separations are to be provided at the North Service Road, Upper Middle Road, Walkers Line, Tremaine Road, Sixth line, the Oakville Link Interchange and the C.N.R. Halton Subdivision east of Bronte Creek. There are two major water crossings at Bronte Creek and Sixteen Mile Creek which are also to be constructed by the Concessionaire.

Provisions shall be made that allow for a possible future interchange at Upper Middle Road.

2.7 Roadside Safety

The Concessionaire shall ensure that the design and construction of Highway 407 West and sideroads meets Ministry Safety Standards. At all locations where guide rail is warranted along Highway 407 West or associated interchanges, steel beam guide rail shall be the considered the minimum acceptable treatment.

2.8 Structures

The Concessionaire shall design and construct all necessary structures required to accommodate Highway 407 and the crossing roads.

Structural needs are identified in the Design Criteria, Pre-Design report, Structural Planning Report, Neyagawa Blvd. interchange plans and new configuration of the Oakville Link Interchange. The structural designs completed as part of the Crown Completed Designs will

require updating to current code requirements and Ministry Safety Standards to accommodate the changes identified in this Schedule 9 (Note: a decision to build an urban cross section instead of the rural cross section significantly affects a number of structures). Structural openings shall be designed and built for ultimate lane widening requirements.

It is noted that previous approvals were received from the Coast Guard (Navigable Waters) for crossings at Bronte Creek and Sixteen Mile Creek; and the National Transportation Agency for the C.N.R. crossing (based on the Crown Completed Designs). The Concessionaire will assume full responsibility for the Work, scheduling and cost associated with any resubmission for approval, resulting from time delays and changes identified in this Schedule 9.

The Concessionaire shall ensure that in addition to the standard requirements, each structure barrier wall incorporates one spare 50mm and one spare 70mm duct. Sufficient and appropriate access points must also be provided to these ducts.

All Highway 407 West mainline structures shall incorporate shoulders of no less than 2.5m.

All bridge decks shall be waterproofed according to Ministry Safety Standards.

The current listing and status of the structures is contained in Table 1.

The Ministry of Transportation has identified a number of alternate structural designs that may be used instead of the Crown Completed Designs. General arrangement drawings (GA) have been prepared for these alternate structural designs, listed as 407 ETR West, Alternatives for Bridge Structures, in Schedule 17. The Concessionaire is not obliged to use any of the provided designs in the Work.

The reference documents listed in Schedule 17 include foundation investigation, design reports, designs, subsurface information, foundation design recommendations and other technical information. The Concessionaire must satisfy itself as to the accuracy and sufficiency of the information presented and obtain any updating or additional information, and perform any studies, analyses or investigations that the Concessionaire deems necessary to finalize its designs.

2.9 Arterial Crossing Roads

The Concessionaire will be responsible to secure all municipal and land-owner approvals required to carry out all construction on the arterial road crossings.

The arterial road crossings shall be designed and constructed in accordance with the approved Design Criteria, as defined in the Crown Completed Designs. The arterial road cross-section is defined in the approved Ministry Design Criteria under GWP's 199-77-06, 406-85-00 & 410-85-00. A cross section for Neyagawa Blvd. is provided with the supporting information on Neyagawa Blvd.

2.10 Illumination and Traffic Signals

All temporary and permanent illumination shall be provided in accordance with Ministry Safety Standards.

Where full illumination is required, design and construction shall be based on high mast lighting. Where partial illumination has been identified, the lighting system must be designed to permit future expansion to full illumination (with high mast lighting if applicable). Illumination must be designed to meet Ministry Safety Standards.

Illumination according to Ministry Safety Standards is required at truck inspection stations.

Ducts, junctions boxes and other appurtenances for high mast lighting must be provided for with the construction of the tall wall concrete median, as a provision for future installation.

The Concessionaire is responsible for designing, supplying and installing traffic signals at all intersections that meet traffic signal warrants, in accordance with Ministry Safety Standards and the guidelines and standards of the road authority that will be assuming the future maintenance and operation of the traffic signal system.

The Concessionaire shall prepare and submit traffic signal layout drawings in accordance with the following:

- i. The Concessionaire prepares PHM-125 drawings and submits to the Ministry of Transportation, Central Region Traffic Office for technical and legal approval. Once approved, the Central Region Traffic Office will submit the drawings to the road authority that will be assuming the future maintenance and operation of the traffic signal system, for their technical comments.
- ii. The road authority that will be assuming the future maintenance and operation of the traffic signal system will test equipment, inspect installation, commission and take over maintenance upon activation.
- iii. The road authority that will be assuming the future maintenance and operation of the traffic signal system undertakes the timing for signals.
- iv. The road authority that will be assuming the future maintenance and operation of the traffic signal system maintains the controller cabinet.
- v. Until activation of the traffic signal system, the Concessionaire is responsible for maintenance of the installation.
- vi. The Concessionaire supplies controller cabinets and coordinates the purchase of the controller cabinets in accordance with the requirements of the road authority that will be assuming the future maintenance and operation of the traffic signal system.

The obligations with respect to operation, maintenance and power consumption charges for traffic signal and illumination installations are outlined as follows:

1. Temporary Installations (traffic signal and illumination)

Where required, the Concessionaire will supply, install, maintain and remove (until permanent installation is activated) the temporary installation. Where the temporary installation replaces an existing installation, the costs of maintenance and power charges will remain with the authority having jurisdiction over the existing installation. Where the temporary installation is a new installation, not relocated "in kind", the costs of maintenance and power charges shall be paid by the Concessionaire.

2. Permanent Installations (traffic signal and illumination)

The Concessionaire will supply and install the permanent installation ready for activation. The installation will be energized for use as warranted with the permission and approval of the respective agency. Following activation of the installation, the respective agency will assume all responsibilities for the cost of operation, maintenance and power consumption of the installation.

2.11 Signing and Pavement Markings

The Concessionaire will be responsible for sign layouts, designing, manufacturing and installing all signs, including but not limited to: regulatory, warning, hazard, information, advance, temporary and toll highway signs; and hazard, trail blazer, name of cross road, 500 metre and snow plow markers; and supporting frames in accordance with Ministry Safety Standards. For the purpose of this Schedule, the term signs and markers includes the necessary supporting frame structures or supporting poles. All walkways on overhead sign frames shall cover the ultimate width of the roadway.

The Concessionaire will be responsible for the supply, placement, inspection and maintenance of all signage (including crossing roads).

At the Oakville Link Interchange, under the Highway 407 Central contract, signs were installed to satisfy existing conditions. The Concessionaire will be responsible to provide any additional signs and to modify existing signs as necessary to provide the complete signing requirements for the interchange.

For any signage on intersecting highways and municipal facilities, the Concessionaire will be responsible for obtaining Approval for sign layout and location from the applicable authority, such as the Ministry of Transportation and municipalities.

The Concessionaire shall be responsible for all temporary and permanent pavement markings within the limits of Highway 407 West, in accordance with Ministry Safety Standards.

Signing Considerations

In addition to Ministry Safety Standards for highway signing identified in Schedule 20, the following highway signing guidelines are to be provided:

- 1 In cases of unusual lane or ramp configurations, priority must be placed on conveying the message on the guide sign to ensure an optimal safe operation of Highway 407 West. Attention shall be given to areas of anticipated weaving within a decision making zone (i.e. drivers wishing to exit within an entrance ramp with considerable volume). Considerable attention must be given to enhanced guide signing at the Freeman and Oakville Link Interchanges.
- 2 The location of the overhead guide signs takes precedence over the location of the tolling gantries. In instances where communication restrictions dictate placement of the gantry system within the immediate vicinity of an overhead guide sign, enhanced guide signing is required.
- 3 In cases where visibility of a guide sign is reduced by a bridge structure, consideration must be given to enhanced signing (i.e. diagrammatic signs). Every effort should be made to ensure maximum sight distance of the guide sign especially in instances of unusual lane arrangement, geometric conditions, or heavy weaving volumes.
- 4 The current G.f-4/G.f-104 standard within the KHGSPM is no longer used to the Ministry of Transportation - Central Region. Layout details for these signs can be obtained from the Ministry of Transportation Central Region Traffic Management Office.
- 5 Careful consideration must be given to the use of chevron (Wa-9) and "diamond reflector" delineation signing. Wa-9 should be installed on highway exit ramps where the combination of multiple changes in horizontal alignment, vertical alignment, and superelevation causes a loss in driver perception of the horizon. Chevrons shall be used at all inner loop ramps.
- 6 Concessionaire shall install all lane designation signs (Rb-41 through Rb-47) on all ramps to assist the driver in choosing the correct lane to minimize weaving at the terminus of the ramp.
- 7 Wa-132 must be used on freeway to freeway ramp lane drops instead of Wa-32.
- 8 All crash cushion attenuator devices and end treatments require hazard markers.
- 9 Combining overhead guide signs with ground mounted guide signs for a given sequence of turn off signs, is an unacceptable practice. The sign designer must select either all guide signs within a single turn off sequence to be mounted overhead or on the ground depending on the criteria of the KHGSPM.
- 10 Wb-102 signal ahead signs are required on all signalized freeway exit ramps.
- 11 G.r-12 advance turn off signs must include an advance turn arrow instead of a straight arrow as shown in the KHGSPM.

- 12 Placement of all new signs on crossing highways must consider maintaining visibility of existing signs. Placement of any new signs must consider any existing object such as a light pole, signal pole, trees and bridge parapet wall.
- 13 All new 407 signs on crossing facilities must be fully covered with a completely opaque tarp until Highway 407 West is opened. Blocking parts of the sign with partial tarps or tabs is unacceptable.
- 14 All low speed freeway to freeway ramps will require enhanced advisory signing (i.e. for low speed inner loop ramps).
- 15 Advisory speed limits should be determined utilizing "Ball-Bank" testing
- 16 Destinations have been used on several freeways when the geographic directions conflict with official route designations. Official destination(s) should be selected by the Ministry of Transportation Traffic Office and guide signs should either include the destination or at least include provisions for a future destination.
- 17 Lane 1 (left most lane in both directions) is 3.5m necessitating a ban on heavy trucks with the appropriate signing.

2.12 Truck Inspection Stations (TIS)

Two truck inspection stations, one per direction shall be constructed as part of the Work. The locations are identified in the Preliminary Design Report and Pre Design plans. The "race track" type design as identified in the Preliminary Design Report and Pre Design plans has now been changed to a "layby" type design. The requirements for the "layby" type design are described in the plans and documentation, as listed in Schedule 17.

The design and construction of the truck inspection station shall include: the grading, pavement, curb & gutter, drainage, stormwater management, illumination, truck weighing scale, power supply, cabinet and other appropriate TIS appurtenances.

2.13 Electrical

The replacement of power supply equipment and the lighting system shall be done to Ministry Safety Standards.

The electrical Work consists primarily of illumination, traffic signals and permanent vehicle presence detectors. Temporary signals and detour illumination may be required as part of the electrical design Work depending upon the construction staging of the Work, design features and other parameters specified for the Work.

All electrical systems shall be designed and installed to Ministry Safety Standards especially with

regards to lighting levels, selected equipment, systems operation and roadside safety.

All electrical work shall be performed in accordance with the Ministry Safety Standards.

Negotiations with different hydro authorities, municipalities and roadway authorities as appropriate shall be carried out with the view of:

- a) selecting suitable power supply equipment and their locations at the appropriate interchanges.
- b) formulating a legal agreement with each hydro authority for the supply of electrical energy and for establishing the cost and billing arrangements for power consumption and applicable engineering standards.
- c) determining the requirements for traffic signal interconnection, equipment, standards and material costs.

Embedded electrical Work in the form of conduits, junction boxes and miscellaneous electrical fittings is required on both sides of each new structure and for installation of future underpass illumination equipment. Where required, pole bases shall be provided on applicable structures for future installation of lighting poles.

The Concessionaire shall conduct negotiations with the appropriate road authority charged with the responsibility for maintaining each traffic signal system in order to determine type of equipment, system operation, requirements for interconnection and traffic signal legal approval procedures and build same.

The Concessionaire shall be responsible for the design, supply and installation and the electrical underground power distribution system for the Toll System and the truck inspection station. This Work shall include, but is not limited to the following: power supply systems, power supply cabinets, conduits, manholes, electrical junction boxes and power cables.

In addition to doing the electrical Work, the Concessionaire shall be responsible for the design, supply and installation of the civil Work necessary for the Toll System.

2.14 Additional Requirements on Highway 403 from Highway 407 to Highway 5

As part of the overall Work for Highway 407 West an additional lane must be constructed from the southern limit of the existing Highway 407/403 interchange to Highway 5 in the southbound direction. This is an operational requirement to permit the existing Highway 407 North to Highway 403 South Ramp to be converted from a left hand merge to a lane away becoming Lane 1 of Highway 403 southbound. Existing Lane 1 of Highway 403 will become Lane 2 and will develop into an either-or lane at Highway 5. Existing Lane 2 of Highway 403 will be taken off at Highway 5.

This can be achieved by a combination of right & left side widening within the existing property limits. This Work should be carried out as soon as possible and must be in place well before the opening of Highway 407 West.

2.15 Additional Requirements to Highway 407 West, QEW AND Highway 403 Freeman Interchange (existing QEW/Hwy403 interchange)

FROM HIGHWAY 407 WEST TO HIGHWAY 403

As part of the connection of Highway 407 West ramp to westbound Highway 403, the following conditions will supersede previous documents and plans:

Changes to Highway 407 West: Ramp Hwy 407 N – Hwy 403 W

The Highway 407 West ramp lane 1 will merge into ramp lane 2 before the ramp meets Highway 403 westbound. Highway 407 W ramp lane 2 proceeds as a continuous lane, becoming lane 1 of Highway 403 Westbound.

Changes to Highway 403 Westbound.

Highway 403 Westbound will be reduced from the existing three lanes to two lanes, merging lane 3 into lane 2, prior to the King Rd structure. These two lanes will be continuous, becoming lanes 2 and 3 of Highway 403 westbound.

FROM HIGHWAY 407 WEST TO QEW

As part of the connection of Highway 407 West to the QEW southbound (Niagara), the following conditions will supersede previous documents and plans:

Changes to Highway 407 West: Ramp Hwy 407 N – QEW S (Niagara)

The Highway 407 West ramp lanes 1 and 2 shall be continuous onto QEW Niagara. Ramp lane 1 becomes lane 3 of the QEW, with an either/or exit at Eastport Drive/ North Shore Blvd. Ramp lane 2 becomes lane 4 of the QEW Niagara bound, with a “must exit” at Eastport Drive / North Shore Blvd.

Changes to Highway 403: Ramp Hwy 403 W – QEW S (Niagara)

The Highway 403 ramp onto the existing QEW South bound, will be extended to merge onto the new Highway 407 West ramp.

Changes to Fairview St Interchange with the QEW

The Fairview St loop E-S ramp to the QEW South bound, shall be removed. A left turn lane

shall be constructed on Fairview St to provide access to the QEW south bound via ramp W-S. The Concessionaire shall be responsible to liaise with the City of Burlington to gain endorsement for this Work. In addition, ramp W-S shall be modified to facilitate this additional move, along with modification of the signal at the existing ramp terminal.

2.16 Carpool Lots

Paved carpool lots are to be provided at the Highway 5, Appleby Line, Highway 25 and Trafalgar Road interchanges. The carpool lots are to be built according to Ministry Safety Standards and in accordance with the typical carpool drawings provided in Schedule 17. Carpool lots shall accommodate bus turning radii.

3. TRAFFIC MANAGEMENT

The Concessionaire shall be responsible for traffic safety and management during field work and construction of the Work and during the installation and testing of toll equipment. The Work includes the management of traffic during construction with minimal impacts on the traveling public. In addition to the requirements set out in this section, the following minimum requirements are to be implemented during the Work:

- a. Traffic may not be staged on a granular surface at any time during construction. Where construction operations necessitate the working area be less than 4m from the traffic, the Concessionaire shall erect barriers or delineators along the edge of the traveled lane. In no case shall the distance between traffic and working areas be less than 1.5m unless protected by temporary concrete barriers and delineators.
- b. The Concessionaire shall schedule the Work so that there will be no open excavation adjacent to a lane carrying traffic overnight and on non-working days, except where protected by temporary concrete barriers. Excavations within 4m of lanes carrying traffic shall be backfilled with the final granular and/or asphalt material up to profile grade and compacted prior to closing down operations.
- c. Materials and equipment shall not be stored within 4m of the travelled portion of any roadway. The Concessionaire shall seek approval from the respective municipal authorities for traffic management plans associated with Work on municipal roads, from Ministry of Transportation for associated Work on Ministry of Transportation roads.
- d. Where the Concessionaire must work adjacent to traveled lanes on a freeway, the Concessionaire must maintain a minimum lane width of 3.4m with a 1.0m paved shoulder where no parallel run of barrier exists, or a 0.5m shoulder where a parallel run of barrier is used. All operations, with the exception of final paving, must take place behind temporary concrete barrier.

The Concessionaire shall seek approval from the respective municipal authorities for traffic

management plans associated with Work on municipal roads, and from the Ministry of Transportation for associated Work on Ministry of Transportation roads.

Traffic management shall be in accordance with Ministry Safety Standards.

Regarding the approval of speed reductions, the Ministry of Transportation is responsible for approving legal speed reductions on King's Highways. The appropriate municipality, through changes to its by-laws, is responsible for approving legal speed reductions on municipal roads. The Concessionaire is responsible for applying for, and obtaining all approvals.

4. PROPERTY

As part of the design Work, the Concessionaire will be responsible for ensuring that designs minimize land locking and the severing of Crown land or private property.

The Concessionaire is responsible to provide and install full chain link fencing on both sides of Highway 407 West. All fences within and bordering the Highway 407 Lands are the responsibility of the Concessionaire.

Any failure by the Grantor to provide vacant possession of any portion of the Highway 407 Lands within the time provided in the Highway 407 Lands Availability Schedule which has a material effect on the timing of the performance of the Work shall, notwithstanding anything contained in the Concession Agreement, be deemed to constitute a Delay Event

5. ENVIRONMENTAL REQUIREMENTS

The Concessionaire shall be responsible to meet any outstanding obligation as the "proponent" as defined under the *Environmental Assessment Act* (the "EA Act") and for complying with all of the conditions under any EA Exemptions, and, to the extent required, under any other applicable provincial and federal environmental legislation.

In undertaking the Work, the Concessionaire shall, to the extent required, address any environmental requirements including: environmental inventory, assessment of impacts, public consultation, design of mitigation, preparing and submitting design and construction reports and other environmental documentation, obtaining of environmental approvals, provision of formal environmental clearance/approvals, provision of mitigation, full compliance with the conditions of the EA Exemptions, monitoring and other environmental services. Complying with the conditions of the EA Exemptions does not preclude more restrictive or additional conditions or requirements being imposed under other statutes.

The Concessionaire will be responsible for completing any additional submissions, addenda or other work, regardless of who completed previous work and submissions. The Concessionaire shall consider and determine whether the previously completed work and submissions require updating. If the Concessionaire determines that the previously completed work and submissions

require up-dating, the Concessionaire shall consult with all regulatory agencies to determine any further requirements. The previously completed work has not been submitted for clearance under the *Canadian Environmental Assessment Act*.

When the Concessionaire is required to undertake the assessment and evaluation of environmental impacts, the Concessionaire shall, in such assessment and evaluation, consider, among others, the following factors:

- sensitivities identified;
- significance of expected condition changes/effects, level of effects, duration and certainty of effects;
- degree to which condition changes/effects can be mitigated (based on previous and concurrent experience); and
- degree of mitigation incorporated in the generation of alternatives.

The Concessionaire shall consider utilizing a wide range of environmental protection measures to address potential environmental impacts identified as described above. Although site specifics have the greatest influence on the selection of environmental measures, the approaches to environmental protection can be generally categorized in order of decreasing preference, as follows:

- avoidance/prevention;
- control/mitigation (reducing the severity of environmental impacts);
- compensation (provision of "equivalent" or countervailing environmental features);
- enhancement (improvement over previous environmental conditions); and
- combinations of the above.

The Concessionaire shall address environmental protection with respect to the following aspects, among others, of planning, design and construction:

- generation and assessment of alternatives;
- evaluation and selection of preferred alternatives; and
- development of the plan/design/approach.

For environmental protection with respect to planning, design and construction the Concessionaire shall undertake, among others, the following activities:

- identification of environmental constraints;
- identification of environmental deficiencies;
- identification of environmental protection strategies;
- identification of environmental design elements;
- identification of environmental mitigation; and
- identification of environmental construction/maintenance constraints.

**Table 1: LIST AND STATUS OF STRUCTURES
Freeman Interchange to Highway 5:**

Description	Status	WP #	Site #
QEW O'Pass @ Fairview St.	Construction Complete	83-74-04	10-319
403W Ramp over CNR to Plains Rd.	Construction Complete	83-74-04	10-135B
QEW N&S over CNR	Construction Complete	83-74-04	10-135A
403W - QEW S. O'Pass @ 407 S - Plains Rd.	Construction Complete	199-77-04	10-334
403W - QEW E. O'Pass @ 407 N - QEW S.	Construction Complete	199-77-02	10-332
403W - QEW E. Ramp over QEW	Construction Complete	199-77-03	10-333
407N - 403W Ramp	Construction Complete	199-77-08	10-481
403W - 407N Ramp	Construction Complete	199-77-07	10-480
QEW E. - 403 W over Ramp 407 N - QEW S	Construction Complete	199-77-05	10-335
QEW E - 403 W, Ramp QEW S - 407 N, U'Pass	Construction Complete	83-74-28	10-320
QEW, Ramp QEW S - 407 N, U'Pass	Construction Complete	83-74-29	10-321
Hwy 407 - Upper Middle Rd., U'Pass	Ministry Detail Design	199-77-17	10-476
407N - QEW S., over North Service Rd.	Ministry Detail Design	199-77-11	10-482
407N - 403W, over North Service Rd.	Ministry Detail Design	199-77-09	10-483
403W - 407N, over North Service Rd.	Ministry Detail Design	199-77-10	10-484

Description	Status	WP #	Site #
QEW S. - 407N over North Service Rd.	Construction Complete	83-74-12	10-339
QEW - over Brant St. U'Pass	Construction Complete	83-74-08	10-138
Hwy 403 - Brant St. U'Pass	Construction Complete	83-74-13	10-340
Hwy 407 - Guelph Line U'Pass	Construction Complete	199-77-19	10-227
Hwy 407 - Hwy 5 U'Pass	Construction Complete	199-77-21	10-477

Highway 5 to Highway 25:

Description	Status	WP #	Site #
Walkers Line O'Pass	Ministry Detail Design	411-85-04	10-228
Appleby Line U'Pass	Ministry Detail Design	411-85-02	10-229
Bronte Creek O'Pass	Ministry Detail Design	410-85-02	10-220
CNR U'Pass	Ministry Detail Design	408-85-01	10-478
Tremaine Rd. U'Pass	Ministry Detail Design	409-85-04	10-230
Hwy 25 U'Pass	Ministry Detail Design	409-85-02	10-479

Sixteen Mile Creek to Trafalgar Rd.:

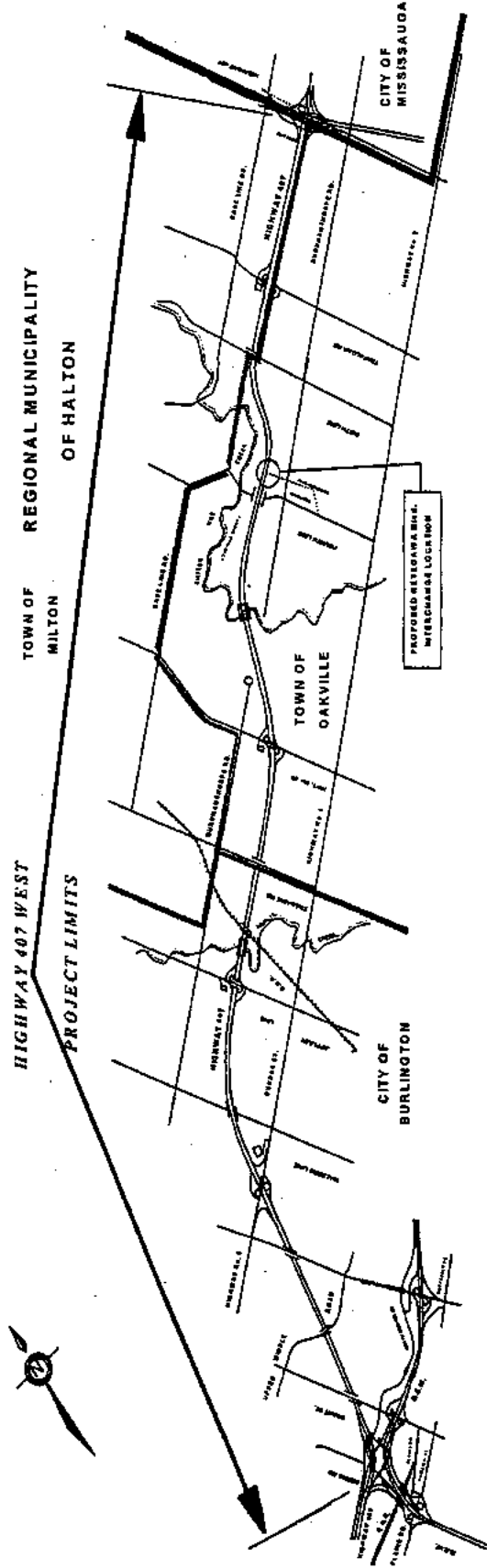
Description	Status	WP #	Site #
Sixteen Mile Creek O'Pass	Ministry Detail Design	406-85-00	10-490

Neyagawa Blvd. O'Pass	GA available	N/A	N/A
Sixth Line U'Pass	Ministry Detail Design	406-85-00	10-489
Trafalgar Rd. U'Pass	Ministry Detail Design	406-85-00	10-329

Oakville Link Interchange:

Description	Status	WP #	Site #
403S - 407N O'Pass @ 407/403 O'Pass	Construction Complete	199-77-06	10-326
407N - 403S/E O'Pass @ 407/403 EW Ramps	Construction Complete		10-509
407 O'Pass @ 403E - 407W	GA available		10-510
407N - 403S/E O'Pass @ 407 & 9 th Line	Construction Complete		10-511
9 th Line O'Pass @ 403 S- 407N & 403E - 407N	Construction Complete		10-512
407W - 403S O'Pass @ 9 th Line	Construction Complete	199-77-06	10-328
9 th Line O'Pass @ 407/403 EW Ramps	Construction Complete	199-77-06	10-327
403E-403S Ramp O'Pass @ 407/403 EW & SN Ramps	Construction Complete	199-77-06	10-325

HIGHWAY 407 West - QEW to Highway 403



Not to Scale

Figure 2

Figure 2 - Highway 407 West - QEW (Freeman I.C.) to Highway 403 (Oakville Link I.C.)

1000 2000

SCHEDULE 10

Known Archaeological/Historical Finds

The known archaeological sites and heritage resources are described in the attached documents which are copies of section K of Appendix 6 Reference Documents of the Request for Proposals-Development and Design-Build for the Western Extension of the 407 Express Toll Route (ETR) and section D of Appendix 6 of the Request for Proposals-Development and Design-Build for the Highway 407 East Partial Extension.

ITEM	DESCRIPTION	COPY TO PROponents	VIEWING IN DATA ROOM
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K. ARCHAEOLOGICAL AND HERITAGE REPORTS

76.	Title: Final Report on the Phase I and II Archaeological Assessment of the Hwy. 403 Project from Highway 5 to Oakville Link Author: P.H.Pihl Date: August, 1992		X
77.	Title: An Archaeological Assessment of Hwy. 403 from Oakville Link to Freeman Interchange W.P.: 197-77-00, 198-77-00, 199-77-00 Author: M. T. Ambrose Date: November, 1984		X
78.	Title: The Ganong Site (AIGx-74) Author: M. T. Ambrose Date: March, 1993		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
79.	<p>Title: Archaeological Testing & Salvaging of Four Sites on Hwy. 403 Phase I and II Report for Site AiGw-143 W.P.: 410-85-00 Author: MCM Date: August, 1994</p>		X
80.	<p>Title: Archaeological Testing and Salvaging of Four Sites on Hwy. 403 Phase I and II Report for Site AiGw-134 W.P.: 410-85-00 Author: MCM Date: August, 1994</p>		X
81.	<p>Title: Archaeological Testing and Salvaging of Four Sites on Hwy. 403 Phase I Report for Site AiGw-156 (Also containing AiGw-158) W.P.: 410-85-00 Author: MCM Date: August, 1994</p>		X
12.	<p>Title: Archaeological Testing and Salvaging of Four Sites on Hwy. 403 Phase I Report for Site AiGw-129 W.P.: 410-85-00 Author: MCM Date: March, 1994</p>		X
82A.	<p>Title: Status of Archaeological Resource Concerns, Proposed Highway 407, From the Queen Elizabeth Way to Highway 403, City of Burlington and Town of Oakville, Regional Municipality of Halton W.P.: N/A Author: M. Home, MCzCR to G. Warrick, MTO Date: Nov. 25, 1998</p>	X	
82B.	<p>Title: Protected Areas Highway 407W W.P.: N/A Author: A. Murray, A.M. Archaeological Associates to G. Warrick, MTO Date: Nov. 25, 1998</p>	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
82C	Title: Highway 407 West - Archaeology Reports W.P.: N/A Author: N/A Date: N/A		X
82D	Title: Ministry of Transportation: Archaeological Investigations in the Central Region, Ontario (AARO VOL 2) W.P.: N/A Author: G. Warrick, MTO Date: 1991		X
82E	Title: The Rasputive Site AIGW-34, Highway 403, Regional Municipality of Halton W.P.: 197-77-00 Author: M.T. Ambrose, MTO Date: Dec., 1984		X
82F	Title: Final Report on Salvage Excavation of the Five Acre Field Site (AIGW-100) W.P.: N/A Author: L. J. Jackson, Northeastern Archaeological Associates Date: June 1, 1996		X
82G	Title: Interim Report on the 1998 Archaeological Mitigation of the Ireland II Site (AIGW-94), Burlington W.P.: 412-85-00/413-85-00 Author: W.D. Finlayson and R. J. Pearce, London Museum of Archaeology Date: Nov. 13, 1998		X
82H	Title: Archaeological Interim Report Stage 4: Excavation Highway 407 West The Bucolic Site (AIGW-301) The Corfu Site (AIGW-304) The Samos Site (AIGW-306) W.P.: 412-85-00 & 413-85-00 Author: MCM Date: Nov. 11, 1998		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
82L	<p>Title: Archaeological Test Excavation of the White Beard Site (AiGW-132) Highway 407W, Town of Oakville W.P.: 412-85-00 Author: C. Murphy, MTO Date: June, 1995</p>		X
82J.	<p>Title: Interim Report for the Excavation of the Shagbark (AiGW-307) and Doug (AiGW-305) sites, Highway 407 West, Regional Municipality of Halton W.P.: N/A Author: New Directions Archaeology Date: N/A</p>		X
82K	<p>Title: Museum of Indian Archaeology at the University of Western Ontario, London, Ontario A Final Report on the 1980-81 Phase 1 Archaeological Assessment of the Highway 403 - Freeman Interchange to Highway 5 Link W.P.: 198-77-00 Author: D. R. Poullon Date: May 1982</p>		X
82L	<p>Title: The Archaeological Assessment of Highway 407 West (Stages 1-3) W.P.: N/A Author: A. M. Archaeological Associates Date: N/A</p>		X
82M.	<p>Title: Preliminary Report on the Stage 4 Excavations at the Downstairs Site (AiGW-302) and the Upstairs Site (AiGW-303) W.P.: N/A Author: A. M. Archaeological Associates Date: N/A</p>		X
83.	<p>Title: Status of Heritage Investigation Hwy. 403 Author: R. Zaryski Jackson, MTO Date: As of August, 1995</p>	X	

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respondents
D	Archaeological Assessments			
	The Excavation of the Salgo Site A.M. Archaeological Associates June 1998	Dec 7 th	✓	✓
	The Excavation of the Sideline Site A.M. Archaeological Associates June 1998	Dec 7 th	✓	✓
	The Excavation of the Forte Site A.M. Archaeological Associates June 1998	Dec 7 th	✓	✓
	Highway 407E/Transitway Areas to be Addressed by Archaeological Work . (Nov 1998)	Dec 7 th	✓	✓
	An Archaeological Survey of Highway 407 from Woodbine Avenue to Ninth Line (April 1982)	Dec 7 th	✓	✓
	An Archaeological Assessment of the Highway 407/Transitway A.M. Archaeological Associates December 1997	Dec 7 th	✓	✓
	MCzCR Letter Re. Status of Archaeological Resource Concerns Nov 25, 1998	Dec 7 th	✓	

SCHEDULE 13

Ministry of Transportation Enforcement Services

Definitions:

Unless otherwise specified or the context otherwise requires, for the purposes of this schedule the following terms have the following meanings:

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement made as of the date hereof between the Concessionaire and the Crown in Right of Ontario as Represented by the Minister Without Portfolio with Responsibility for Privatization.

"407 Act" means the *Highway 407 Act, 1998*,

"HTA" means the *Highway Traffic Act*.

"Minister" means the Minister of Transportation of Ontario.

"Ministry" means the Ministry of Transportation of Ontario.

"Ministry Enforcement Officer" means an officer appointed by the Minister to enforce vehicle licensing and safety standards.

"MTIS" means a Mobile Truck Inspection Station.

Unless defined herein, capitalized terms used in this schedule have the meanings ascribed to them in the Concession Agreement.

1. Background

This schedule defines the roles and responsibilities of the Grantor and the Concessionaire with respect to enforcing vehicle licensing and vehicle safety standards on Highway 407 and payment for these services.

Under the 407 Act, for the purpose of enforcing vehicle licensing and safety standards under any Act, the Minister is obligated to treat Highway 407 as if it were part of the King's Highway. The Minister is permitted under the 407 Act to charge the Concessionaire for the reasonable costs of providing enforcement services on a full cost recovery basis.

2. Grantor Responsibility

The Grantor shall provide Ministry Enforcement Officers who shall undertake routine enforcement duties on Highway 407, as they would for Comparable Controlled Access Highways, according to Laws and Regulations. In addition to routine enforcement, the Grantor and the Concessionaire may

agree that the Grantor shall provide a higher level of enforcement for a cost based on the parameters set out in Section 4.1, as well as supplementary enforcement activities relating to offences under Part X.1 of the HTA for an agreed upon compensation to be paid by the Concessionaire. The Concessionaire and the Grantor will work together co-operatively to co-ordinate and set the parameters for these enforcement activities. If the Grantor and the Concessionaire cannot reach agreement with respect to the costs of supplementary enforcement activities the matter shall be subject to dispute resolution.

3. Concessionaire Responsibility

The Concessionaire shall provide the Grantor with the information necessary to undertake enforcement under Part X.1 of the HTA (including any tolling enforcement training guide or an operations manual for Highway 407 in the Concessionaire's possession or control).

If the Concessionaire has requested supplementary enforcement activities under Part X.1 of the HTA, the Concessionaire shall provide training relating to the tolling operations and toll enforcement for Highway 407 to Ministry Enforcement Officers.

4. Costs of Enforcement

The Concessionaire shall be responsible for the costs of Ministry Enforcement Officers' enforcement activities on Highway 407 based on the following formula:

4.1 Table

TOLL HIGHWAY ENFORCEMENT ACTIVITY COSTS = A + B

Where:

A is STAFF Costs =

Number of officers required multiplied by the number of hours per officer multiplied by the hourly rate of the officers

As at the Effective Date the hourly rate of Ministry Enforcement Officers is \$32.

As at the Effective Date the estimated number of officers required to patrol Highway 407 is 4.

B is VEHICLE Costs =

i. Cruiser:	Monthly charge plus per kilometre charge multiplied by the number of kilometres
ii. Mini-van:	Monthly charge plus per kilometre charge multiplied by the number of kilometres
iii MTIS"	monthly charge plus per kilometre charge multiplied by the number of kilometres

As at the Effective Date the "per kilometre" charge for a cruiser is \$0.12-0.15 depending on vehicle type.

As at the Effective Date the monthly charge for a cruiser is \$145.

As at the Effective Date the "per kilometre" charge for a mini-van is \$0.15.

As at the Effective Date the monthly charge for a mini-van is \$176.

As at the Effective Date the "per kilometre" charge for an MTIS is \$0.58.

As at the Effective Date the monthly charge for an MTIS is \$500.

4.2 Changes in Formula

The number of officers, their hourly rates and the vehicle monthly and per kilometre charges referenced in the above formula are subject to reasonable change by the Grantor to reflect the actual staffing, hourly rates and monthly and per kilometre costs for enforcement activities. Enforcement activities shall be consistent with such activities on Comparable Controlled Access Highways. If the Grantor and the Concessionaire agree to a higher level of enforcement activity the above formula shall be used when determining the costs of such specific enforcement.

4.3 Enforcement Needs

At the Effective Date four (4) enforcement officers are used with respect to Highway 407. When Highway 407 West and Highway 407 East Partial are Commissioned and Opened, the Concessionaire acknowledges that enforcement needs will increase to accommodate the additional length of Highway 407 as well as the operation of vehicle inspection and weigh stations.

4.4 Tools and Linkages

All relevant Highway 407 enforcement tools (e.g. special enforcement transponders) and technological linkages required to enforce Part X.1 offences under the HTA shall remain the property of the Concessionaire. To the extent the Grantor requires the use of any tools and linkages for enforcement activities on Highway 407 the tools and linkages shall be provided free-of charge to the Grantor and shall be maintained and paid for by the Concessionaire

5. Exemption from Tolls

The Concessionaire shall not have the right to establish, collect or enforce payment of tolls, administrative fees or other fees or charges in respect of vehicles used in the enforcement of vehicle licensing and safety standards. As a condition of gaining such toll exempt status, the Concessionaire may require the Grantor to cause the Ministry to (i) register all enforcement vehicles with the Concessionaire; (ii) equip all Ministry enforcement vehicles with operational monitoring and collection technology prescribed and validated pursuant to the 407 Act, at the Concessionaire's expense; (iii) enter into a user agreement with respect to such standard

monitoring and collection technology; and (iv) provide license plate numbers of all Ministry enforcement vehicles.

6. Inspection Stations

In order that the Grantor may comply with its obligations under Section 2, the Concessionaire shall provide the Ministry Enforcement Officers with free and unrestricted access to any permanent vehicle inspection and weigh stations that the Concessionaire is required to build under the Concession Agreement. In addition, the Concessionaire shall also, at its cost and expense, be responsible for all operations, maintenance, repair and rehabilitation of such vehicle inspection and weigh stations.

7. Payment

The Grantor shall submit all requests for payment together with appropriate documentation to the Concessionaire. Prior to the Concessionaire making any payment the Grantor shall provide the Concessionaire with such other documents as the Concessionaire, acting reasonably, may require. The Concessionaire shall make payments within sixty (60) days of receipt of the payment request. If there is a dispute as to any amount owing hereunder, the Concessionaire shall pay such amount within the time required. If the dispute arbitrator finds that any amount is not owing, the Grantor shall refund such amount with interest at the Bank Rate plus three (3%) per cent.

8. Dispute Resolution

Any dispute relating to this schedule shall be resolved using the dispute resolution process in Article 25 of the Concession Agreement.

Schedule 12
Management Plan

Designated Consultants

SNC-Lavalin Inc.

Designated Contractors

SNC-Lavalin Inc.

F&A, Ferrovial Agroman Internacional, S.A.

Designated Personnel

Project Manager	Fernando Guijo
Design Manager	Robert Hadachi
Construction Manager	Carmelo Rodrigo Lopes
Environmental Manager	Ian Upjohn
Quality Control Manager	Andres Valdes
Operations and Maintenance Manager	Alberto Azaola
Safety Specialist	Imand Nassereddine John Lisman

SCHEDULE 11

Known Hazardous Substances

This Schedule consists of the attached report of R. V. Anderson Associates Limited dated March 1995



R.V. Anderson Associates Limited

consulting engineers and architect

Suite 409, 2001 Sheppard Avenue East, Willowdale, Ontario M2J 4Z9.
Telephone (416) 497-8500 Fax (416) 497-0342

March 14, 1995

RVA 4010.10

Ministry of Transportation of Ontario
Highway 407 Project
Mail Room, Box 407
1201 Wilson Avenue
Downsview, Ontario
M3M 1J8

Attention: Mr. E. Ellard
Manager of Highway 407 West Project

Dear Sir:

Re: Highway 403 Property Request and Value Engineering
Soil Contamination Investigation Report
W.P. 412-85-00 and 413-85-00

We enclose herewith a copy of soil contamination investigation report for the Highway 403 corridor from Highway 5 to Highway 403/407 interchange for your comment. This report outlines the methodology undertaken to identify the potential soil contamination issues and sites along the 403 corridor, the findings and the recommendations.

Should you have any questions, please do not hesitate to contact our office.

Yours very truly,

R. V. ANDERSON ASSOCIATES LIMITED

T.H. McColm, P.Eng.
Project Manager

PCWL/THM/kis
Encl.

CC = P.T. - R.A.

SOIL CONTAMINA
FROM HIGHW

RVA 4010.10

INTRODUCTION

Pursuant to our proposal to MTO dated August 30, 1994, we have conducted a "Phase I" site investigation of the properties traversed by the proposed Highway 403 right-of-way from east of Trafalgar Road to Highway 5. The purpose of this investigation was to identify the potential soil-contamination issues which may be of concern during the construction of Highway 403.

METHODOLOGY

The investigation consisted of the following:

- Review of existing documentation;
- Review of aerial photographs;
- Site inspection

The review of existing documentation was for background information purposes and to obtain information regarding the current land use of the properties traversed by the proposed highway and the condition of the lands. A listing of the existing documentation which was reviewed appears in Appendix A.

Aerial photographs from 1954, 1978 and 1994 were reviewed in addition to the aerial photographs appended to the MTO report entitled: Highway 403 From Freeman Interchange Easterly to Highway 403/Oakville Link. Preliminary Design Report (July 1983 with May 1984 Addendum).

Since virtually all of the lands to be traversed by the proposed highway are still rural in land use, insurance drawings and municipal directories were not available for review. Given that the lands did not appear to have been subjected to industrial activity, the review of aerial photographs provided sufficient information for the purposes.

An inspection of the properties within the proposed Highway 403 right-of-way was conducted. This inspection was not detailed in that the entire route of the proposed highway was not walked. Instead, the properties were viewed from existing roads and from the CNR right-of-way between Appleby Line and Tremaine Road. Since the properties consisted of lands under cultivation and woodlots, the above method of inspection in conjunction with the review of aerial photographs was deemed to be sufficient.

FINDINGS

As stated above, the lands proposed to be traversed by the Highway 403 extension from east of Trafalgar Road and Highway 5 are being used primarily for agricultural purposes. Some areas have not been cleared and are heavily wooded.

Upon review of the aerial photographs from 1954 to the present, it is clear that the land use has not altered significantly in the past 40 years. It does not appear that any of the lands included within the proposed Highway 403 right-of-way were used for industrial purposes.

On the basis of the visual inspection which we conducted, we observed no evidence of contamination of the surface soils and no evidence of illegal waste dumping.

In addition to the cultivated lands and woodlots which comprise the majority of the properties within the proposed highway right-of-way, we note the following:

- There are some dwellings and outbuildings on the west side of Fourth Line within the proposed right-of-way;
- As the proposed right-of-way crosses Burnhamthorpe Road, there are 2 sets of dwellings and outbuildings on the north side of Burnhamthorpe Road which are within the proposed right-of-way. Also, there is one dwelling with outbuildings on the south side of Burnhamthorpe Road which is on the edge of the proposed right-of-way;
- There is one residence on the west side of Highway 25 which is within the proposed right-of-way;
- There was 1 set of farm buildings on the east side of Appleby Line which would fall within the proposed right-of-way according to the 1954 and 1978 aerial photographs and the air photos included in the 1983 MTO predesign report entitled: Highway 403 From Freeman Interchange Easterly to Highway 403/Oakville Link, Preliminary Design Report. These buildings were not evident on the 1994 aerial photograph and were not observed during the site inspection;
- There was 1 set of farm buildings on the north side of Dundas Street west of Walkers Line which would fall within the proposed right-of-way according to the historical aerial photographs. However, these buildings did not appear on the 1994 aerial photograph and were not observed during the site inspection;
- There is 1 crossing of railway tracks between Appleby Line and Tremaine Road east of Bronte Creek.

DISCUSSION

There are very few potential soil contamination issues, which have been identified with respect to the lands which will fall within the proposed Highway 403 right-of-way.

With regard to the dwellings and outbuildings which are (or were) within the proposed right-of-way, the potential exists for some localized soil contamination due to leaks and spills associated with refueling and maintenance of farm vehicles and equipment. The extent of the contamination (if any) is expected to be minor; however, a detailed inspection of each of the properties is recommended. If visual evidence of soil contamination is detected, then soil sampling and analysis is recommended.

There is the potential for the soils in the vicinity of the railway track crossing to be contaminated with polynuclear aromatic hydrocarbons (PAHs). These compounds are associated with heavy oil products such as the creosote used to preserve railway ties. Sampling and analysis of surficial soils (1 or 2 samples) in the vicinity of the railway tracks is recommended.

There is the potential of soil contamination associated with agricultural operations. While pesticides may have been used historically on agricultural lands which would fall within the proposed highway right-of-way, it is not likely that the organic component of the pesticides will have persisted in the soil. However, there have been cases where elevated levels of heavy metals such as arsenic were found in agricultural soils. Some preliminary sampling and analysis of soils from the lands under cultivation would be useful to determine if a concern exists.

Except in cases where gross soil contamination was discovered, in which case the soil would have to be removed, the above potential soil contamination issues would not be of great concern as long as the soil was being moved from one place to another within the highway right-of-way (i.e. cut and fill). However, if excess soil material was to be moved off the right-of-way, a number of provincial regulations and guidelines would come into play to help determine the acceptable fate of the materials. The regulations and guidelines include:

- Guidelines for the Protection and Management of Aquatic Sediment Quality in Ontario (Lakefill Guidelines);
- Interim Guidelines for the Assessment and Management of Petroleum Contaminated Sites in Ontario;
- Proposed Policy for Management of Excess Soil, Rock and Like Materials;
- Ontario Regulation 347, General - Waste Management.

The Lakefill Guidelines will govern in the case of soils which are intended to be used as fills around water courses, such as Bronte Creek and Sixteen Mile Creek. The soils will require testing and the suitability of soil will be assessed against a set of criteria contained in the guideline document.

The Interim Guidelines for the Assessment and Management of Petroleum Contaminated Sites in Ontario sets out a sampling and analysis protocol as well as assessment criteria for petroleum contaminated soils. The suitability of contaminated soils for fill or landfill applications is determined in accordance with this guideline document.

The Proposed Policy for Management of Excess Soil, Rock and Like Materials is only a discussion document at this time. However, it is mentioned because the policy is likely to be adopted in the near future and almost certainly by the time that the Highway 403 extension is constructed. This proposed policy provides guidelines for classifying soils in classes such as: inert fill (no restrictions on use except where Lakefill Guidelines govern), urban residential fill (may be used for fill on residential sites), urban industrial fill (may be used for fill on industrial sites) and controlled fill (may be used only on sites which have received a Certificate of Approval from the Ministry of Environment and Energy).

Ontario Regulation 347, General-Waste Management is a regulation pursuant to the Ontario Environmental Protection Act. It provides criteria for classifying waste materials. If contaminated soil is discovered on the site, leachate testing in accordance with Ontario Regulation 347 will be required in order to identify the disposal options for this soil. Depending on the quality of the leachate resulting from the leachate test, the soil may be classified as

hazardous waste, registerable waste or non-registerable waste. Disposal of these wastes must be at approved sites.

Once again, the above guidelines, policy and regulation become important considerations when excess soils are to be removed from the highway right-of-way and placed elsewhere. Except in cases where high levels of contamination are found, excess soils should be suitable for reuse within the highway right-of-way.

CONCLUSIONS

Based on the investigation which we conducted, we have reached the following conclusions:

1. Most of the lands within the proposed highway right-of-way are under cultivation or are wooded;
2. There is no evidence that any of the lands within the proposed highway right-of-way have been subjected to industrial activity;
3. There is no evidence of illegal disposal of wastes on the lands within the proposed right-of-way;
4. There are some dwellings and outbuildings within the proposed right-of-way and evidence of others which no longer exist.

RECOMMENDATIONS

Based on the foregoing conclusions, we have formulated the following recommendations:

1. The present and former sites of dwellings and outbuildings should be inspected for evidence of soil contamination;
2. If soil staining is discovered, samples of the soil should be obtained and analyzed and the results compared to the criteria set out in the Interim Guidelines for the Assessment and Management of Petroleum Contaminated Sites in Ontario;
3. Some soil samples (perhaps 10) should be obtained from the cultivated lands within the proposed right-of-way. These samples should be analyzed for the metals and nutrients parameters listed in the Lakefill Guidelines;
4. One soil sample should be obtained from the vicinity of the railway tracks and tested for polynuclear aromatic hydrocarbons;
5. No further soil testing is recommended at this time. Additional testing may be required if soil is to be transported offsite during construction.

APPENDIX A - EXISTING DOCUMENTATION

1. Ecological Services for Planning Ltd., Initial Environmental Inventories of the Highway 403 Corridor at Bronte Creek and Sixteen Mile Creek (May 1991).
2. Cumming Cockburn Limited, Hydrology and Hydraulics Bronte Creek at Proposed Highway 403 Crossing (Sept. 1990).
3. Acres International Limited, Foundation Investigation for Proposed Highway 403/CNR Subway District #4, Burlington WP 408-85-01, Site 10-478 (March 1991).
4. Acres International Limited, Foundation Investigation for Proposed Structures at the Crossing of Highway 403 and Bronte Creek District #4, Burlington WP 410-85-01/02 Site 10-220 (Feb. 1991).
5. McCormick Rankin, Investigation of Structure Alternatives for the Bronte Creek Bridges Highway 403 W.P. 410-85-01 WBL Structure W.P. 410-85-02 EBL Structure, Site 10-220 District 4, Burlington (March 1991).
6. MTO, Structural Design Report for the Appleby Line Underpass Highway 403 W.P. 411-85-02, Site 10-229, District 4, Burlington (August 1990).
7. MTO, Structural Design Report for the Highway 25 Underpass Highway 403 W.P. 409-85-02; Site 10-479, District 4, Burlington (August 1990).
8. MTO, Structural Design Report for the Bronte Creek Bridges Highway 403, W.P. 410-85-01; WBL Structure, W.P. 410-85-02; EBL Structure, Site 10-220, District 4, Burlington (Dec. 1990).
9. MTO, Structural Design Report for the CNR Subway Highway 403 W.P. 408-85-01; Site 10-478, District 4, Burlington (Jan. 1991).
10. MTO, Structural Design Report for the Walkers Line Underpass Highway 403, W.P. 411-85-04; Site 10-228, District 4, Burlington (August 1990).
11. MTO, Structural Design Report for the Regional Road, 22 (Tremaine Road) Underpass, Highway 403 W.P. 409-85-04; Site 10-230, District 4, Burlington (August 1990).
12. Ecological Services for Planning Ltd., Environmental Inventory for the Highway 403 Crossing of Bronte Creek (Dec. 1991).
13. McCormick Rankin, Environmental Study Report, Fourth Line/Neyagawa Boulevard Highway 5 to Highway 403 (April 27, 1994).
14. MTO, Highway 403 From Freeman Interchange Easterly to Highway 403/Oakville Link, Preliminary Design Report (July 1983 with May 1984 Addendum).

SCHEDULE 14

Permits

The list of permits and exemptions to be assigned to the Concessionaire are described in the attached documents which are copies of Section M of Appendix 6, Reference Documents in the Request for Proposals Development and Design-Build for the Western Extension of the 407 Express Toll Route (ETR).

In addition copies of the following documents have been provided to proponents--see Sections C and J of Appendix 6— Reference Documents in the Request for Proposals – Development and Design-Build for the Highway 407 East Partial

Order in Council No. 1704/98 Approval of the EA and its attached conditions (June 24, 1998)

List of all encroachment applications/permits within Highway 407 Corridor

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
M. APPROVALS AND CLEARANCES			
119.	<p>Title: Hwy. 403 Bronte Creek Crossing Approval under the <i>Navigable Waters Protection Act</i> (NWPA) W.P.: 410-85-00 Site: 10-220 (Bronte Creek) Author: D. Wong, MTO Date: Varies</p>	X	
120.	<p>Title: Hwy. 403 16 Mile Creek Crossing Approval under the <i>Navigable Waters Protection Act</i> (NWPA) W.P.: 406-85-00 Site: 10-490 (16 Mile Creek) Author: K. Wong, MTO Date: Varies</p>	X	
121.	<p>Title: Submission to National Transportation Agency for Proposed Hwy. 403/C.N. Rail Grade Separation W.P.: 410-85-00 Author: MTO Date: April 6, 1993</p>	X	
122.	<p>Title: Memorandum: Environmental Clearance Hwy. 403 Advance Structures and Approaches at Sixteen Mile Creek, Sixth Line and Trafalgar Rd. W.P.: 406-85-00 Author: F. R. Leech, MTO Date: September 22, 1995</p>	X	
123.	<p>Title: Memorandum: Environmental Clearance from Q.E.W. (Freeman IC) Northerly to Hwy. 5 (Dundas St.) City of Burlington, Regional Municipality of Halton W.P.: 199-77-06 Author: F. R. Leech, MTO Date: July 14, 1995</p>	X	

ITEM	DESCRIPTION	COPY TO PROONENTS	V IN DAT
124.	Title: Memorandum: Environmental Clearance Hwy. 403 Advance Structures for Walkers Line, Appleby Line, Bronte Creek (2 Bridges), CN Rail Subway, Tremaine Road and Hwy. 25 in the Region of Halton W.P.: 410-85-00 Author: F. R. Leech, MTO Date: January 25, 1995	X	
124A.	Orders made under the <i>Environmental Assessment Act</i> to exempt Highway 407 from applications of the Act Exemption Orders MTC-21/2, MTC-47& MTC-52		X



Order in Council
Décret

EA Approved
for 407 C.P.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

WHEREAS section 9 of the *Environmental Assessment Act* provides that the Minister of Environment and Energy, with the approval of the Lieutenant Governor in Council, may give approval to proceed with an undertaking, give approval to proceed with an undertaking subject to such conditions as the Minister considers necessary, or refuse to give approval to proceed with the undertaking;


WHEREAS under subsection 12.4(3) of the Act the Minister has ordered that section 3 (other than paragraph 9(2)2 and the reference to subsection 6.4(2) in paragraph 3(2)5) as enacted by the *Environmental Assessment and Consultation Improvement Act, 1996*, apply with respect to the environmental assessment;

WHEREAS 13 notices requiring a hearing were received by the Minister of the Environment after the publication of the Notice of Completion of the Review; and

WHEREAS, having considered the purpose of the Act, the environmental assessment of the undertaking, which is the subject of the attached notice, and the submissions received, the undersigned Minister of the Environment considers that a hearing is unnecessary and is of the opinion that the undertaking should be given approval to proceed, subject to the conditions specified in the attached notice,

THEREFORE, pursuant to the provisions of the *Environmental Assessment Act*, the undertaking which is the subject of the attached notice, be given approval to proceed subject to the said conditions.

Recommended 
Minister of the Environment

Concurred 
Chief of Cabinet

Approved and Ordered JUN 24 1998
Date


Lieutenant Governor



ENVIRONMENTAL ASSESSMENT ACT

SECTION 9

NOTICE OF APPROVAL TO PROCEED WITH THE UNDERTAKING
(AND ORDER UNDER SUBSECTION 12.4(3))

RE: An Environmental Assessment for Highway 407 Transloway
(Markham Road Easterly to Highway 7 East of Brock Road)

Proponent: Ministry of Transportation

EA File No.: TC-CE-02

TAKE NOTICE that the period for requiring a hearing, provided for in the Notice of Completion of the Review for the above noted undertaking, expired on February 16, 1998. I received 31 submissions before the expiration date. Eighteen submissions required a hearing by the Environmental Assessment Board. The public, including the submitters, has been advised that the Minister was considering applying section 9 of the Act with respect to the Environmental Assessment (which has the effect of eliminating the acceptance decision which was necessary prior to January 1, 1997) and were invited to make submissions on that proposal. None did.

Pursuant to subsection 12.4(3) of the amended Environmental Assessment Act I order that the provisions of section 9 (other than paragraph 9(2)2 and other than the reference to subsection 6.4(2) in paragraph 9(2)5) apply with respect to the Environmental Assessment.

I do not consider it advisable or necessary to hold a hearing. Having considered the purpose of the Act, the Environmental Assessment, the Review and submissions received, I hereby give approval to proceed with the undertaking, subject to conditions set out in Attachment A.

REASONS:

My reasons for giving approval are:

1. On the basis of the proponent's Environmental Assessment and the Review, the proponent's conclusion that, on balance, the advantages of this undertaking outweigh its disadvantages appears to be valid.
2. No other beneficial alternative method of implementing the undertaking was identified.
3. On the basis of the proponent's Environmental Assessment, the Review and the conditions of approval, the construction, operation and maintenance of the undertaking will be consistent with the purpose of the Act (section 2).
4. The Government Review Team has indicated no outstanding concerns that can not be addressed through conditions of approval. The public review of the Environmental Assessment did not identify any outstanding concerns which can not be addressed through these conditions of approval or conditions of a Provisional Certificate of Approval.
5. The submissions received after the Notice of Completion of the Review was published are being dealt with through conditions where appropriate or raise issues beyond the scope of the Environmental Assessment or the Review. I am not aware of any outstanding issues with respect to this undertaking which suggest that a hearing should be required.

Dated the 18th day of June 1998
at TORONTO..

Tom W. Frie

Minister of Environment and Energy
135 St. Clair Avenue West
15th Floor
Toronto, Ontario
M4V 1P5

Approved by O.C. No. 1784/98

Attachment A

HIGHWAY 407/TRANSITWAY
(MARKHAM ROAD EASTERLY TO HIGHWAY 7 EAST OF BROCK ROAD)

Environmental Assessment Act

Conditions of Approval

DEFINITIONS

1. For the purpose of these Conditions:
 - a) "proponent" means The Ontario Ministry of Transportation, also known as MTO;
 - b) "MOE" refers to the Ministry of the Environment.

GENERAL REQUIREMENTS

1. The proponent shall comply with all the provisions of the Environmental Assessment as submitted by the proponent which are hereby incorporated in this approval by reference, except as provided in these conditions and as provided in any other approvals or permits that may be issued.
2. These conditions do not prevent more restrictive conditions being imposed under other statutes.
3. Where a document is required for the Public Record, it shall be provided to the Director of the Environmental Assessment Branch for filing with the Public Record file maintained for the undertaking. In addition, copies of all such documents will be provided by the proponent for public access to the Director, Central Region, MOE, the Clerks of The Corporation of the Town of Markham, The Corporation of the Town of Pickering, The Regional Municipality of Durham and The Regional Municipality of York; and at least one local library in each of Markham and Pickering. Such documents will also be provided to other municipalities as considered appropriate by the proponent.
4. The proponent shall publish notices in local newspapers advising of the availability of the Design and Construction reports and any reports prepared under Condition 3.

Specific Requirements

5. During the design phase, in addition to the two public consultation sessions identified in the Environmental Assessment, the proponent shall provide opportunities such as Focus Group Sessions or Technical Workshops that will allow special interests and the general public to have direct input to the design. Formal notification of such opportunities shall be provided in local newspapers.
 6. The proponent's Design and Construction reports are required for the Public Record. In addition, these reports will be made available to all federal, provincial and municipal agencies that have indicated an interest in being involved in the detailed design phase of the undertaking. This includes, but is not limited to, the Department of the Environment, Department of Fisheries and Oceans, Department of Transport, the Ministry of Natural Resources, the MOE, the Ministry of Citizenship, Culture and Recreation, the Toronto and Region Conservation Authority, the Rouge Park Alliance, and the appropriate planning and/or public works departments of the municipalities named in Condition 3.
 7. MTO shall submit Design and Construction reports to the Director of the Central Region Office of the MOE a minimum of 45 days prior to the commencement of construction.
 - a. MTO shall address, through the Stakeholder Consultation Process committed to in the Environmental Assessment, the specific comments of:
 - a) the Toronto and Region Conservation Authority and the Rouge Park Alliance, as laid out in their letters to the Environmental Assessment Branch of June 6, 1997 and February 13, 1998;
 - b) the Ministry of Natural Resources, as laid out in their letters to the Environmental Assessment Branch of June 6, 1997 and February 13, 1998;
 - c) The Corporation of the Town of Pickering, as laid out in their letter to the Environmental Assessment Branch of February 16, 1998; and
 - d) the Noise Assessment Unit of the MOE.
- MTO shall provide a notice to each of the above organizations, setting out how their comments were addressed. A copy of each notice is required for the Public Record.
5. The proponent has committed to a process to allow it to address the environmental impacts resulting from this undertaking, whether specified in the Environmental Assessment or the MOE Conditions of Approval or identified during subsequent stages of design. Therefore, all component projects of this undertaking will be screened by the

proponent during their design for significant new concerns and compliance with commitments made.

Where significant changes in the undertaking, the commitments made, or the effects of the undertaking, with mitigation, are identified as being limited to the interests of specific property owners or other stakeholders, the proponent will work directly with these stakeholders to address and resolve concerns. Where concerns are addressed to the satisfaction of the stakeholders, this will be documented in the associated Design and Construction Report. Where significant changes are identified and the agreement of the stakeholders cannot be reached through consultation, or it is apparent that not all interested parties can be identified without a formal notice process, the MOE will be consulted. MTO and the MOE will make a joint decision on the need to proceed under a Provincial Highways Class Environmental Assessment process to obtain approval under the *Environmental Assessment Act* for the proposed change.

If it is determined that the Provincial Highways Class Environmental Assessment process will be followed, only the change or changes that necessitated this decision will be subject to the review and "bump-up" provisions of the *Provincial Highways Class Environmental Assessment*.

10. The MTO will abide by the objectives/future commitments identified in Section 6.4 of the Environmental Assessment and revised by letter from Paul Jankowski, Project Director MTO to B. Johnston, Assistant Director, Environmental Assessment Branch, MOE, dated August 26, 1997.

(1)

APPLICANTS NAME APPLICATION R PHONE APPLICANT DES

Table with 5 columns: APPLICANTS NAME, APPLICATION R, PHONE, APPLICANT, DES. Rows include various utility and construction projects such as 'Brampton Hydro (Val Kuznetsov)', 'The Consumers' Gas Company', 'Vaughan Hydro', etc.

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IST REG. MUN.	DATE APPLIC	LOCATION	PERMIT DATE	EXPIRY DATE	REC	FEE	RECEI	FEER	R	PREV	X	X	X
	April 14, 1997	Mavis Road	May 6, 1997	May 6, 2007	7111	\$240.00	H-Q897	240.00	N				X
	January 24, 1999	Centre Line of Woodbine Avenue	January 30, 1996	January 30, 2006	6014	\$190.00	N/A	\$0.00					X
	January 2, 1996	Weston Road	February 1, 1996	February 1, 2006	6020	\$190.00	N/A	\$0.00					X
	January 2, 1996	Goreway Drive	February 2, 1996	February 2, 2006	6022	\$190.00	N/A	\$0.00					X
	January 2, 1996	Bramalea Road	February 12, 1996	February 12, 2006	6036	\$190.00	N/A	\$0.00					X
	August 13, 1996	Kennedy Road	November 5, 1999	November 5, 2006	6236	\$240.00	H-0887	240.00	N				X
	September 6, 1996	Britannia Road	November 5, 1999	November 5, 2006	6238	\$240.00	N/A	\$0.00	N				X
	February 9, 1996	Bramalea Road	December 4, 1999	December 4, 2006	6275	\$240.00	H-0897	240.00	N				X
	August 20, 1996	Derry Road west of 9th Line	September 12, 1999	September 12, 2006	6180	\$240.00	N/A	\$0.00					X
	August 7, 1996	Hurontario Street	November 14, 1999	November 14, 2006	6249	\$240.00	H-0887	240.00	N				X
	August 7, 1996	Derry Road, west of 9th Line	September 12, 1999	September 12, 2006	6182	\$240.00	N/A	240.00	N				X
	December 19, 1996	Jane Street	December 22, 1999	NOT RENEWABL	5393	\$190.00	N/A	waived					X
	November 7, 1996	Kennedy Road	December 3, 1999	December 3, 2007	7368	\$240.00	H-1016	240.00	N				X
	October 8, 1996	Chinguacousy Road	November 26, 1999	November 26, 2006	6265	\$240.00	H-0895	240.00	N				X
	October 8, 1996	Creditview Road	November 26, 1999	November 26, 2006	6264	\$240.00	H-0895	240.00	N				X
	September 25, 1996	Woodbine Avenue	October 21, 1997	October 21, 2007	7310	\$240.00	H10063	240.00	N				X
	August 7, 1996	Derry Road west of 9th Line	September 12, 1999	September 12, 2006	6181	\$240.00	N/A	\$0.00	N				X
	May 10, 1995	Marlingrove Road	September 18, 1999	September 18, 2006	5273	\$190.00	F-65867	190.00					X
	September 7, 1995	Brampton w/o GOREWAY	September 20, 1999	September 20, 2006	5275	\$190.00	F-65869	190.00					X
	June 19, 1995	w/o BRAMALEA RD. w/m	September 20, 1999	September 20, 2006	5279	\$190.00	N/A	waived					X
	July 17, 1995	400mm w/m xing 407 w/o Torbram Rd.	October 6, 1995		5296	\$190.00	N/A	waived					X
	September 27, 1995	Hwy. 400	October 10, 1995	NOT RENEWABL	5302	\$190.00	F-65897	190.00					X
	October 10, 1999		October 11, 1995	NOT RENEWABL	5312	\$190.00	F-65914	190.00					X
	September 25, 1999	Torbram Road	October 17, 1995	October 17, 2005	5315	\$190.00	N/A	\$0.00					X
	September 28, 1999	Bramlea Road Detour	October 17, 1995	October 17, 2005	5316	\$190.00	N/A	\$0.00					X
	July 26, 1995	Dixie Road	October 23, 1995	October 23, 2005	5328	\$190.00	F-65925	190.00					X
	October 26, 1999	Alport Road	October 31, 1995	October 31, 2005	5342	\$190.00	F-65942	190.00					X
	September 29, 1999	Highway 407	October 3, 1997	October 3, 2007	7277	\$240.00	H-1007	240.00	N				X
	October 6, 1997	at Jane Street Overpass	October 6, 1997	Not renewable	7278	\$240.00	H-1007	240.00	N				X
	October 2, 1995	McLaughlin Road	November 30, 1999	NOT RENEWABL	5369	\$190.00	F-65973	190.00					X
	June 17, 1996	5th Line West	December 16, 1999	February 18, 2006	6310	\$240.00	N/A	\$0.00	Y				X
	September 4, 1996	Kennedy Road	September 26, 1999	September 26, 2006	7269	\$240.00	H-1006	240.00	N				X
	June 17, 1996	crossing Mississauga Road	December 16, 1999	February 17, 2006	6309	\$240.00	N/A	\$0.00	Y				X
	April 25, 1996	Dufferin Street	May 3, 1996	May 3, 2006	6058	\$240.00	N/A	\$0.00					X
	November 16, 1996	Farmhouse Court	March 10, 1997	March 10, 2007	7060	\$240.00	N/A	\$0.00	N				X
	February 8, 1999	Derry Road	March 20, 1997	March 20, 2007	7065	\$240.00	N/A	\$0.00	N				X
	April 10, 1996	Kipling Avenue	May 17, 1996	May 17, 2006	6086	\$190.00	H-0762	190.00					X
			June 12, 1996	June 12, 2006	6110	\$240.00	H-0774	240.00					X

APPLICANTS NAME	APPLICATION R	PHONE	APPLICANT	DES
Rogers Cable TV Ltd. - Peel	EC-98-201-117	(905) 89	3573 Wolfredo	Proposed new installation of overhead fibre cable onto existing Mississauga Hydro poles on
Brampton Hydro (Louis Coletta)	EC-96-201-110	(905) 84	175 Sandalwo	Construct a concrete duct bank and overhead conductors crossing Hwy. 407, 35m west of C
The Regional Municipality of Halton	EC-97-201-141	(905) 82	11561 Bronle	Install a 700mm diameter steel liner crossing Hwy. 407 and associated ramps on north side o
The Consumers' Gas Company	EC-96-201-308	(416) 49	P.O. Box 650	Maintaining a 36" NPS gas main crossing Hwy. 407 on Brenda Road, Lot 14, Conc. 4/5 EH
The Consumers' Gas Company	EC-96-201-307	(416) 49	P.O. Box 650	Maintaining a 38" NPS gas main crossing 2nd Line west (Chinguacousy Road) at Hwy. 407, L
Brampton Hydro	EC-96-201-171	(905) 84	175 Sandalwo	Construct concrete duct bank and concrete poles complete with aerial overhead crossing Hwy
Bell Canada	EC-96-201-169	(416) 23	2 Fieldway Dr	Construct underground duct bank, pedestal and aerial cable crossing Hwy. 407 and ramps o
The Consumers' Gas Company	EC-96-201-305	(416) 49	P.O. Box 650	Maintaining a 36" NPS gas pipeline crossing McLaughlin Road and Hwy. 407, Lot 13, Conc.
Brampton Hydro	EC-96-201-161	(905) 84	175 Sandalwo	Construct a permanent concrete duck bank, a temporary aerial crossing (and its removal) H
The Consumers' Gas Company	EC-96-201-302	(416) 49	P.O. Box 650	Maintain a 36" NPS gas main crossing Hwy. 407 south of Derry Road west of 9th Line, Lot 1
Regional Municipality of Peel (J)	EC-96-201-296	(905) 79	10 Peel Centr	Install a 675mm concrete sanitary sewer crossing Hwy. 407 on east side of Chinguacousy R
Regional Municipality of Peel (J)	EC-96-201-295	(905) 79	10 Peel Centr	Construct a 525mm diameter sanitary sewer crossing Hwy. 407 on the east side of Financial
Regional Municipality of Peel (J)	EC-96-201-294	(905) 79	10 Peel Centr	Construct a 600mm concrete sanitary sewer crossing Hwy. 407 at Mullet Creek east of 5th Li
Shaw Cablesystems Ltd.	EC-97-201-302	(416) 39	244 Newkirk	Install 570 m of new 100 mm HDPE conduit along existing Warden Avenue under Highway 4
BRAMPTON HYDRO (V. Kuzne	EC-95-201-021	(905) 84	175 SANDAL	REMOVE EXISTING HYDRO AND REPLACE WITH CONCRETE POLES AND OVERHEAD
CLASSIC COMMUNICATIONS	EC-95-201-057	(905) 88	244 NEWKIR	AERIAL PLANT ON EXISTING HYDRO POLES AND 4 X 100MM PVC DUCTS AND CABLE
Shaw Cable Systems Inc. C/O	EC-98-201-132	(416) 29	705 Progress	Placing fibre optic cable thru the Existing Conduit on Bayview Ave. Crossing Highway 407
Rogers Cable TV Ltd.	EC-98-201-124	(905) 89	3573 Wolfredo	Placing cable in existing duct east/west sides of Hwy. 407 about 0.5 km east of Torbram Roa
City Of Mississauga c/o Ozzl Te	EC-98-201-123	(905) 89	3484 Someny	Two concrete headwalls at storm culvert discharge, two overflow channels for storm discharg
Avery Plix Inc.	EC-98-201-122	(416) 46	629 Eastern A	Performing a Movie Shoot on Highway 407 East of McCowan Road and West of Markham R
City of Brampton	EC-98-201-104	(905) 87	2 Wellington	Construct and maintain a concrete sidewalk and asphalt strip across Hwy. 407 about .01 k
City of Brampton	EC-98-201-103	(905) 87	2 Wellington	Construct and maintain a concrete sidewalk and asphalt strip across Hwy. 407 about .06 k
Radke Films	EC-98-201-096	(416) 36	49 Ontario St.	Construct a Commercial for Honda on Hwy 407 between McCowan Rd. and Markham Rd.
Imported Artists Film Co.	EC-98-201-090	(416) 97	49 Spadina A	Filming of a Commercial for Radio Shack on Hwy 407 between McCowan Rd. and Hwy. 46
McWintler Productions Inc.	EC-98-201-064	(416) 30	65 Trinity Sire	Filming "Bride of Chucky" on Hwy 407 between McCowan Rd. and Hwy. 48 including W.B.
Vaughan Hydro (Steve Ground)	EC-98-201-056	(905) 83	2141 Major M	A Hydro Line crossing Hwy 407 at Weston Rd. According to Dwg's # D1054-02 & C-1067, on
TransCanada Pipelines	EC-98-201-031	(403) 26	111 5th Ave.	Construct a NPS 42 Steel Natural gas Pipeline across Hwy 407 in Lot 13, Con. 9, Milton and
The Consumers' Gas Company	EC-98-201-029	(905) 66	101 Consume	Relocate a NPS Gas Pipeline along Warden Ave. Across Hwy 407, in accordance with Dra
The Consumers' Gas Company	EC-98-201-028	(905) 66	101 Consume	Relocation of a Gas Main on the east side of McCowan Rd. for the HWY 407 according to D
City of Mississauga (Talming C	EC-96-201-230	(905) 61	300 City Cent	Attach fibre optic cable to existing hydro poles on the east side of Airport Road crossing High
Regional Municipality of Peel	EC-97-201-312	(905) 79	10 Peel Centr	Construct a 400 mm diameter watermain on the north and south sides of Hwy. 407 (connecti
Markham Hydro	EC-97-201-040	(905) 47	8100 Warden	To install Hydro poles on the East side of 9th Line from 14th Ave. to Hwy. 7, crossing the Hw
Regional Municipality of York, c	EC-97-201-121	(905) 47	90 Alstate Pa	Construct a 1200mm diameter watermain along the west side of McCowan Road crossing H
Regional Municipality of Peel (L	EC-97-201-041	(905) 79	10 Peel Centr	Relocate 600mm high pressure concrete watermain steel encased on the east side of Dixie
The Consumers' Gas Company	EC-97-201-117	(416) 49	P.O. Box 650	Construct and maintain a 4" gas main crossing Hwy. 407 on east side of Mississauga Road,
The Consumers' Gas Company	EC-96-201-303	(416) 49	P.O. Box 650	Maintain a 36" NPS gas main crossing Hwy. 407 Ramps N/E/W and E-S and W-S and Derry
Ontario Cr... if Agency	EC-95-201-263	(416) 31	20 Bay Surool	A 900mm diameter watermain along Langstaff Road crossing Hwy. 7 and Hwy. 407 between
The Cons... Gas Company	EC-97-201-100	(416) 49	P.O. Box 650	Construct a 6" watermain crossing Highway 407 on the east side of Winston Churchil Blvd., Cil

J. I. ST REG. MUN.	DATE APPLIC	LOCATION	PERMIT DATE	EXPIRY DATE	REC	FEE	RECEI	FEER	R	PREV	X	X
	January 2, 1996	Mississauga Road	June 21, 1996	June 21, 2006	6117	\$190.00	H-0759	190.00			X	X
	January 2, 1996	Centre Line Torbram Road	June 21, 1996	June 21, 2006	6118	\$190.00	H-0759	190.00			X	X
	May 16, 1997	Derry Road	May 28, 1997	May 28, 2007	7141	\$240.00	H-09617	240.00			X	
	June 17, 1996	at Bramalea Road	December 16, 19	February 24, 2006	6308	\$240.00	N/A	\$0.00	Y	21804	X	
	June 17, 1996	crossing 2nd Line West	December 16, 19	February 24, 2006	6307	\$240.00	N/A	\$0.00	Y	21803	X	
	July 31, 1996	McLaughlin Road	September 6, 199	September 6, 2006	6171	\$240.00	H-0886	240.00	N		X	X
	February 8, 199	Bramalea Road	September 6, 199	September 6, 2006	6169	\$190.00	H-0762	190.00	N		X	X
	June 17, 1996	and McLaughlin Road	December 16, 19	February 24, 2006	6305	\$240.00	N/A	\$0.00	Y	21802	X	
	July 9, 1996	Heritage Road	September 9, 199	September 9, 2006	6161	\$240.00	H-0888	240.00	N		X	X
	November 29, 1	Derry Road, West of 9th Line	December 15, 19	April 18, 2006	6302	\$240.00	N/A	\$0.00	Y	21816	X	
	November 1, 19	Chinguacousy Road	December 13, 19	December 13, 200	6296	\$240.00	H-0894	240.00	N		X	X
	December 11, 1	Financial Drive	December 13, 19	December 13, 200	6295	\$240.00	H-0910	240.00	N		X	X
	December 11, 1	at Mullet Creek east of 5th Line W. Heri	December 13, 19	December 13, 200	6294	\$240.00	H-0910	240.00	N		X	X
	September 25,	Warden Avenue	October 15, 1997	October 10, 2007	7302	\$240.00	H10063	240.00	N		X	X
	January 12, 199	STEELES AVE		January 18, 2005	5021	\$190.00	F-64374	190.00	Y		X	
	January 1, 1995	WESTON RD IN WOODBRIDGE		January 26, 2005	5057	\$190.00	F-64378	190.00	Y		X	
	October 9, 1998	Bayview Ave.	October 27, 1998	October 27, 2008	8132	\$350.00	H-1050	350.00	N		X	X
	July 14, 1998	Torbram Rd.	October 20, 1998	October 20, 2008	8124	\$240.00	H-1049	240.00	N		X	X
	September 1, 1	Brillannia Road	October 9, 1998	October 9, 2008	8123	\$240.00	H-1048	240.00	N		X	X
	October 8, 1998	Markham	October 9, 1998	October 31, 1998	8122	\$350.00	H-1048	350.00	N		X	X
	August 21, 1998	Huronario St.	August 28, 1998	August 28, 2008	8104	\$240.00	H-1044	240.00	N		X	X
	August 21, 1998	Airport Rd.	August 28, 1998	August 28, 2008	8103	\$240.00	H-1044	240.00	N		X	X
	August 20, 1998	Markham	August 21, 1998	September 30, 199	8096	\$240.00	H-1043	240.00	N		X	X
	August 6, 1998	Markham	August 6, 1998	August 31, 1998	8090	\$240.00	H-1042	240.00	N		X	X
	June 26, 1998	Markham	July 3, 1998	July 31, 1998	8064	\$240.00	H-1040	240.00	N		X	X
	June 4, 1998	Weslon Rd.	June 16, 1998	June 16, 2008	8056	\$350.00	H-1037	350.00	N		X	X
	May 14, 1998		May 15, 1998	May 15, 2008	8031	\$350.00	L-1033	350.00	N		X	X
	April 17, 1998	Warden Ave.	May 13, 1998	May 13, 2008	8029	\$240.00	N/A	\$0.00	N		X	X
	April 17, 1998	McCowan Rd.	May 13, 1998	May 13, 2008	8028	\$240.00	N/A	\$0.00	N		X	X
	September 26,	Alport Road	October 25, 1996	October 25, 2006	6230	\$240.00	H-0892	240.00	N		X	X
	September 30,	Heritage Road	October 21, 1997	October 21, 2007	7312	\$240.00	H-1012	240.00	N		X	X
	November 25, 1	Hwy. 7	February 12, 199	February 12, 2007	7040	\$240.00	H-0915	240.00	N		X	X
	April 9, 1997	McCowan Road	May 13, 1997	May 13, 2007	7121	\$240.00	H-0960	240.00	N		X	X
	April 27, 1995	Dixie Road	February 24, 199	February 24, 2007	7041	\$240.00	N/A	\$0.00	N		X	X
	May 6, 1997	Mississauga Road	May 13, 1997	May 13, 2007	7117	\$240.00	N/A	\$0.00	N		X	X
	November 29, 1	Derry Road	December 16, 19	April 21, 2006	6303	\$240.00	N/A	\$0.00	Y	15	X	X

7

DES

the crossing Highway

2

RIDE WORKS

LO	HW	LOT	CON	NO	CITY/TWP/TOWNSHIP	COUNTY
	407	13	9		Milton	Hallowell
	407	32,3	384		Marshall	York

07 by lots according to Dwg's 1405-407-16.2 dated Dec. 11 1998.

(4)

IST/REG. NUM.	DATE APPLIC	LOCATION	PERMIT DATE	EXPIRY DATE	REC	FEE	RECEI	FEE R	R	PREV	X	X	X	X
	December 31, 1		December 31, 19	April 7, 2006	0194	\$350.00	N/A	\$0.00	Y	21070	X			
	October 19, 199	Woodbine Ave.	February 12, 199	February 12, 2009	0198	\$350.00	11-1056	350.00	N		X			X

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PE PERMIT K GRO EXP | O PARTY ANN LEN SPECIAL COND

CE	000194069	0276					0	
CC	000190009						0.005	

**SCHEDULE 15
POLICE SERVICES AGREEMENT**

BETWEEN:

**THE CROWN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTRY OF THE SOLICITOR GENERAL
AND CORRECTIONAL SERVICES OF ONTARIO**

(the "Solicitor General")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "Concessionaire")

Background:

- (a) The *Highway 407 Act, 1998*, S.O. 1998, Chapter 28 (the "Act") provides for the transfer of all or any part of the Highway 407 Lands and other assets comprising or relating to Highway 407.
- (b) The Concessionaire is the owner of Highway 407, as defined in the *Act*.
- (c) Pursuant to subsection 59(2) of the *Act*, Highway 407 is deemed to be part of the King's Highway for the purposes of paragraph 3 of subsection 19(1) of the *Police Services Act*, R.S.O. 1990 c. P.15.
- (d) Pursuant to subsection 59(3) of the *Act*, the Ontario Provincial Police may charge the owner the reasonable costs of providing services under paragraph 3 of subsection 19(1) of the *Police Services Act* on a full cost recovery basis.
- (e) Pursuant to subsection 59(4) of the *Act*, the Solicitor General may enter into an agreement with the owner for the provision of services on Highway 407 under paragraph 3 of subsection 19(1) of the *Police Services Act*.

For consideration, the receipt and sufficiency of which are acknowledged by each of them, the parties hereto covenant and agree as follows:

ARTICLE 1.0 INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"Agreement" means this police services agreement, including, for the avoidance of doubt, all schedules referred to herein.

"Annual Budget" means a budgetary estimate of the annual police costs for the services, service levels, equipment and all other matters to be provided hereunder prepared in accordance with this Agreement by the Solicitor General, the OPP or the Commissioner and submitted to the Concessionaire, in the form of Schedule B.

"Annual Financial Statement" means a financial statement prepared in accordance with this Agreement by the Solicitor General, the OPP or the Commissioner and submitted to the Concessionaire, which presents the Concessionaire's annual police costs incurred pursuant to this Agreement in the form of Schedule C.

"Collective Agreement" means the collective agreement negotiated from time to time between the Ontario Public Service Employees Union and Management Board of Cabinet.

"Commander" means the OPP officer in the Greater Toronto Regional Headquarters who is responsible for the administration of this Agreement from time to time.

"Commissioner" means the Commissioner of the OPP from time to time.

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement made as of the date hereof between the Concessionaire and the Crown in Right of Ontario as Represented by the Minister Without Portfolio with Responsibility for Privatization.

"Concessionaire Default" has the meaning ascribed thereto in Section 7.1.

"GTA" means the geographic area of jurisdiction of the City of Toronto and the regional municipalities of Durham, Halton, Peel and York as constituted from time to time.

"Memorandum of Understanding" means the collective agreement negotiated from time to time between the Crown and the Ontario Provincial Police Association, pertaining to compensation, benefits and working conditions of the uniformed members of the OPP up to and including the rank of Sergeant-Major.

"OPP" means the Ontario Provincial Police.

“Satellite Facility” means the portable building to be constructed and maintained by the Concessionaire as described in Schedule A, or such other portable building or facility Approved by the Solicitor General.

“Senior Operating Officer” means the person designated by notice from time to time by the Concessionaire for the purposes of Schedule D.

“Senior Responsible Official” means the person designated by notice from time to time by the Solicitor General for the purposes of Schedule D.

“Solicitor General Default” has the meaning ascribed thereto in Section 7.3.

1.2 Other Definitions

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Concession Agreement.

1.3 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

1.4 Headings

The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.5 References to this Agreement

The words “herein”, “hereby”, “hereof”, “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it.

1.6 References to any Agreement

A reference in this Agreement to any agreement or document (including, for avoidance of doubt, this Agreement) refers to that agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

1.7 Meaning of Including

In this Agreement the words “include”, “includes” or “including” mean “include without limitation”, “includes without limitation” and “including without limitation”,

respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

1.8 Statutes

Unless specified otherwise, a reference in this Agreement to a statute refers to that statute as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto. A reference to a statute shall be deemed to include any regulations made thereunder.

1.9 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to lawful currency of Canada.

1.10 Generally Accepted Accounting Principles

All accounting and financial terms used herein, and all budgets, financial statements and other documents to be prepared pursuant to this Agreement, shall be prepared, interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

1.11 Calculation of Time

For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern standard time or Eastern Daylight Time, whichever is applicable) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern standard time or Eastern Daylight Time, whichever is applicable) on the next Business Day.

1.12 Performance on Holidays

If any action is required by this Agreement to be taken on or by a day which is not a Business Day, such action shall be valid if taken on or by the next succeeding Business Day.

1.13 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

1.14 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by the parties hereto.

1.15 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.16 Invalidity

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent, (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Schedule D

1.17 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Schedule D, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

1.18 Schedules

The following schedules form part of this Agreement:
Schedule A Policing Requirements for Highway 407
Schedule B Annual Budget
Schedule C Annual Financial Statement
Schedule D Dispute Resolution

ARTICLE 2.0 TERM, SERVICES AND PAYMENT

2.1 Commencement and Termination of Agreement

The term of this Agreement shall be for a term of five (5) years commencing on the Effective Date. Either party to this Agreement may terminate this Agreement upon one (1) year's written notice to the other party, in which case this Agreement shall terminate one year following the delivery of such notice. The giving of a notice of termination shall not affect the obligations of either party under this Agreement during the notice period up to and including the date of termination.

Should this Agreement be terminated or expire, the OPP shall continue to be responsible to provide police services and the Concessionaire shall continue to be obligated to pay for the cost of providing police services, in accordance with subsection 59(3) of the *Act*.

2.2 Provision of Services

The Solicitor General shall provide police services to the Concessionaire as set out in Schedule A. The Solicitor General shall cause the Commissioner to assign police officers and other persons to duties relating to the police services for Highway 407 so as to meet the policing requirements and service levels set out in Schedule A.

2.3 Charges

The Solicitor General shall charge for the reasonable costs of providing services under this Agreement on a full cost recovery basis.

2.4 Payment

The Concessionaire shall pay the Solicitor General for the police services provided under this Agreement in accordance with the provisions governing payment detailed herein.

2.5 Estimates

The policing costing estimates set out in Schedule A and the appendices thereto represent estimates for 1999 only and shall be the basis for establishing the Annual Budget as detailed herein. Subject to increases as set out in section 6.4 of this Agreement, the costing estimates set out in Schedule A and the appendices thereto are reasonable estimates of the costs for the policing requirements and police services described in Schedule A.

2.6 Reporting

The Commissioner shall cause the Commander or his or her designate to report to the Concessionaire in writing quarterly in each year for the term of this Agreement, or at

mutually agreed upon intervals, regarding the provision of police services under this Agreement.

ARTICLE 3.0 SERVICE LEVELS

3.1 Level of Services

The police services provided under this Agreement as set out in Schedule A shall be provided by the OPP in the same manner and to the same extent as provided by the OPP on Comparable Controlled Access Highways in the GTA and in accordance with Laws and Regulations.

3.2 Responsibility for Determination of Service Levels

Notwithstanding any other term in this Agreement, but subject to section 3.1 above, the OPP shall be solely responsible for determining the minimum level of police services to be provided on Highway 407. The OPP shall consult as reasonably necessary with the Concessionaire relating to the determination of the minimum level of police services. Subject to section 3.1 and to the Concessionaire's right to be consulted and to receive information from the OPP, as further detailed in this Agreement, the Concessionaire shall accept and have no right to challenge or question any determination made by the OPP relating to the minimum level of police services.

3.3 Responsibility for Operational Decisions

Notwithstanding any other term in this Agreement, but subject to section 3.1 above, the OPP shall be solely responsible for all operational policing decisions, including any matters relating to the application of any policing policy or procedure on Highway 407. Subject to section 3.1 and the Concessionaire's right to be consulted and to receive information from the OPP as further detailed in this Agreement, the Concessionaire shall accept and have no right to challenge or question any operational policing decision, including any matters relating to the application of any policing policy or procedure on Highway 407.

3.4 Annual Review

The Solicitor General, the OPP and the Concessionaire shall review annually the costs of the policing requirements and service levels set out in this Agreement and shall make the appropriate adjustments to the Annual Budget.

3.5 Supporting Information

The Solicitor General shall ensure that the Commander or his or her designate shall deliver to the Concessionaire quarterly, or at mutually agreed upon intervals, a statement, including supporting information reasonably required by the Concessionaire, regarding

police services provided under this Agreement. The Solicitor General shall ensure that appropriate records are kept to support and verify the statement provided. At the request of the OPP, the Concessionaire shall provide information required by the OPP for the purposes of determining policing requirements and delivering police services.

3.6 Dispute Resolution

Notwithstanding any other term of this Agreement, but subject to section 3.1, any matter relating to the determination of policing requirements and levels of police service, as described in section 3.2, or any matter relating to operational policing decisions, as described in section 3.3, are matters to be determined solely by the OPP as described in this Agreement, and are not subject to dispute resolution. For the avoidance of doubt, the Concessionaire shall be able to dispute whether the police services are being provided by the OPP in the same manner and to the same extent as provided by the OPP on Comparable Controlled Access Highways in the GTA. Any disputes that are submitted to arbitration pursuant to section 1.3 of Schedule D shall be submitted independently and dealt with independently of any other disputes submitted to arbitration under the Concession Agreement.

ARTICLE 4.0 EXPANSION AND EXTENSION OF HIGHWAY 407

4.1 Results of Expansion or Extension

Schedule A applies to Highway 407 at the Effective Date. Any Expansion, Extension or other alteration of Highway 407 may necessitate a change in police services, to be determined solely at the discretion of the OPP in accordance with section 3.1, and a corresponding change in costs to be paid by the Concessionaire.

4.2 Notice

The Concessionaire shall give at least six (6) months notice to the OPP prior to the Commissioning and Opening of any Expansion or Extension, of Highway 407 which may impact on police services. If requested by the Solicitor General, the Concessionaire shall provide any information about the proposed Expansion or Extension to Highway 407 as may be required by the OPP. The Solicitor General shall, as soon as reasonably practical after receipt of the notice, advise the Concessionaire of any changes in the policing requirements, including minimum service levels, and the corresponding costs.

The Concessionaire shall advise the Solicitor General and provide reasonable notice of any other alterations to Highway 407 that may necessitate a change in police services.

4.3 Adjustment to Budgets and Financial Statements

Any change to the policing requirements, service levels and costing shall be incorporated in the appropriate Annual Budget and reflected in the Annual Financial Statement in accordance with this Agreement.

ARTICLE 5.0 EQUIPMENT AND FACILITIES

5.1 Supply of Equipment

The Solicitor General shall supply or cause to be supplied at the Solicitor General's cost all vehicles and equipment reasonably necessary and appropriate for the use of the OPP in providing police services under this Agreement.

5.2 Concessionaire's Responsibility

The Concessionaire shall supply and make available to the OPP the Satellite Facility for the OPP's exclusive use. The Satellite Facility shall meet or exceed the specifications set out in Schedule A. Subject to section 5.3, the Concessionaire shall be solely responsible for all costs associated with the supply of the Satellite Facility and its on-going operation. All costs includes costs relating to the installation, operation (including insurance costs) and maintenance of the Satellite Facility.

5.3 OPP's Responsibility

The OPP shall be responsible for damage to the Satellite Facility resulting from wilful acts of the OPP.

ARTICLE 6.0 COSTS OF SERVICES

6.1 Annual Budgets

On or before December 1 in each year, the Solicitor General shall prepare and deliver to the Concessionaire for its review the Annual Budget for the following year, together with sufficient documentation and information reasonably necessary to explain and support the service levels, the adequacy of equipment and facilities and all other matters affecting the Annual Budget.

6.2 Monthly Payments

The Concessionaire shall make monthly installment payments to the Solicitor General on the last days of each calendar month in each year, each being one twelfth of the Annual Budget for that year subject to any adjustment in accordance with the Annual Financial Statement as set out below.

6.3 Annual Financial Statements

On or before March 31 in each year following a year to which this Agreement applies, the Solicitor General shall prepare and deliver to the Concessionaire an Annual Financial Statement for the preceding calendar year. The actual costs of police services for Highway 407 shall be as shown in the Annual Financial Statement. The Solicitor General shall keep records, statements of accounts, invoices and any other such documents necessary to support the Annual Financial Statement, and all such records shall be kept for a period of at least six years. The Solicitor General shall permit a designated representative of the Concessionaire, upon reasonable notice to the Solicitor General, to examine all such records and books of account and conduct a review of the Annual Financial Statement.

6.4 Excess Amounts Offset

Despite anything in this Agreement, the total amount of money paid by the Concessionaire for police services in respect of any calendar year shall not exceed the Annual Budget for that year. However, the Solicitor General may charge the Concessionaire for any increase incurred as a result of the following items to the extent they relate to services to be provided pursuant to this Agreement:

- (a) an emergency which has been declared under the *Emergency Plans Act*, R.S.O. 1990, c.E9, where the emergency area includes the whole or any part of Highway 407;
- (b) increases with respect to wages, benefits or other employment matters as provided for in the Memorandum of Understanding or Collective Agreement in effect at the relevant time;
- (c) increases with respect to accommodation, equipment and fuel costs;
- (d) compliance with any laws, by-laws, regulations or provincial standards which become applicable to this Agreement or the provision of police services following the delivery of the Annual Budget for that year; and
- (e) any other matters which require the provision of police services on Highway 407 and which could not be reasonably anticipated or forecast at the time of the preparation of the Annual Budget.

6.5 Disputes

If a dispute should arise respecting a costing item in either the Annual Budget or the Annual Financial Statement, the Concessionaire may refer the matter to the dispute resolution mechanism contained in Schedule D. In no case, however shall the referral of a matter to the dispute resolution mechanism operate to affect in any manner the Concessionaire's obligation to make payment with respect to the cost of any item or to continue to perform any other obligations under this Agreement.

6.6 Payment

Any amounts payable by the Concessionaire under this Agreement, except those amounts payable pursuant to section 6.2, shall be paid within 60 (sixty) days of the date of delivery of an invoice. Any amounts payable in accordance with an adjustment by either party following delivery of the Annual Financial Statement shall be paid within 60 (sixty) days of the date of delivery of the Annual Financial Statement or credited or debited within one month after the delivery of the Annual Financial Statement.

6.7 Reimbursement

If any party to this Agreement pays any amount under this Agreement and it is subsequently determined that such amount was not owing by such party, the party in receipt of such amount shall immediately upon such determination repay such amount to the other party.

6.8 Partial Years

If for any reason it shall become necessary to calculate an Annual Budget for a period of less than one (1) year, then the calculation of such Annual Budget shall be done on an appropriate *pro rata* basis, based on the number of days in such period in proportion to the number of days in a calendar year.

ARTICLE 7.0 DEFAULT

7.1 Concessionaire Default

The occurrence of any one or more of the following events shall constitute a Concessionaire Default under this Agreement:

- (i) If the Concessionaire fails to make any payment of any amount due to the Solicitor General under this Agreement and such default continues unremedied for a period of thirty (30) days following notice thereof from the Solicitor General to the Concessionaire.
- (ii) If the Concessionaire fails to perform or observe any of its material obligations or covenants under this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Solicitor General to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Solicitor General, acting reasonably, that
 - (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure,

- (B) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Solicitor General, acting reasonably, and
 - (C) if such failure is in fact cured within such period of time then such failure shall not be a Concessionaire Default.
- (iii) If the Concessionaire fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule D and such default continues unremedied for a period of sixty (60) days following notice thereof from the Solicitor General to the Concessionaire.
 - (iv) If there is a Concessionaire Default under the Concession Agreement and the Grantor is entitled to exercise any of its remedies set out in Section 20.2 of the Concession Agreement

7.2 Remedies of the Solicitor General

Upon the occurrence of a Concessionaire Default, the Solicitor General may by notice to the Concessionaire declare the Concessionaire to be in default and may, subject to the dispute resolutions provisions of Schedule D, do any or all of the following as the Solicitor General, in its sole and absolute discretion, shall determine

- (i) The Solicitor General may terminate this Agreement by giving sixty (60) days' prior notice to the Concessionaire.

The Solicitor General may cure the Concessionaire Default (but this shall not obligate the Solicitor General to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so) and all costs and expenses incurred by the Solicitor General in curing or attempting to cure the Concessionaire Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses shall be payable by the Concessionaire to the Solicitor General on demand, without any days of grace. No such action by the Solicitor General shall be deemed to be a termination of this Agreement. The Solicitor General shall not incur any liability to the Concessionaire for any act or omission of the Solicitor General or any other Person in the course of remedying or attempting to remedy any Concessionaire Default.

- (ii) The Solicitor General may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default.
- (iii) The Solicitor General may seek to recover damages and costs, including legal fees on a solicitor and client basis.

7.3 Solicitor General Default

The occurrence of any one or more of the following events shall constitute a Solicitor General Default under this Agreement

- (a) If the Solicitor General defaults in the payment or crediting of any amount due to the Concessionaire under this Agreement and such default continues unremedied for a period of thirty (30) days following notice thereof from the Concessionaire to the Solicitor General.
- (b) If the Solicitor General fails to perform or observe any of its material obligations or covenants under this Agreement and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Solicitor General or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Solicitor General has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that it is
 - (i) proceeding with all due diligence to cure or cause to be cured such failure, and
 - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably, and if such failure is in fact cured within the period of time acceptable to the Concessionaire, acting reasonably, then such failure shall not be a Solicitor General Default.
- (c) If the Solicitor General fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule D and such default continues unremedied for sixty (60) days following notice thereof from the Concessionaire to the Solicitor General.

7.4 Remedies of the Concessionaire

Upon the occurrence of a Solicitor General Default by the Solicitor General under this Agreement, the Concessionaire may do any or all of the following as the Concessionaire, in its sole and absolute discretion, shall determine:

- (a) The Concessionaire may terminate this Agreement by giving sixty (60) days' prior notice to the Solicitor General.
- (b) The Concessionaire may seek such equitable remedies as are available to it.
- (c) The Concessionaire may seek to recover damages and costs, including legal fees on a solicitor and client basis.

7.5 Rights of Leasehold Mortgagee

Article 22 of the Concession Agreement applies to this Agreement with necessary modifications.

7.6 Notification of Breach

Each of the Concessionaire and the Solicitor General shall notify the other immediately upon becoming aware that any of the provisions set out in this Agreement have been breached.

ARTICLE 8.0 GENERAL

8.1 Notice

All notices and other communications required or permitted by this Agreement shall be in writing and shall be delivered, sent by telecopier or by registered mail (return receipt requested) as follows:

To the Solicitor General:

25 Grosvenor Street
11th Floor
Toronto, Ontario

Fax: (416) 326-5085;

To the Commissioner:

Ontario Provincial Police
777 Memorial Avenue
Orillia, Ontario
L3V 7V3

Attention: the Bureau Commander, First Nations and Contract Policing Bureau,
Fax: (705) 329-6217

To the Concessionaire:

200 King Street West
20th Floor
Toronto, Ontario
M5H 3T5

Attention: President
Fax: (416) 326-6460

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received (i) on the day it is delivered or on the day on which transmission is confirmed by the sender's telecopier records, if telecopied, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by registered mail.

8.2 Time of the Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

8.3 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party shall at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

8.4 Interest

Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus three percent (3%), from the date such payment is due until payment and both before and after judgement.

8.5 Costs

Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

8.6 Enurement and Binding Effect

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and assigns.

8.7 No Partnership

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Solicitor General and the Concessionaire.

8.8 Cumulative Remedies

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.9 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

8.10 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

8.11 Precedence of this Agreement

Unless expressly stated otherwise in this Agreement, in the event of any direct conflict between this Agreement and the provisions of the Concession Agreement, the terms of this Agreement shall prevail.

8.12 Assignability

Subject to Section 7.5, this Agreement may not be assigned by the Solicitor General or the Concessionaire, either in whole or in part, without prior written consent of the other party, which consent may not be unreasonably withheld. A Leasehold Mortgagee shall be a permitted assignee for the purposes of this Section 8.12. No consent shall be required if this Agreement is assigned in conjunction with a permitted Transfer under the Concession Agreement and in such case the provisions of Article 21 of the Concession Agreement shall apply with necessary modifications.

8.13- Certificates

On fifteen (15) days' notice, each party shall promptly, whenever reasonably requested by the other, execute and deliver to the other, a certificate signed by a responsible officer or director or employee, in respect of the status of this Agreement including confirmation:

- (a) that this Agreement is in full force and effect, unamended and, if not, reasonable details thereof; and
- (b) as to the existence or non-existence of any defaults under this Agreement and, to the extent applicable, reasonable details thereof.

8.14- Further Assurances

The parties hereto shall execute and deliver such further documents and take such further action as reasonably necessary or appropriate to give effect to this Agreement.

IN WITNESS WHEREOF, the Concessionaire by its duly authorized signing authority has signed this Agreement and the Solicitor General has personally signed this Agreement to be effective as of the date set out herein.

**THE CROWN IN RIGHT OF ONTARIO, as Represented
by the Ministry of the Solicitor General and Correctional
Services of Ontario**

Per: _____

407 ETR CONCESSION COMPANY LIMITED

Per: _____ c/s
Name:
Title:

SCHEDULE A

**POLICING REQUIREMENTS FOR KING'S HIGHWAY 407,
NOVEMBER 26, 1998**



Policing Requirements

for

King's Highway 407

*Prepared by Municipal Policing Section
Ontario Provincial Police*

November 26, 1998

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- APPENDIX "A" - 1999 CHARGES FOR CONTRACT POLICE COSTS
- APPENDIX "B" - COSTING SUMMARY
- APPENDIX "C" - OPP COMPUTERIZED CONSTABLE DEPLOYMENT MODEL SUMMARY
- APPENDIX "D" - SATELLITE FACILITY COST INFORMATION

INTRODUCTION

The Privatization Secretariat of the Government of Ontario has requested, by way of Bill 70, that the OPP identify the level of resources required to provide policing services to King's Highway 407. The following Outline of Service was prepared in response to this request, subject to Section 50 (3) & (4) of Bill 70 and Section 19(1) of the Police Services Act.

For the purposes of this document, the future owner(s) of King's Highway 407, will be known as the "Owner", as defined in Section 1(1) of Bill 70: "the person who from time to time is a tenant under a ground lease of the King's Highway 407 lands and who is an owner of assets comprising or relating to King's Highway 407."

KING'S HIGHWAY 407

King's Highway 407 is an electronic-toll, controlled-access, multi-lane highway. It is currently 68 kilometres in length and runs in an east-west direction from the junction of Highway 403 in the Regional Municipality of Peel east to McCowan Road in the Regional Municipality of York. Plans are in place for future extensions.

Statistical information related to workload on King's Highway 407 is limited due to the highway's relatively brief history. For current statistical data relating to King's Highway 407, refer to Appendix C.

ONTARIO PROVINCIAL POLICE

The Ontario Provincial Police (OPP), in accordance with the Police Services Act, is responsible for providing traffic control (patrol and enforcement) on all 400 series and King's highways, including those parts that are within the jurisdiction of municipal police agencies. The OPP has provided traffic control and enforcement services on Ontario's highways for more than 60 years. The expertise and resources available from the OPP are second to none.

The OPP Greater Toronto Region (GTR) houses the greatest concentration of OPP traffic management resources available in Ontario. The GTR provides traffic control policing services to an estimated 5.7 million people who travel over the 643 kilometres of highways in and around the Greater Toronto area.

The OPP delivers highway traffic services, in cooperation with concerned agencies and the people served, in order to assist in the safe and efficient movement of vehicles on Ontario road systems. The OPP has developed a comprehensive Traffic Management Plan, the objectives of which are:

- to provide policing services designed to prevent traffic collisions;
- to reduce the number of deaths and injuries related to traffic collisions;
- to promote voluntary compliance with traffic laws;
- to provide investigative excellence;
- to provide consistent and effective enforcement of traffic laws; and
- to maintain an effective liaison with other concerned agencies and interest groups for the purpose of traffic management planning.

CONSULTATION RECORD

In developing the policing resource requirements, the OPP consulted the following groups and stakeholders:

- the Ministry of Transportation (MTO) corporate personnel for statistical information on traffic flows and traffic volumes;
- the Canadian Highways Management Corporation (CHMC) and the Advanced Toll Management Corporation (ATMC) officials for information on the maintenance and administration of the infrastructure of King's Highway 407;
- the OPP GTR command staff and police officers who currently police King's Highway 407. Their duties include traffic management, enforcement and collision investigation.

Resource requirements in similar areas now policed by the OPP were taken into consideration and the OPP Computerized Constable Deployment Model was used to develop this outline of re-active and pro-active policing requirements for King's Highway 407.

OUTLINE OF SERVICE

OPP GTR Regional Headquarters, located in Aurora, oversees the seven OPP regional traffic detachments in the GTR. Aurora and Port Credit OPP detachments are currently responsible for providing policing services to King's Highway 407. These detachments will house the OPP resources identified in this Outline of Service.

The OPP provides traffic specialists with expertise in technical traffic collision investigation, reconstruction, technical identification services, truck safety enforcement, radar enforcement, Highway Ranger teams, among others.

The OPP takes an integrated approach to service delivery, supervision and administration. The shared infrastructure of the OPP broadens local access to resources, expertise, solutions, training and management services without duplicating service. Advantages to the Owner include: assurance of the adequacy of the police service; dedication to resolving local issues; service at a defined cost; support from neighbouring detachments, regional headquarters and general headquarters; and access to a comprehensive infrastructure and specialized services. (See OPP Contract Service Model, page 7.)

The OPP is mandated to provide provincial level emergency response that can be mobilized in times of emergency, disaster or specialized investigative need. The OPP meets such emergent needs, on an on-call, as-needed basis, by deploying small numbers of officers from multiple locations and assignments, both contract and provincial. In so doing, the OPP ensures that appropriate levels of service remain in place. Costs to the Owner will be reduced when policing contract resources are mobilized in cases where there is a provincial obligation at locations other than King's Highway 407.

King's Highway 407 requires policing that is both pro-active (preventative patrols, speed and seatbelt enforcement programs, etc.) and re-active (collision investigation, stranded motorists, etc.).

24 hours a day, seven days a week. The services that will be provided as part of this contract proposal outline include all policing services related to King's Highway 407, including specialist services.

The policing resources will be housed at Port Credit and Aurora OPP detachments. The Owner will be responsible for providing, equipping and maintaining a satellite facility either on or in close proximity to King's Highway 407. A suitable site will be determined by way of consultation between the Owner and the OPP. (For satellite facility costing information, see Appendix D.)

This outline of services addresses present-day requirements to provide adequate pro-active and re-active policing services to King's Highway 407. Future growth and/or increased workload on King's Highway 407 will necessitate additions to the proposed policing resources during the term of the contract. As the length of the highway is extended, additional policing resources will be required and will be housed in additional detachments.

Additional policing resources for future extensions to King's Highway 407 will be determined using deployment model methodology. A description of the OPP Computerized Constable Deployment Model and methodology is provided in Appendix C.

Any required change in policing resources will be negotiated between the Owner and the OPP. At least six months notice shall be given to the OPP prior to the opening of any future extension(s) to King's Highway 407, in order that staffing levels and infrastructure issues may be addressed by the OPP and the Owner, and the contract amended.

Day to day operations will be the responsibility of the OPP Commander of the officers assigned to the contract resources. The Owner or representative(s) shall be consulted concerning general policing issues related to the overall direction of the policing service on King's Highway 407. The Owner shall receive reports at a frequency determined in consultation with the Commander. The Owner shall identify a representative(s) available as a contact resource to facilitate consultation with the OPP Commander, or designate.

CONTRACT COSTS

The 1999 costs for OPP policing of King's Highway 407, as outlined in the model:

1999 Estimated Policing Cost	\$ 2,097,209.00
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Note:

1. The salary cost outlined in this document for the OPP contract resources is based on the first class pay level. The salary costs for providing police services are adjusted annually to reflect actual levels.
2. The Owner is entitled to revenues generated from the sale of reports such as copies of statements pertaining to motor vehicle collisions, copies of motor vehicle collision reports, technical collision investigation reports, etc.

King's Highway 407

OPP CONTRACT SERVICE MODEL

When an Owner or business elects to receive police services from the OPP under contract, the OPP provides a defined level of service to the Owner or business and access to the integrated resources of the OPP. The OPP resources described below are required to deliver the level of service for King's Highway 407 as defined in this document.

OPP Contract Service Model Profile

Position	Contract Resources
Staff Sergeant	0.4
Sergeant	2
Provincial Constable	18
Total Uniform	20.4
Clerical Support (OAG8)	1.4
Caretaker	0.4
Total Civilian	1.8

KING'S HIGHWAY 407

OPP SERVICE

The following areas describe front line service and the support provided by detachment and Regional and General Headquarters. The associated costs are included in this document.

Front Line Service

Traffic Management Program

Complement members will be deployed to traffic areas that require particular attention. These areas will be selected on the basis of traffic volume, collision frequency, and complaints. The areas will be monitored continuously and adjusted as required. Technical Traffic Collision Investigators, officers trained in motor vehicle accident investigation and reconstruction, will be available if requested by the Detachment Commander for serious accident investigations. There are trained investigators working at Aurora and Port Credit Detachments.

Patrol Provision

The OPP will provide all preventive and investigative services required to address the policing needs of King's Highway 407. Patrols will be maintained on both a pro-active and re-active basis.

The deployment of officers to meet the needs of King's Highway 407 will be designed to provide the most effective use of resources. As needs change or circumstances require, officers can be re-deployed to achieve desired response levels. Consultation between the Owner and the Commander will occur as required, to address issues regarding the policing function on King's Highway 407.

The uniform complement will provide twenty-four (24) hours per day, seven (7) days per week, policing service. If on-duty members are unavailable (e.g., due to investigations, court attendance,) emergent calls for service will be responded to by on-duty resources from the other zones. If members from other zones are unavailable to respond to priority calls for service, off-duty contract members will respond on a call-back basis and any overtime hours incurred will be charged to the contract. Shift scheduling, court scheduling, and supervision will aim to reduce overtime accumulation.

Patrols and Officer Safety

The OPP considers officer safety paramount and as such, policy dictates that two-member patrol cars will be utilized from 10:00 p.m. to 6:00 a.m. on Friday and Saturday nights and where practicable on all other nights during those hours. The potential for injury or death of an officer when investigating or responding to occurrences involving violence (e.g. domestic disputes,

assaults) necessitates such policies. The policy to utilize one or two-member patrols at other designated times or incident types is activated at the discretion of the Detachment Commander.

R.I.D.E.

The Reduced Impaired Driving Everywhere (R.I.D.E.) program will be managed by local detachment members as time and resources permit, and will be operated as a year-round initiative. Aurora and Port Credit OPP Detachments have an Intoxilyzer™ instrument which allows qualified technicians to conduct breath tests to determine the blood/alcohol concentration in persons suspected of drinking and driving offences.

Supervision

Overall responsibility for the contract complement will be that of the Inspector-Commander, located at the Greater Toronto Regional (GTR) Headquarters, located in Aurora. Direct operational supervision from Team Leader Sergeants will be provided to the King's Highway 407 complement from Aurora and Port Credit Detachments.

Assistance and guidance may also be provided by the on duty Sergeant at the GTR Operations Centre. (The Regional Operations Centre provides supervision by a Sergeant, on a 24 hour, seven day per week basis.)

Technical Identification Services

Technical Identification specialized services will be provided by the Technical Identification Unit based in Aurora. The OPP Detachments also have S.O.C.O. (Scenes of Crime Officers) to provide quick response to the identification and collection of physical evidence.

Auxiliary Policing Program

The OPP Auxiliary Program, which is a provincial responsibility, has units strategically located throughout the Province of Ontario, including a unit operating out of the Port Credit Detachment with an authorized strength of 35 members and a second unit at Aurora consisting of 28 members. These committed volunteers accompany regular members on patrol, along with other assignments.

Support Services

Accommodations

Policing service will be provided using the contract resources from the Aurora and Port Credit OPP detachments.

To enhance the availability of complement members, one suitable satellite office equipped with the necessary phone lines and computer equipment, will be located in the immediate vicinity of Highway 407, as determined by the OPP in consultation with the Owner. The Owner will be responsible for this facility and the related installation and operational costs associated to this facility. This facility will allow complement members to remain at, or near, King's Highway 407, rather than returning to detachment to complete reports or to interview witnesses, etc.

The annual cost of accommodation is identified in Appendix "A". The related costs of the satellite office is identified in Appendix "C".

Communications

Dispatching services will be provided through the GTR Region Operations Centre in Aurora. The Operations Centre has Enhanced 911 and Canadian Police Intelligence Centre (C.P.I.C.) network participation capabilities. Staff within the Operations Centre will perform incident taking and dispatching responsibilities and will use the OPP communications system to accomplish these tasks.

Ongoing operating, maintenance and replacement costs for the mobile radio equipment are described in the Communication Support and Mobile Radio Equipment categories in Appendices A and B.

C.P.I.C. Administration

Canadian Police Intelligence Centre (C.P.I.C.) administration is located at the GTR Operations Centre in Aurora. The Centre is responsible for coordinating data entry and maintenance of C.P.I.C. files for detachments in the GTR.

Office Automation

The OPP is committed to using the most current technology at all OPP locations to enhance the service it provides to the public. This includes OMPPAC (a computerized records management system). This computer system is an operational and investigative tool that is available to both provincial and contract police services. OMPPAC fees are captured in annualized lease and operational figures.

Transport

The OPP will ensure sufficient vehicles are provided to meet the contract requirements. The Owner will be invoiced for the transportation supplied by the OPP, as outlined under vehicle usage in Appendices A and B.

Clerical

The Owner shall be responsible for a portion of the clerical positions providing support to the contract complement. Clerical duties shall include general office administration, clerical support/reception duties, court administration, warrants, etc.

Janitorial Services

A portion of janitorial services at the Aurora and Port Credit OPP Detachments will be the responsibility of the Owner. The cost of janitorial services are identified in Appendices A and B. In addition, the Owner will be responsible for janitorial services at the satellite location. These costs have not been included in this proposal.

GENERAL CONTRACT PROVISIONS

The Commissioner of the Ontario Provincial Police will undertake to:

- provide annually to the Owner, a schedule of estimated costs for the subsequent calendar year;
- provide the Owner with quarterly billings;
- certify the actual cost of policing at the end of the calendar year;
- provide the Owner with monthly and cumulative yearly totals for dedicated police hours, kilometers traveled, overtime and any other related information and;
- adjust from time to time any estimates set out in the schedule(s) as mentioned and advise the Owner of any such adjustments, for example salaries, benefits;
- assign the agreed upon number of uniformed and civilian staff to police King's Highway 407;
- direct and maintain administrative and operational control of assigned members;
- oversee the conduct and discipline of OPP members;
- supply all uniforms, equipment and vehicles to be used by the OPP in policing King's Highway 407; and
- provide direct liaison with the Owner to address policing needs and other items of mutual concern;

The Owner will undertake to:

- pay the Province of Ontario for the policing services provided in accordance with the contractual agreement by way of quarterly installments on the dates specified in the contractual agreement.

Mutual Undertakings

Both the Owner and the Province of Ontario will undertake to:

- provide each other with financial and other information to assist in the proper maintenance of any contractual agreement.

Additional Contract Provisions

- Representatives of the OPP and the Owner will meet to discuss matters of mutual concern.
- The Agreement will be for a five-year period, and each party will notify the other one year prior to the conclusion of the agreement of its intent with respect to the negotiation of the renewal agreement.

Dispute Resolution Mechanism

This proposal includes a dispute resolution mechanism. Should a dispute arise, the Detachment Commander or designate agrees to meet with the Owner at the earliest opportunity to discuss the dispute. If the dispute remains unresolved at the detachment level, the Regional Commander or designate shall meet with the Owner, at the earliest opportunity. If the dispute remains unresolved at the Regional level, the Commissioner or in the Commissioner's absence, a Deputy Commissioner, agrees to meet with the Owner, at the earliest opportunity.

N.B.

The provisions outlined above are general in nature. Specific terms of the contract will be developed with the Owner.

APPENDIX A

1999 Charges for Contract Police Costs

1999 Contract Charges For Police Costs

The following categories are taken into consideration when preparing the costing proposal:

<u>Particulars</u>	<u>1999 Estimates</u>
Uniformed Staff Salaries** (1999 Salary levels)	Staff Sergeant - \$71,389 Sergeant - \$63,022 Constable - \$55,772
Civilian Salaries** (1998 salary levels)***	OAG 8 - \$35,181 Caretaker 2 - \$32,914
Overtime Hours**	7% of salaries
Shift Premium	\$241.00 per uniformed staff
Service Badge Allowance	\$306.00 per uniformed staff
Contractual Payouts (Vacation & Stats)**	\$2,500.00 per uniformed staff
Benefits	22.5 % civilian / 23.5 % uniformed staff
Support (Training Recruiting, HR, Servicing)	\$772.00 per uniformed staff
Vehicle Usage	\$5,329.00 per uniformed staff
Telephone**	\$832.00 per uniformed staff
CPIC Lines	\$47.00 per uniformed staff
Office Supplies	\$121.00 per uniformed staff
Uniforms & Equipment	\$500.00 per uniformed staff
Communication/Information Technology	
Salary & Benefits - Operators	\$1,679.00 per uniformed staff
Electricity for Towers	\$113.00 per uniformed staff
Mobile Radio Maintenance	\$724.00 per uniformed staff
Office Automation including OMPPAC	\$1,068.00 per uniformed staff
Janitorial Supplies	\$74.00 per uniformed staff
Accommodation	\$353.00 per uniformed staff
Prisoner Supplies	\$312.00 per uniformed staff
Furniture & Equipment	provided by OPP

** Owner is billed for actual costs at year end.

APPENDIX B

Costing Summary

O.P.P. COSTING SUMMARY - HIGHWAY 407
 Estimated Policing Costs for the period
 January 1, 1999 to December 31, 1999

Salaries and Benefits

Uniform Members	Positions	\$	
Inspector	-	-	
Staff Sergeant	0.40	28,556	
Sergeant	2.00	126,044	
Constables	18.00	1,003,896	
Total Uniform Salaries			1,158,496
Overtime (Provincial Average)			81,095
Contractual Payout (Vacation & Statutory Holidays)			51,000
Shift & Badge Premiums			11,062
Benefits (23.5% of Salaries)			272,246
<i>Total Uniforms Salaries & Benefits</i>			1,573,899
Civilian Members	Positions	\$	
OAG 8	1.40	49,253	
OAG 6	-	-	
Caretaker 2	0.40	13,166	
Caretaker 1	-	-	
Total Civilian Salaries			62,419
Benefits (22.5% of Salaries)			14,044
<i>Total Civilians Salaries & Benefits</i>			76,463
Total Salaries & Benefits			1,650,362

Other Direct Operating Expenses

Operational Support	15,749
Prisoner Guards / Expenses	6,365
Vehicle Usage	108,712
Telephone	17,932
Office Supplies	2,468
Accommodation	7,201
Uniform & Equipment	10,200
Furniture & Equipment	-
Janitorial Supplies	1,510
Communication Support	36,557
Mobile Radio Equipment	14,770
Office Automation / OMPPAC	21,787
<i>Total Other Direct Operating Expenses</i>	243,250
GHQ/RHQ Support	203,597

TOTAL ESTIMATED POLICING COST \$ 2,097,209

APPENDIX C

OPP Computerized Constable Deployment Model Summary

**OPP Computerized Constable Deployment Model
Summary**

Operational Policy and Support Bureau

November 24, 1998

[CONFIDENTIAL]

OPP Computerized Constable Deployment Model Summary of the Model Standards and Parameters

Operational Policy and Support Bureau

Summary:

The computerized uniform constable staffing model was developed for the OPP in the mid 1980's by the Illinois State Police Service's Chief of Planning and Analysis, Richard Raub. The model estimates the number of constables required at a detachment. The model does not forecast the level of uniformed staffing required for operational support, supervision, and administration. Staffing in these areas must be determined using other methods. The staffing deployment model is used by the OPP both operationally and corporately for planning and analysis.

To estimate the number of constables required to staff a detachment, the model considers five general parameters, Detachment Characteristics, Availability for Calls For Service (CFS's), Calls For Service, Policing Standards (e.g., Shift Coverage), and Patrol. The model parameter estimates used to forecast the Constable Staffing Requirements for the Central Section of Highway 407 are provided in the following table:

Two important factors in considering staffing requirements for highway 407 are the Response and Patrol Standards. The OPP deployment model takes into account the probability of simultaneous Motor Vehicle Collisions and Criminal Code/Other Calls For Service (CFS's) and considers the percentage of time an officer will be immediately available to respond to CFS's. This is referred to as the Response Standard. A Response Standard of 92% means that 92% of the time there are enough officers deployed to respond immediately to all outstanding CFS's. The 8% of the time when there are not enough officers deployed to handle all outstanding calls are managed through officers from neighbouring detachments handling the remaining outstanding Calls For Service. The optimum situation for a police agency is to have a 100% Response Standard (officers being able to respond to all CFS's immediately). The decision for operating at a Response Standard less than 100% is based upon the availability of fiscal resources, vision/mission of the organization, knowledge of local conditions, and most importantly, the expectations of the public.

The deployment model estimates the number of officers required for patrol, and patrol-related activities based on the number of kilometers and traffic volumes for highway 407. The Patrol Speed while patrolling on 407 is adjusted based upon the premise that higher traffic volumes mean greater highway congestion and a lower patrol speeds. The model

HMB LEASING

TEL: (905) 543-0444 FAX: (905) 543-0442

4570 SANN RD, BEAMSVILLE, ONT. L0R 1B0

Nov. 10, 1988

Ontario Provincial Police
Fax: 705 329-6293

Attention: Mr. Jeff Willet

Dear Sir:

Subject: Revised Modular Building Quotation

Product: As per the previous floor plan and specification less (1) single washroom.

Purchase Price: \$24,832.00 plus taxes.

Delivery and Set: \$450.00 plus taxes.

Lease to Own Option: Deposit of \$6500.00 at the point of order and the following payment schedule with a \$1.00 but-out at the end of the term.

24 Month: \$933.00 per month plus taxes.

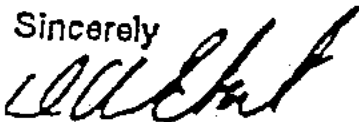
36 Month: \$649.00 per month plus taxes.

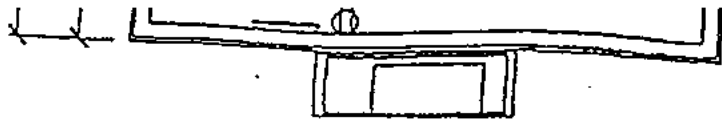
-Rental Option:

Minimum 24 month contract at \$650.00 per month plus taxes, if term is extended in to 36 months the rate is reduced to \$600.00 per month plus taxes. Return delivery of 450.00 is required on a rental contract.

I hope that you will find this acceptable and look forward to your response.

Sincerely





Panel: 100 amp combination.
Circuit Breakers: to suit
Grounding: No. Ground bonded to panel and continued out side for connection by others.
Wall Out-Lets: (12)
Dedicated Out-Lets: None
Other Out-Lets: None
Single Pole Wall Switches: (4)
Three Way Wall Switches: None
Other Switches: None
Interior Light Fixtures, Type and Quantity: (6) 1'x4' surface mounted fluorescent fixtures.
Exterior Light Fixtures, Type and Quantity: (1) 100 exterior globe.
Communication Out-Lets: Optional
Other: None

HEATING

Type, Size and Quantity: Exterior wall mounted HVAC providing 10 KW electric heat.

COOLING:

Type, Size and Quantity: Exterior wall mounted HVAC providing 2 ton of cooling.

VENTILATION

Type and Quantity: (2) 50 CFM Bath fan.

WASHROOM

- (2) insulated toilet
- (2) wall mounted china sinks
- (2) faucet set
- (1) 6 gallon hot water tank. (located under cabinet in kitchen)
- (2) Mirror, toilet paper dispenser, tissue dispenser, soap dispenser.

KITCHENETTE

70 inches of cabinet base and 70' of wall cabinets, (1) SS sink complete with faucet.

COUNTERS

70" post form with back splash.

ARMSTRONG MODULAR HOMES**O/B DOUGLAS R. ARMSTRONG TRAILERS LTD.**

1868 Commerce Park Drive

P.O. Box A4

Thornton, Ontario L0L 2N0

Tel: (705) 436-5611

Toll Free: 1-800-387-5611

Fax: (705) 436-4317

QUOTE for - 12 x 34 office trailer
with spec. washroom - & kitchenette
Layout & Specs enclosed.
Bard Heat & Air System.

\$ 26,750 + APPLICABLE TAXES.

Refer to Specs enclosed
for Structural Features.
Interior & Exterior finishing

8.0 PLUMBING

PAGE 4 OF 6

QUOTATION NO. 98-0771

SPECIAL INSTRUCTIONS:

WATER CLOSETS: #

- STANDARD
- ELONGATED 1
- HANDICAPPED

Faucets: #

- STANDARD 2
- SINGLE LEVER
- HANDICAPPED

WATER HEATER: #

- 6 gal. ELECTRIC 1
- 12 gal. ELECTRIC
- 40 gal. ELECTRIC
- 60 gal. ELECTRIC
- NATURAL GAS
- PROPANE

GRAB BARS

MIRROR 1

SCAF DISP.

PAPER HOLD 1

VANTY

PAPER TOWEL DISPENSER

TOILET SEATS:

- CLOSED
- OPEN 1
- WITH COVER

WATER LINES:

- *WIRSBO
- COPPER X

32" x 32" SHOWER STALL

METAL TOILET SCREENS

URINAL SCREENS

JANITORS SINK

WATER FOUNTAIN

LAVATORIES:

- COUNTER
- WALL HUNG 1
- HANDICAPPED

KITCHEN SINK:

- DOUBLE S/S
- SINGLE S/S 1

URINAL

9.0 ELECTRICAL

SPECIAL INSTRUCTIONS:

BARO CEILING SUPPLY DUCT WORK & GRILLS

- 24" x 24" #
- 12" x 12" 4
- 8" x 24" R/A 3

- INSULATED
- UNINSULATED
- FLEX DUCT

SE ENTRANCE:

- 60 amps
- 100 amps X
- 200 amps
- 400 amps
- 600 amps

EXTERIOR LIGHTING: #

- POT LIGHTS 2
- RAB RWP100 2
- H.P. SODIUM
- PHOTO CELL

INTERIOR LIGHTING: #

- FLUORESCENT
- SURFACE
- LAY-IN X
- 2 x 40 watt
- 4 x 40 watt 5
- ACRYLIC LENS X
- INCANDESCENT
- LAMP HOLDER
- POT LIGHT 1

OUTLETS:

- DUPLEX 9
- SINGLE 3
- DEDICATED
- 220 volt
- EXT. W/P
- HEAT TRACE 1
- TEL PREP.
- COMPUTER

3/4" P.V.C. CONDUIT
3/4" P.V.C. CONDUIT

VENTILATION:

- BATH CEILING FAN X
- WALL FAN
- RANGE HOOD

SERVICE ENTRANCE

- MAST & METER X
- FLOOR
- WALL

120/240 1Ph X

120/208 3 Ph

- ELECTRIC BASEBOARD 1
- WALL MOUNT THERMO 1
- INTEGRATED THERMO

- ELECTRIC FURNACE
- OIL FURNACE
- PROPANE FURNACE
- NATURAL GAS FURNACE
- CENTRAL AIR CONDIT.

BARO ELECTRIC HEAT & A/C 1

BARO ELECTRIC A/C ONLY

BARO GAS HEAT & A/C

BARO MODEL #

RE ALARM SYSTEM

EMERGENCY LIGHTS

POT LIGHTS:

10.0 EQUIPMENT

KITCHEN COUNTERS

SPECIFY:

COUNTER BOARDS:

COLOUR:

ROSES:

SCHEDULE B
ANNUAL BUDGET

SCHEDULE C
ANNUAL FINANCIAL STATEMENT

SCHEDULE D

DISPUTE RESOLUTION

1.1 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Solicitor General and the Concessionaire under or relating in any way to this Agreement, including a dispute with respect to the obligations of the Concessionaire or the Solicitor General hereunder or the occurrence of a default hereunder, such dispute shall, in the first instance, by notice from either party to the other requiring the dispute to be resolved, be referred to the Senior Responsible Official of the Solicitor General and the Senior Operating Officer of the Concessionaire for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within fifteen (15) Business Days (or such longer period as the parties may agree) following such notice, the dispute shall, by notice from either party to the other requiring the dispute to be resolved at a higher level, be referred to the then chief executive officer of the Concessionaire and the Commissioner or the Commissioner's designee. If the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following such latter notice, either party may by notice to the other require that the dispute be resolved by mediation as set out below.

1.2 Mediation

The mediation shall be held within thirty (30) Business Days following the end of the thirty (30)-Business Day negotiation period.

Within seven (7) Business Days following the end of such thirty (30)-Business Day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be final and binding on them. If the parties fail to agree on a mediator within seven (7) business Days or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

1.3 Initiation of Arbitration Proceedings

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request an arbitration. Within fifteen (15) Business Days following

receipt of the Initiating Notice by the Responding Party, the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party, either party shall be entitled to make application under the *Arbitration Act*, 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator, and the provisions of the *Arbitration Act*, 1991 (Ontario) shall govern such appointment.

1.4 Qualified to Act

The Single Arbitrator or panel of arbitrators appointed to act hereunder (the "Arbitrator") shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

1.5 Submission of Written Statements

(a) Within thirty (30) Business Days following the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send to the Responding Party a statement of claim (the "Statement of Claim") stating in sufficient detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims.

(b) Within fifteen (15) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim (collectively, the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.

(c) Within fifteen (15) Business Days following receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the Arbitrator a statement of reply (the "Statement of Reply").

(d) Within fifteen (15) Business Days following receipt of the Statement of Reply, the Responding Party may send to the Initiating Party a statement of reply to counterclaim (the "Statement of Reply to Counterclaim").

(e) Every Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the party concerned relies.

(f) After submission of the Statement of Claim, the Statement of Defence, the Statement of Reply and the Statement of Reply to Counterclaim, if any, the Arbitrator shall forthwith meet with and give directions to the parties for the further conduct of the arbitration.

(g) There shall be no oral discovery unless ordered by the Arbitrator.

1.6 Meetings and Hearings

(a) Meetings and hearings of the Arbitrator shall take place in the City of Toronto or in such other place as the parties agree upon and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties adequate notice thereof. Subject to any adjournments which the Arbitrator allows, the arbitration hearing shall be continued on successive Business Days until it is concluded.

(b) All meetings and hearings shall be in private unless the parties otherwise agree.

(c) Each party may be represented at any meetings or hearings by legal counsel.

(d) Each party may examine and re-examine its witnesses and cross-examine those of the other parties at the arbitration.

1.7 The Decision

(a) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days following the conclusion of all hearings referred to in Section 1.6 of this Schedule D unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reasons for the decision.

(b) If the Arbitrator is a panel, the decision of the majority of the panel shall be deemed to be the decision of the Arbitrator.

(c) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), and with the exception of monetary claims in excess of ten million dollars (\$10,000,000) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice.

(d) If the decision results in an award in excess of ten million dollars (\$10,000,000) the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

1.8 Jurisdiction and Powers of the Arbitrator

(a) The object of an arbitration hereunder shall be to ensure the just, expeditious, economical and final determination of any dispute.

(b) Without limiting the jurisdiction of the Arbitrator at law, a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to

- (i) determine any question of law arising in the arbitration,
- (ii) determine any question as to the Arbitrator's jurisdiction,
- (iii) determine any question of good faith or dishonesty arising in the dispute,
- (iv) order any party to furnish further details of its case, in fact or in law to the other parties,
- (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so,
- (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law,
- (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues pending the final resolution of any dispute hereunder,

- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of parties hereto,
- (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant,
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties,
- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
- (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

(c) The jurisdiction and powers referred to in Subsection 1.8(b) of this Schedule D shall be exercised at the discretion of the Arbitrator subject to only to Laws and Regulations and the provisions of this Agreement.

1.9 *Arbitration Act, 1991 (Ontario)*

The rules and procedures of the *Arbitration Act, 1991 (Ontario)* shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Schedule D or by agreement of the parties.

1.10 *Provisional Remedies*

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

1.11 *Continuing Performance*

At all times, notwithstanding the existence of any dispute, the Solicitor General and the Concessionaire shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.

1.12 Costs of Arbitration

Pending determination by the Arbitrator, the parties shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator.

SCHEDULE 18

AUTHORIZED REQUESTER

ELECTRONIC DATA TRANSFER AGREEMENT

THIS AGREEMENT made as of the 6th day of April, 1999.

B E T W E E N:

**THE CROWN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION**

(the "**Ministry**")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "**Requester**")

For consideration, the receipt and sufficiency of which are acknowledged by each of them, the parties hereto covenant and agree as follows:

ARTICLE 1.0 INTERPRETATION

1.0 Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"Agreement" means this electronic data transfer requester agreement, including, for the avoidance of doubt, all schedules referred to herein.

"Base Fee" means the annual fee set out in Schedule C for access to Information Products as adjusted from time to time to take into account increases in CPI as set out in Section 5.6.

"Call-ups" means electronic requests by the Requester for Information Products.

"Completed Highway 407" means Highway 407 when it is Commissioned and Opened from the Queen Elizabeth Way in the City of Burlington to Highway 7 east of Brock Road in the Town of Pickering.

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement made as of the date hereof between the Requester and the Crown in Right of Ontario as Represented by the Minister Without Portfolio with Responsibility for Privatization.

"Cost Recovery Fee" means the annual fee to be charged for providing the Information Products as determined pursuant to Section 5.7 which shall be equal to reasonable additional costs incurred by the Ministry annually in providing the Information Products to the Requester pursuant to this Agreement on a full cost recovery basis as adjusted from time to time to take into account increases in CPI as set out in section 5.7.

"Cost Recovery Index Ratio" means, with respect to any particular calendar year, the ratio of (i) the highest value of the CPI for the most recent month in which there has been an election to charge the Cost Recovery fee or a re-negotiation or re-determination of the Cost Recovery Fee as set out in Section 5.7, and the months of September in each calendar year from and including the calendar year which includes the most recent election, re-negotiation or re-determination of the Cost Recovery Fee, to but excluding such particular calendar year, to (ii) the value of the CPI for the most recent month in which there has been a election, re-negotiation or re-determination of the Cost Recovery Fee as set out in Section 5.7.

"CPI" means the All-Items Consumer Price Index for the City of Toronto published by Statistics Canada (or by a successor or other Governmental Authority), or, if the Consumer Price Index is no longer published or is not published for the relevant period or time, an index published in substitution for the Consumer Price Index or for such relevant period or time, or any comparable replacement index designated by the Ministry acting reasonably. If a substitution or replacement is required, the Ministry, acting reasonably, will make the necessary conversions. If the base year for the Consumer Price Index, (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other Governmental Authority), the Ministry will make the necessary conversion. If any calculation required to be made under this Agreement based on the Consumer Price Index as at a particular date or for a particular period and the Consumer Price Index for such date or period is not available as at the time the calculation is required to be made, the Ministry, acting reasonably, shall be entitled to estimate the Consumer Price Index for the purposes of such calculation, subject to adjustment following the Consumer Price Index for the relevant date or period becoming available.

"EDT" means, from time to time, the computer hardware and software that allows remote access to Information Products.

"Index Base Month" means the calendar month three (3) months prior to the calendar month which includes the Effective Date.

"Index Ratio" means, with respect to the calendar year which includes the Effective Date, 1.000 and, with respect to any subsequent calendar year, the ratio of (i) the highest value of the CPI for the Index Base Month and the months of September in each calendar

year from and including the calendar year which includes the Effective Date to but excluding such subsequent calendar year, to (ii) the value of the CPI for the Index Base Month.

“Information Products” means names and addresses of users of Highway 407 who owe tolls, fees or other charges and any other personal information prescribed by regulation pursuant to the Highway 407 Act, 1998, contained in the Ministry computer database used by the Province and includes a response that there is no information in the database relating to a particular license plate number, but excludes any information that the Requester has obtained from a source other than the Ministry.

“Mailbox” means the electronic services used to send and to receive electronic documents.

“Ministry Default” has the meaning ascribed thereto in Section 7.3

“Personal Information” has the meaning ascribed thereto in Subsection 2(1) of the *Freedom of Information and Protection of Privacy Act*.

“Requester Default” has the meaning ascribed thereto in Section 7.1

“Security Statement” means a security statement of an employee or agent in substantially the form set out in Schedule A.

“Senior Operating Officer” means the person designated by notice from time to time by the Requester for the purposes of Schedule D.

“Senior Responsible Official” means the person designated by notice from time to time by the Ministry for the purposes of Schedule D.

“Transaction Log” means the record of all Call-ups, including the date of each Call-up and the license plate number for which the Information Product was requested and exchanged between the Ministry and the Requester via EDT.

“User ID” means the user identification number of each of the Requester’s employees, representatives or agents.

1.1 Other Definitions

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Concession Agreement.

1.2 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

1.3 Headings

The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.4 References to this Agreement

The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it.

1.5 References to any Agreement

A reference in this Agreement to any agreement or document (including, for avoidance of doubt, this Agreement) refers to that agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

1.6 Meaning of Including

In this Agreement the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

1.7 Statutes

Unless specified otherwise, a reference in this Agreement to a statute refers to that statute as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto. A reference to a statute shall be deemed to include any regulations made thereunder.

1.8 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to lawful currency of Canada.

1.9 Generally Accepted Accounting Principles

All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

1.10 Calculation of Time

For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern standard

time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern standard time or Eastern Daylight Time, whichever is applicable) on the next Business Day.

1.11 Performance on Holidays

Except as otherwise set out in this Agreement, if any action is required by this Agreement to be taken on or by a day which is not a Business Day, such action shall be valid if taken on or by the next succeeding Business Day.

1.12 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

1.13 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by the parties hereto.

1.14 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.15 Invalidity

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent, (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Schedule D.

1.16 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Schedule D, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder or related hereto.

1.17 Schedules

The following schedules form part of this Agreement:

Schedule A	Employer/Employee/Agent Security Statement
Schedule B	Access Schedule
Schedule C	Fees
Schedule D	Dispute Resolution

ARTICLE 2.0 GRANT OF LICENCE

2.1 Grant

The Ministry grants the Requester a non-exclusive, non-assignable and non-transferable licence to access and use the Information Products, subject to the terms of this Agreement.

2.2 Title

The Requester acknowledges that the Ministry owns all right, title and interest in the Information Products including intellectual property, copyright and other proprietary rights. This licence shall not constitute a sale of any of the Ministry's right, title or interest of any kind whatsoever in the Information Products.

2.3 Authorized Use

The Requester shall hold the Information Products and the information contained therein in strict confidence for the exclusive use of the Requester. The Requester shall not collect, use or disclose the Information Products for any purposes except for those which have been approved by the Ministry, as follows:

- (a) to assist the Requester in the collection and enforcement of tolls, fees and other charges owing with respect to Highway 407;
- (b) to assist the Requester in traffic planning and revenue management with respect to Highway 407;
- (c) to assist the Requester in communicating with users of Highway 407 for the purpose of promoting the use of Highway 407 and;

- (d) to assist the government of a province of Canada or a state of the United States of America with whom the Requester has an agreement relating to the collection and enforcement of tolls.

2.4 Database Maintenance

Except for the purposes authorized by this Agreement the Requester shall not develop, derive or maintain a database containing Information Products obtained pursuant to this Agreement.

2.5 Individuals not to be Contacted

The Requester shall not contact any individual to whom the Information Products relates, directly or indirectly, other than as authorized by this Agreement.

2.6 Use of Information Product

The Requester may use any Information Product received from the Ministry for the purposes set out in this Agreement.

2.7 Survival

For the avoidance of doubt, the Requester covenants that the restriction on the use of Information Products set out in Section 2.6 shall be binding upon its successors and assigns. This Section shall survive the expiry or termination of this Agreement.

2.8 Document Destruction

The Requester shall retain all originals or copies of electronic files or records of Information Products received from the Ministry for at least sixty-five (65) days from the date of the receipt of such Information Products. For the avoidance of doubt, the foregoing obligation does not apply to the Transaction Logs required to be maintained by Article 6.

2.9 Ministry Obligation

Subject to the provisions of this Agreement, the Ministry shall provide the Requester with the Information Products requested by the Requester as set out in Schedule B and, subject to Section 5.8, in a form accessible by the Requester.

2.10 Cooperation re Agreements

The Ministry and the Requester shall reasonably cooperate in the negotiation of agreements involving the exchange of information to assist in the collection and

enforcement of tolls with a government of a province of Canada or a state of the United States of America.

ARTICLE 3.0 TERM

3.1 Term

The term of this Agreement shall be for a term of ninety-nine (99) years commencing on the Effective Date. Unless earlier terminated in accordance with the provisions hereof, this Agreement shall terminate upon the earlier of the Concession Termination Date or the date upon which the Concession Agreement is terminated.

3.2 Early Termination by Requester

Despite Section 3.1, this Agreement may be terminated by the Requester giving to the Ministry sixty (60) days written notice of termination.

3.3 Early Termination by Ministry

Despite Section 3.1, if an alternative method of obtaining Information Products, which may be used by the Requester is as reliable, for all purposes under this Agreement, is no more onerous and is no more expensive than obtaining Information Products pursuant to this Agreement, and is available to the Requestor, this Agreement may be terminated by the Ministry giving to the Requester a written notice of termination. Upon receipt of the notice of termination, the Requester shall have sixty (60) days to object to or accept the proposed alternative method, failing which, the agreement shall terminate after the expiry of the sixty (60) days. If the parties fail to reach an agreement on the alternative method, they shall resort to the dispute resolutions mechanism of Schedule D, it being understood that the Ministry shall not terminate this Agreement before receipt of a decision by the Arbitrator allowing it to do so.

ARTICLE 4.0 ELECTRONIC DATA TRANSFER

4.1 Electronic Call-Ups

Subject to Section 5.8, the Ministry shall allow the Requester to access the Ministry's vehicle database through a Mailbox accessed electronically through a telecommunications link to be established between the Requester's computer and EDT.

4.2 Effect of Electronic Call-Ups

The Ministry shall accept Call-ups and shall respond with Information Products in accordance with Schedule B.

4.3 EDT and Mailbox

The Requester shall obtain, install, test, maintain, repair and replace at its own expense all of the Requester's computer equipment, supporting equipment software and services, including communications and Mailbox services that it shall require in order to send and to receive electronic documents as contemplated by this Agreement through EDT.

4.4 Receipt and Acknowledgment

The Ministry is hereby deemed to have received a Call-up when the Call-up is accessible to the Ministry at its Mailbox. The Ministry shall provide the Requester with acknowledgments of receipt of all Call-ups and the Ministry shall use reasonable efforts to assist the Requester when failed communication is detected.

4.5 Data Processing

The Requester agrees that all requests for Information Products shall be made from offices of the Requester located in the Province of Ontario. All activities related to the authorized use set out in Section 2.3 hereof, shall also be performed from the aforesaid offices of the Requester. The Requester shall retain and process in the Province of Ontario any Information Products obtained from the Ministry.

4.6 EDT Support

The Ministry and the Requester shall each:

- (a) designate a service coordinator who shall be responsible for all issues and communications with the other related to EDT;
- (b) designate a technical advisor who shall be the primary contact for technical communications with the other related to EDT;
- (c) inform the other of the names of their service coordinator and technical advisor before any Call-ups of Information Products; and
- (d) promptly inform the other when another individual is assigned to either of these positions.

Additional support personnel may be designated by mutual agreement.

ARTICLE 5.0 PAYMENT, FEES AND SEARCHES

5.1 Fee Schedule and Payment

The Ministry shall charge the Requester and the Requester shall pay the fees set out in Schedule C.

5.2 Designated Banking Information

The Requester shall establish an account with the Ministry to be used for payment of amounts owing under this Agreement.

5.3 Fees Due

The Base Fee is due and payable on a quarterly basis in advance on the first business day of January, April, July and October unless the Ministry has elected to pay the Cost Recovery Fee in which case the Cost Recovery Fee is due and payable on a quarterly basis in advance on the first business day of January, April, July and October. The Ministry shall have no obligation to process and provide Information Products if the payments are not made to the account established pursuant to Section 5.2 as set out in this Section.

5.4 Costs

The Requester shall pay all fees associated with use of EDT for electronic access to Information Products as prescribed in Schedule C.

5.5 Modifications to Schedule B

Notwithstanding Section 1.13, the Ministry may modify Schedule B at any time when it is reasonable and necessary to do so based upon the then existing technology provided that, subject to Section 5.8, the Ministry shall at all times provide the Requester with the Information Products requested by the Requester in a form accessible by the Requester and at least as frequently as set out in Schedule B, as it exists at the date of this Agreement. The Ministry shall give the Requester at least ninety (90) days notice prior to modifying Schedule B.

5.6 Annual Adjustments to the Base Fee

Subject to Section 5.7, after the first (1st) anniversary of the Effective Date, the Base Fee shall be adjusted on an annual, calendar year, basis to take into account increases in the CPI. On or before November 30 of each year following the first

(1st) anniversary of the Commissioning and Opening of the Completed Highway 407 the Ministry shall notify the Requester of the Base Fee to be applicable to the following calendar year. The Base Fee for any year shall be calculated by multiplying the Base Fee set out in Schedule C by the Index Ratio.

5.7 Election to Charge Cost Recovery Fee

On the second (2nd) anniversary of Commissioning and Opening of the Completed Highway 407, and every five (5) years thereafter, the Ministry shall have the right to elect to charge the Requester the Cost Recovery Fee in lieu of charging the Base Fee. The Ministry shall provide notice of such election to the Requester within thirty (30) days after the applicable anniversary of the Commissioning and Opening of the Completed Highway 407. The Cost Recovery Fee shall be determined after such election by agreement between the Requester and the Ministry or, failing agreement, using the dispute resolution process set out in Schedule D. Once the Ministry has elected to charge the Cost Recovery Fee it shall no longer have the option of charging the Base Fee for the remainder of the term of this Agreement. If the Ministry has not made an election to charge the Cost Recovery Fee and provided notice thereof to the Requester within the time period set out above, the Ministry shall charge the Base Fee for the following five (5) year period. Every fifth (5th) year after the Ministry elects to charge the Cost Recovery Fee, the Cost Recovery Fee shall be re-negotiated by agreement between the Requester and the Ministry or, failing agreement, the Cost Recovery Fee shall be re-determined by the dispute resolution process set out in Schedule D. The Cost Recovery Fee shall come into effect on the first day of the calendar year following the applicable anniversary of the Commissioning and Opening of the Completed Highway 407. If the Ministry has elected to charge the Cost Recovery Fee, the Cost Recovery Fee shall be adjusted on an annual, calendar year, basis to take into account increases in the CPI. On or before November 30 of each year after the election to charge the Cost Recovery Fee, or each year after a re-negotiation or re-determination of the Cost Recovery Fee, the Ministry shall notify the Requester of the Cost Recovery Fee to be applicable to the following calendar year. The Cost Recovery Fee to be charged for any year shall be calculated by multiplying the Cost Recovery Fee most recently negotiated or determined pursuant to this Section by the Cost Recovery Index Ratio.

5.8 Search Prior to Plate Denial

Prior to giving the Registrar of Motor Vehicles notice pursuant to Section 22 of the *Highway 407 Act, 1998*, the Requester shall confirm identity of the plate holder through one confirmatory Call-up for Information Product to the Ministry.

5.9 Cost of Changes to Ministry's System

The Requester shall pay the costs of any changes to the hardware or software including maintenance directly related thereto, used by the Ministry to provide Information Products, where such changes have been reasonably requested by the

Requester and Approved by the Ministry, provided that such changes are directly related to the requirements of the Requester.

ARTICLE 6.0 SECURITY, RECORDS AND AUDIT

6.1 Transaction Log

Each party shall maintain a Transaction Log and shall designate one or more individuals with appropriate authority as the persons responsible for the systems and procedures relating to the compilation and custody of the Transaction Log. Any such authorized person shall be competent to certify the accuracy and completeness of the Transaction Log.

6.2 Records of Requests

The Requester shall maintain in its office in the Province of Ontario Transaction Logs of all requests with respect to searches of individuals' names and addresses from the Ministry's data base. The Transaction Logs shall contain the date of each requests, and the license plate numbers for which the information was requested. The Ministry shall have the right to examine the Transaction Logs at the discretion of the Ministry on one (1) Business Day's notice as prescribed by Section 6.3 of this Agreement. The Requester shall maintain each Transaction Log for a period of three (3) years from the date of the last request recorded in such Transaction Log. A Transaction Log shall not include Information Products.

If there is any discrepancy relating to Call-ups of Information Products and the response of the Ministry, the Requester shall advise the Ministry within two (2) Business Days of becoming aware of such discrepancy. If the parties cannot otherwise agree, the Ministry shall provide the Requester with copies of excerpts of the Transaction Logs relating to discrepancy as soon as possible after notification of the discrepancy by the Requester.

6.3 Audit

The Ministry or its designee may conduct electronic or manual audits of the Requester at the discretion of the Ministry and on one (1) Business Day's notice. The Ministry or its designee may perform on-site audits at the Requester's offices during regular business hours for the strict purpose of ensuring compliance with the terms and conditions of this Agreement. The Ministry will use reasonable efforts to ensure such audit is done in a manner so as not to interfere with the Requester's normal business activities. All records created by or as a result of this Agreement shall be subject to inspection and audit by the Ministry for a period of three (3) years from the date they are created.

6.4 Surrender of Information Products

Upon termination of this Agreement, the Requester shall, at the request of the Ministry, surrender to the Ministry all Information Products and any copies or portions thereof in its possession together with all records retained in respect thereof (including Transaction Logs), except any copies required to fulfil the Requester's obligations set out in Section 8.7. The Requester shall comply with the Ministry's request not later than the end of the third Business Day after the date of suspension, revocation, closure, cancellation, expiry or termination as the case may be. The Requester shall continue to remain bound by the non-disclosure provisions of this Agreement which shall survive the termination of this Agreement. Notwithstanding the foregoing, if this Agreement is terminated but the Concession Agreement is not terminated, then the Requester shall be entitled to retain any Information Products necessary for the purposes of enforcing payment of any unpaid tolls, fees and other charges. Such Information Products shall be surrendered on the earlier of (i) the date that such tolls, fees and other charges have been paid or (ii) the date that the dispute resolution process with respect to the payment of such tolls, fees and other charges has been concluded.

6.5 Authorization

Each party shall establish such systems or methods of controlling the transmission of its documents as it considers appropriate, and warrants that each document of which it is the sender is duly authorized and binding upon it.

6.7 Incomplete, Inaccurate or Corrupted Electronic Call-Ups

If the Ministry reasonably believes that a Call-up is incomplete, inaccurate, corrupted in transmission, or not intended for it, the Ministry shall, within one (1) Business Day, notify the Requester of same and the Ministry shall not process such Call-up, pending further clarification by the Requester. The Requester shall promptly re-transmit such Call-ups or take such other corrective actions as may reasonably be required in the circumstance. All communications initiated pursuant to this Section are at the expense of the Requester.

6.8 Notices and Communications

It is in the discretion of each of the Ministry and the Requester whether to use the electronic service for notices and communications given pursuant to this Article.

6.9 Security

- a) The Requester shall maintain the security and integrity of the information and Information Products which it receives, and shall comply with such reasonable security requirements as are from time-to-time specified by the

Ministry, including keeping any Information Product in a physically secure location to which access is restricted.

- b) The Requester is responsible for the selection, implementation, and maintenance of appropriate security products, tools, and procedures sufficient to meet Ministry requirements for protecting Ministry programs and data from improper access or from loss, alteration, or destruction. The Requester is responsible for implementing any necessary tests to establish and monitor its own security products, tools, and procedures and to assess their adequacy.
- c) The Requester shall ensure that each employee, representative, or agent has a User ID and a security code to make Call-ups and receive Information Products under this Agreement. Call-ups which contain a User ID and a security code shall be legally sufficient to verify the identity of the Requester and the authenticity of the Call-ups. The Requester shall maintain security procedures to prevent unauthorized use or disclosure of any User ID.
- d) Any residence address information obtained by the Requester pursuant to this Agreement shall be secured so that the information cannot be viewed by the public and non-authorized persons.
- e) The Requester shall restrict access by its employees or agents to the information it receives pursuant to this Agreement by requiring all employees or agents who shall have access to such information to enter into and comply with Security Statements. Security Statements shall bind the Requester and all employees and agents to the terms and conditions set out therein. The Requester shall be solely responsible for any failure on its part to bind an employee or agent and to ensure his or her compliance with a Security Statement and the Requester shall indemnify the Ministry for any Losses which occur as a result of its failure to bind an employee or agent or to ensure his or her compliance with a Security Statement. The Requester shall maintain a copy of all Security Statements that it has entered into for a period of three (3) years from the date when the employee or agent ceases to be an employee or agent of the Requester.

ARTICLE 7.0 DEFAULT

7.1 Requester Default

The occurrence of any one or more of the following events shall constitute a Requester Default under this Agreement

- (i) If the Requester fails to make any payment of any amount due to the Ministry under this Agreement and such default continues unremedied for a period of ninety (90) days following notice thereof from the Ministry to the Requester.
- (ii) If the Requester fails to perform or observe any of its material obligations or covenants under this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Ministry to the Requester or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Requester has demonstrated to the satisfaction of the Ministry, acting reasonably, that
 - (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure;
 - (B) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Ministry, acting reasonably, and
 - (C) if such failure is in fact cured within such period of time then such failure shall not be a Requester Default.
- (iii) If the Requester fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule D and such default continues unremedied for a period of ninety (90) days following notice thereof from the Ministry to the Requester.
- (iv) If there is a Concessionaire Default under the Concession Agreement and the Grantor is entitled to exercise any of its remedies set out in Section 20.2 of the Concession Agreement.

7.2 Remedies of the Ministry

Upon the occurrence of a Requester Default, the Ministry may by notice to the Requester declare the Requester to be in default and may, subject to the dispute resolutions provisions of Schedule D, do any or all of the following as the Ministry, in its sole and absolute discretion, shall determine

- (i) The Ministry may terminate this Agreement by giving sixty (60) days' prior notice to the Requester.
- (ii) If the Requester is in default under this Agreement by reason of the failure to pay any monies, the Ministry may (without obligation to do so) make payment on behalf of the Requester of such monies. Any amount so paid by the Ministry shall be payable by the Requester to the Ministry on demand, without any days of grace.

- (iii) The Ministry may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Requester Default.
- (iv) The Ministry shall be entitled to recover damages and costs, including legal fees on a solicitor and client basis.

Notwithstanding the foregoing, the Ministry may not exercise its rights under 7.2(i) above unless its other remedies are inadequate in the circumstances of the Requester Default. In order to exercise its rights under 7.2(i) the Ministry must, in the notice provided for in Subsection 7.1(i), set out the reasons why the Ministry's other remedies are inadequate in the circumstances of the Requester's Default.

7.3 Ministry Default

The occurrence of any one or more of the following events shall constitute a Ministry Default under this Agreement

- (a) If the Ministry defaults in the payment of any amount due to the Requester under this Agreement and such default continues unremedied for a period of ninety (90) days following notice thereof from the Requester to the Ministry.
- (b) If the Ministry fails to perform or observe any of its material obligations or covenants under this Agreement and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Requester to the Ministry or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Ministry has demonstrated to the satisfaction of the Requester, acting reasonably, that
 - (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, and
 - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Requester, acting reasonably,

and if such failure is in fact cured within the period of time acceptable to the Requester, acting reasonably, then such failure shall not be a Ministry Default.

- (c) If the Ministry fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule D and such default continues unremedied for ninety (90) days following notice thereof from the Requester to the Ministry.

7.4 Remedies of the Requester

Upon the occurrence of a Ministry Default by the Ministry under this Agreement, the Requester may do any or all of the following as the Requester, in its sole and absolute discretion, shall determine:

- (a) The Requester may terminate this Agreement by giving sixty (60) days' prior notice to the Ministry.
- (b) The Requester may seek such equitable remedies as are available to it.
- (c) The Requester shall be entitled to recover damages and costs, including legal fees on a solicitor and client basis.

7.5 Rights of Leasehold Mortgagee

Article 22 of the Concession Agreement applies to this Agreement with necessary modifications.

7.6 Notification of Breach

Each of the Requester and the Ministry shall notify the other immediately upon becoming aware that any of the provisions set out in this Agreement have been breached.

ARTICLE 8.0 GENERAL

8.1 Communications

The Requester and the Ministry shall each deal with their own technical issues and problems relating to EDT. All communications with the Ministry relating to EDT shall be through personnel identified in Section 4.6. In cases when the Requester is unable to answer a question and that question must be answered by Ministry personnel, the Requester shall obtain the answer from the Ministry and relay the answer to the user of the EDT.

8.2 Independent Contractor

The Requester and its officers, agents and employees shall act on behalf of the Requester and not as officers, agents or employees of the Ministry.

8.3 Limitation of Liability

The Ministry makes no warranty, express or implied, with respect to the Information Products or the accuracy or completeness of information contained

therein, and in no event shall the Ministry be liable for Losses arising out of the Requester's use of, or inability to use the Information Products. This Section shall survive the expiry or termination of this Agreement. For the avoidance of doubt this Section shall not restrict the Requester from exercising any of the rights which are available to it pursuant to Section 7.4.

8.4 Force Majeure

Neither party shall be liable for delay or failure in performance resulting from Force Majeure.

8.5 EDT Failure

If Call-ups or Information Products cannot be sent by EDT because of any failure, both parties agree to use all commercially reasonable efforts to continue normal communications by alternate means and to restore the EDT transmissions promptly. The Ministry shall not be liable for any damages, loss of profits or other consequential or indirect damages incurred by the Requester as a result of any such failure, provided that the Ministry shall use its commercially reasonable efforts, where it is within the Ministry's control, to restore EDT transmissions as soon as is reasonably possible after such failure.

8.6 Advertising

Any promotional or informational material referring to Information Products from the Ministry or referring to access to the Ministry data base shall be accurate, shall be consistent with the terms and provisions of this Agreement and shall contain only factual statements relating to the purpose and conditions of access as set forth in this Agreement. The Ministry name and logo shall not be used without the prior written consent of the Ministry.

8.7 Evidence

Any computer printout made pursuant to this Agreement shall be considered to be an "original" when maintained in the normal course of business and shall be acceptable by both parties to the same extent and under the same conditions as other business records maintained in documentary form. Each party agrees that any Transaction Logs and records, whether kept by either party in a regular course of business or kept by EDT, shall be admissible in any legal, administrative or other proceedings as prima facie evidence of the accuracy and completeness of their contents in the same manner as an original document in writing. The parties hereby waive any right to object to the introduction of a duly certified permanent copy of such records in evidence.

8.8 Non-Assignability

This Agreement may not be assigned or otherwise disposed of by the Ministry or the Requester, either in whole or in part, without prior written consent of the other party, which consent may not be unreasonably withheld. A Leasehold Mortgagee shall be a permitted assignee for the purposes of this Section 8.8. No consent shall be required if this Agreement is assigned or otherwise disposed of in conjunction with a permitted Transfer under the Concession Agreement and in such case the provisions of Article 21 of the Concession Agreement shall apply with necessary modifications.

8.9 Notice

All notices and other communications required or permitted by this Agreement shall be in writing and shall be delivered, sent by telecopier or by registered mail (return receipt requested) as follows:

To the Ministry:

Licensing Administration Office
 Ministry of Transportation
 2680 Keele Street
 Downsview, Ontario
 M3M 1J8

Attention:

Co-ordinator,
 Business Information Services

Tel: (416) 235-4832
 Fax: (416) 235-4414

To the Requester:

200 King Street West
 20th Floor
 Toronto, Ontario
 M5H 3T5

Attention: President
 Fax: (416) 326-6460

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received (i) on the day it is delivered or on the day on which transmission is confirmed by the sender's telecopier records, if telecopied, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be

deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by registered mail.

8.10 Time of the Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

8.11 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party shall at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

8.12 Interest

Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus three percent (3%), from the date such payment is due until payment and both before and after judgement.

8.13 Costs

Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

8.14 Enurement and Binding Effect

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and assigns.

8.15 No Partnership

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Ministry and the Requester.

8.16 Cumulative Remedies

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.17 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

8.18 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

8.19- Certificates

On fifteen (15) days' notice, each party shall promptly, whenever reasonably requested by the other, execute and deliver to the other, a certificate signed by a responsible officer or director or employee, in respect of the status of this Agreement including confirmation:

- (a) that this Agreement is in full force and effect, unamended and, if not, reasonable details thereof; and
- (b) as to the existence or non-existence of any defaults under this Agreement and, to the extent applicable, reasonable details thereof.

8.20 Dispute Resolution

All disputes between the Ministry and the Requester relating to this Agreement shall be resolved using the dispute resolution process contained in Schedule D.

ARTICLE 9.0 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the Ministry

The Ministry represents and warrants to the Requester as set out in the following subsections of this Section (and acknowledges that the Requester is relying on such representations and warranties in completing the transactions contemplated hereby).

- (a) The Ministry has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Ministry, and constitutes a legal, valid and binding obligation of the Ministry, enforceable against it in accordance with its terms (subject, however, to limitations with respect to the enforcement of remedies and other laws relating to or affecting creditors' rights generally and to the availability of equitable remedies such as specific performance and injunction and to limitations of general application respecting the enforcement of claims against Her Majesty the Queen in Right of the Province of Ontario).

9.2 Representations and Warranties of the Requester

The Requester represents and warrants to the Ministry as set out in the following subsections of this Section (and acknowledges that the Ministry is relying on such representations and warranties in completing the transactions contemplated hereby).

- (a) the Requester is a corporation duly incorporated and organized and is validly subsisting under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, and has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Requester and constitutes a legal, valid and binding obligation of the Requester enforceable against it in accordance with its terms (subject, however, to limitations with respect to the enforcement of remedies, to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction).

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement.

**THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF
TRANSPORTATION**

Per: _____
Title: Minister of Transportation

407 ETR CONCESSION COMPANY LIMITED

Per: _____ c/s
Name:
Title:

SCHEDULE A

ARTICLE 2 EMPLOYER/EMPLOYEE/AGENT SECURITY STATEMENT

Employee/Agent's Name:
Division:
Position #:

Ontario Transportation Capital Corporation ("the Requester") is licensed to receive confidential and personal information from databases administered by the Ontario Ministry of Transportation. The Requester and the Ministry of Transportation are committed to protect this information from unauthorized access, use or disclosure. The following policies have been adopted to address employees' and agents' responsibilities for handling and protecting this information.

1. As an employee or agent of the Requester, you may access information only when necessary to perform your duties in the course of your employment. You must not access or use the information from any Ministry file or database for personal reasons. (Examples of inappropriate access or misuse of information include, but are not limited to: making inquiries for personal use or processing transactions on your own records or those of your friends or relatives; accessing information about another person, including locating their residence address, for any reason for which it is not related to your work responsibilities or authorized by your supervisor.)
2. You may disclose information from a Ministry database or file only to individuals who have been authorized to receive it through appropriate procedures which have been authorized by the Ministry of Transportation. (Examples of unauthorized disclosures include but are not limited to: looking up someone's address for a friend).
3. You must take reasonable precautions to maintain the secrecy of any password you use to access information on the automated database. Reasonable precautions include not telling others your password or knowingly allowing them to observe while you enter it at the terminal. It also includes changing your password frequently, and, if you suspect your password has been used by someone else, changing it immediately and notifying your supervisor. In addition, you should select random passwords that are not easy for others to guess.
4. You must take reasonable precautions to protect data entry terminals and equipment from unauthorized access. Reasonable precautions include, without limitation: not leaving your terminals unattended while you are logged onto the system; exiting the database when you leave your workstation; securing your terminal with a locking device if one has been provided; storing user documentation to sensitive programs in a secure place; and reporting any

suspicious circumstances or unauthorized individuals you have observed in the work area to your supervisor.

I have read and I understand the security policies stated above, and shall comply with them and any other security policies issued in the future by the Ministry or the Requester. I understand that failure to comply with these policies may result in disciplinary action and civil or criminal prosecution in accordance with applicable statutes.

Signature of Employee/Agent

Date

Witnessed By

SCHEDULE B
ACCESS SCHEDULE

EDT - Over Night Batch:

All requests for Information Products shall be processed by overnight batching: i.e. all requests for Product Information for a single day will be processed at one time and such requests will be processed and transmitted to the Requester the Business Day following receipt of such requests. The Ministry may establish a time by which such requests must be received for processing by the next Business Day. As at the Effective Date, requests must be received by 11:00 p.m. (Eastern standard time or Eastern Daylight Time, whichever is applicable) in order to be processed and transmitted to the Requester on the next Business Day. Requests may be made on any day of the year.

The Requester's Technical Contact is

Please print or type name

Area Code and telephone number

SCHEDULE C

FEES

Connectivity Fees

The connectivity fees will include a one time set-up fee of \$250.00 for a personal computer connection or \$1,100.00 for a mainframe connection.

Information Product Fee

Base Fee for access to Information Products: \$ 5,000,000

SCHEDULE D

DISPUTE RESOLUTION

1.1 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Ministry and the Requester under or relating in any way to this Agreement, including a dispute with respect to the obligations of the Requester or the Ministry hereunder or the occurrence of a default hereunder, such dispute shall, in the first instance, by notice from either party to the other requiring the dispute to be resolved, be referred to the Senior Responsible Official of the Ministry and the Senior Operating Officer of the Requester for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within fifteen (15) Business Days (or such longer period as the parties may agree) following such notice, the dispute shall, by notice from either party to the other requiring the dispute to be resolved at a higher level, be referred to the then chief executive officer of the Requester and the then responsible Deputy Minister of the Ministry or such Deputy Minister's designee. If the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following such latter notice, either party may by notice to the other require that the dispute be resolved by mediation as set out below.

1.2 Mediation

The mediation shall be held within thirty (30) Business Days following the end of the thirty (30)-Business Day negotiation period.

Within seven (7) Business Days following the end of such thirty (30)-Business Day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be final and binding on them. If the parties fail to agree on a mediator within seven (7) Business Days or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

1.3 Initiation of Arbitration Proceedings

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request an arbitration. Within fifteen (15) Business Days following receipt of the Initiating Notice by the Responding Party,

the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party, either party shall be entitled to make application under the *Arbitration Act*, 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator, and the provisions of the *Arbitration Act*, 1991 (Ontario) shall govern such appointment.

1.4 Qualified to Act

The Single Arbitrator or panel of arbitrators appointed to act hereunder (the "Arbitrator") shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

1.5 Submission of Written Statements

(a) Within thirty (30) Business Days following the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send to the Responding Party and the Arbitrator a statement of claim (the "Statement of Claim") stating in sufficient detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims.

(b) Within thirty (30) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim (collectively, the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.

(c) Within fifteen (15) Business Days following receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the Arbitrator a statement of reply (and, if applicable, defence to counterclaim collectively, the "Statement of Reply").

(d) Within fifteen (15) Business Days following receipt of the Statement of Reply, the Responding Party may send to the Initiating Party a statement of reply to counterclaim (the "Statement of Reply to Counterclaim").

(e) Every Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the party concerned relies.

(f) After submission of the Statement of Claim, the Statement of Defence, the Statement of Reply and the Statement of Reply to Counterclaim, if any, the Arbitrator shall forthwith meet with and give directions to the parties for the further conduct of the arbitration.

(g) There shall be no oral discovery unless ordered by the Arbitrator.

1.6 Meetings and Hearings

(a) Meetings and hearings of the Arbitrator shall take place in the City of Toronto or in such other place as the parties agree upon and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties adequate notice thereof. Subject to any adjournments which the Arbitrator allows, the arbitration hearing shall be continued on successive Business Days until it is concluded.

(b) All meetings and hearings shall be in private unless the parties otherwise agree.

(c) Each party may be represented at any meetings or hearings by legal counsel.

(d) Each party may examine and re-examine its witnesses and cross-examine those of the other parties at the arbitration.

1.7 The Decision

(h) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days following the conclusion of all hearings referred to in Section 1.6 of this Schedule D unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reasons for the decision.

(i) If the Arbitrator is a panel, the decision of the majority of the panel shall be deemed to be the decision of the Arbitrator.

(j) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), and with the exception of monetary claims in excess of ten million dollars (\$10,000,000) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice.

(k) If the decision results in an award in excess of ten million dollars (\$10,000,000) the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

1.8 Jurisdiction and Powers of the Arbitrator

(a) The object of an arbitration hereunder shall be to ensure the just, expeditious, economical and final determination of any dispute.

(b) Without limiting the jurisdiction of the Arbitrator at law, a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to

- (i) determine any question of law arising in the arbitration,
- (ii) determine any question as to the Arbitrator's jurisdiction,
- (iii) determine any question of good faith or dishonesty arising in the dispute,
- (iv) order any party to furnish further details of its case, in fact or in law to the other parties,
- (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so,
- (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law,
- (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection

and retention of Toll Revenues pending the final resolution of any dispute hereunder,

- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of parties hereto,
- (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant,
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties,
- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
- (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

(c) The jurisdiction and powers referred to in Subsection 1.8(b) of this Schedule D shall be exercised at the discretion of the Arbitrator subject to only to Laws and Regulations and the provisions of this Agreement.

1.9 *Arbitration Act, 1991 (Ontario)*

The *Arbitration Act, 1991 (Ontario)* shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Schedule D or by agreement of the parties.

1.10 *Provisional Remedies*

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

1.11 *Continuing Performance*

(a) At all times, notwithstanding the existence of any dispute, the Ministry and the Requester shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.

For example, in the event of a dispute with respect to the reasonableness of any Approval by the Grantor, the Concessionaire shall comply with such decision but shall have the right to submit the question of reasonableness to the Arbitrator pursuant to this Article 25.

(b) Subject to the express provisions of this Agreement, where there is any dispute as to the amount of monies owing by any party to any other party hereunder, the portion of the amount owing that is not contested, disputed or challenged, if any shall be paid when due hereunder, but without prejudice to the rights of the parties to contest, dispute or challenge the disposition of the remaining portion of the monies claimed hereunder.

1.12 Costs of Arbitration

Pending determination by the Arbitrator, the parties shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator.

1.13 Leasehold Mortgagee to Participate in Arbitration

Provided that notice of the Leasehold Mortgage has been given to the Grantor pursuant to Subsection 22.1(iv), the Leasehold Mortgagee shall be entitled to notice of and, at the request of the Concessionaire, to participate in any arbitration conducted under this Article 25 in the place and stead of the Concessionaire, provided that, subject to Section 25.8, the Leasehold Mortgagee agrees to be bound by the decision of the arbitrator hereunder.

SCHEDULE 17
Reference Documents

The List of Reference Documents consists of the following attached documents:

Appendix 6 – Reference Documents, in the Request for Proposals – Development and Design-Build for the Western Extension of the 407 Express Toll Route (ETR)

Appendix 6 – Reference Documents in the Request For Proposals – Development and Design-Build for the Highway 407 East Partial Extension.

APPENDIX 6: REFERENCE DOCUMENTS

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respondents
A	Geotechnical			
	Soils Information Report Highway 407 East Partial Extension	Dec. 18 th	✓	✓
	Pavement Design Report Highway 407 East Partial Extension	Jan. 4 th	✓	✓
	Old aggregate sources lists from previous MTO capital construction contracts. Historical information on potential sources of aggregates, both licensed and unlicensed.	Dec 7	✓	✓
B	Highway Engineering			
	Highway 407 East Partial Extension Conceptual Preliminary Design Report From Markham Road Easterly to Highway 7	Dec. 18 th	✓	✓
	Preliminary Design Report: Highway 407 Woodbine Avenue Easterly to Highway 48, Volume 1	Dec 7 th	✓	✓
	Predesign Report: Highway 404/407 IC including Highway 407 from Leslie St. Easterly to Woodbine Ave and Highway 404 from South of John St. Northerly to North of Highway 7, Volume 2	Dec 7 th	✓	✓
	1998 Update on Roadside Safety Practice	Dec 7 th	✓	✓

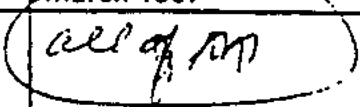
Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respond
	Pre-design Report: Highway 404/407 IC including Highway 407 from Leslie St. Easterly to Woodbine Ave and Highway 404 from South of John St. Northerly to North of Highway 7, Volume 2	Dec. 7 th	✓	✓
	Existing Construction Information Highway 407 – Highway 404 to Highway 48. (Information to be provided by OTCC as part of Hwy 407 Central)	Dec 7 th	✓	✓
C	Environmental			
	Environmental Assessment Report Highway 407/Transitway Markham Road Easterly to Highway 7 (East of Brock Road)	Dec 7 th	✓	✓
	Review under the Environmental Assessment Act (1997) Highway 407/Transitway Markham Road Easterly to Highway 7 (East of Brock Road)	Dec 7 th	✓	✓
	Order in Council No. 1704/98 Approval of the EA and its Attached Conditions (June 24, 1998)	Dec 7 th	✓	✓
	Non Standard Special Provisions	Dec 7 th	✓	✓
	Highway 407 Transitway-System Plan and Station Site Plan Study (Aug 97)	Dec 7 th	✓	✓

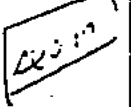
Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respondents
D	Archaeological Assessments			
	The Excavation of the Salgo Site A.M. Archaeological Associates June 1998	Dec 7 th	✓	✓
	The Excavation of the Sideline Site A.M. Archaeological Associates June 1998	Dec 7 th	✓	✓
	The Excavation of the Forte Site A.M. Archaeological Associates June 1998	Dec 7 th	✓	✓
	Highway 407E/Transitway Areas to be Addressed by Archaeological Work (Nov 1998)	Dec 7 th	✓	✓
	An Archaeological Survey of Highway 407 from Woodbine Avenue to Ninth Line (April 1982)	Dec 7 th	✓	✓
	An Archaeological Assessment of the Highway 407/Transitway A.M. Archaeological Associates December 1997	Dec 7 th	✓	✓
	MCzCR Letter Re. Status of Archaeological Resource Concerns Nov 25, 1998	Dec 7 th	✓	
E	Structural			
	No Separate Reports. All information included in Conceptual Preliminary Design Report.	Dec. 18 th		
F	Electrical			

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Responder
	No Separate Reports. All information included in Conceptual Preliminary Design Report. Recommendations for illumination and signal warrants	Dec. 18 th		
G	Utilities			
	Mark-up of existing utility plant from plant authority. Information included in Conceptual Preliminary Design Report with original mark-ups available for viewing.	December 1 st / December 18 th		✓
	Consumers Gas Utility Plan Mark-up	Dec 7 th	✓	
	Hydro Utility Plan Mark-up	Dec 7 th	✓	
H	Surveys			
	Aerial photographs 1/3000, 1996 flying	Dec. 7 th	✓	
	Ortho mosaics	Dec. 7 th	✓	
	Base plans (b-plans) 1/500, updated in 11/98	Dec 18 th	✓	✓
	DTM (ground survey)** hard surfaces only (surveyed in 11/98)	Dec 18 th		✓
	DTM (photogrammetric)** based on 1996 aerial photography	Dec 18 th		✓

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respondents
	Alignments Preliminary only, available in Softdesk format	Dec 18 th	✓	
	Horizontal control monument data Highway 407 from Hwy 48 to Regional Road 31	Dec 7 th	✓	✓
	Bench Mark data	Dec 7 th	✓	✓
	Property/legal plans	Dec 7 th	✓	
	Property mark-up	Dec 7 th	✓	
I	Traffic			
	Traffic Projections (memorandum from P. Bumstead to J. White, Oct 1998)	Dec 7 th	✓	✓
	Traffic & Revenue Study	Dec 7 th	✓	✓
	Ministry of Transportation Highway 407 Partial Extension East Feasibility Study July 1997	Dec 7 th		✓
J	Corridor Management			
	List of all Encroachment Applications/Permits within Highway 407 Corridor	Dec 7 th	✓	✓

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Response
K	Highway 407 Central			
	Design Criteria – A06, A11		✓	
	Planning Reports – E20-7-1, E20-7-1, E30-5-1 to E30-5-4		✓	
	Approved CHIC Drawings: segment no 15C/16, 17/21, 17 roads & electrical, Information to be provided by OTCC as part of Central Reference Material Landscaping Phase II.		✓	
L	Foundations			
	Structures <ul style="list-style-type: none"> - Markham Road Underpass - Rouge River Crossing (Detailed) including the fill area between Sta 24+750 to 25+150 - 9th Line Underpass - Markham By-pass Overpass - 10th Line Overpass - CPR Overhead - Little Rouge Creek Crossing - Regional Road 30 Underpass - West Duffin Creek and fill area between Sta 10+950 to 11+700 - West Duffin Creek Tributary - North Road Underpass - Sideline 24 Underpass - Urfe Creek Bridge including high fill area between Sta 16+650 and 16+700 - Brougham Creek Bridge including high fill area between Sta 17+425 and 17+500 - Brock Road Underpass 	December 18 th – January 4 th	✓	✓

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respondents
	<p>Culverts</p> <ul style="list-style-type: none"> - Ganatsekiagon Creek - Urfe Creek Tributary including high fill area between Sta 16+000 and 16+300 - Spring Creek including high fill area between Sta 17+675 and 17+775 - Spring Creek Trib. Culvert Extension 	December 18 th – January 4 th	✓	✓
	<p>High Fills</p> <ul style="list-style-type: none"> - Sta 28+400 to 29+350 10th Line to Little Rouge Creek - Sta 15+675 to 15+775 Gravel Pit - Sta 18+200 to 18+500 Highway 7 Connector 	December 18 th – January 4 th	✓	✓
	Terms of Reference for Foundation Engineering Consultant Services (Nov 1998)	Dec. 7 th	✓	✓
	Preliminary Foundation Investigation Highway 407/Little Rouge Creek Bridges January 1998	Dec 7 th	✓	
	Preliminary Report Highway 407 at Rouge River Crossing March 1997	Dec 18 th	✓	
M		Planning Reports		
	MTO Highway 407/Overview Study (Highway 48 to Highway 35/115) Summary Report Sept. 20/1989			
	Highway 407/Transit Transportation Corridor Route Planning & Environmental Assessment Study Highway 48 to Whitby/Oshawa Boundary Route Planning Report, Volume 1, 2 nd Draft Appendices, Volume 2 April 1995			

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy Respc
	Highway 407/Transit Transportation Corridor Technically Preferred Route Detailed Aquatic and Terrestrial Biological Study Highway 48 to Highway 35/115 Technical Report (Volume 1) & Detailed Data Records (Volume 2) Aerial Photographs (Volume 3) June 1996			
	Foundation Investigation Report for the Preliminary Design Study for proposed Highway 407 from Highway 48 to Whitby/Oshawa Boundary August 4, 1994			
	Preliminary Soils Design Information Report Highway 407 East and Connecting Links May 15, 1995			
	Technical Paper to MTO on Highway 407 Route Planning & Environmental Assessment Study Preliminary Geotechnical Conditions Highway 48 to Highway 35/115 July 1990			
	Protection for Transit in the Highway 407/Parkway Belt West Corridor June 1989			
	Need and Justification Study for the Protection of Highway 407/Parkway Belt West Transit Corridor January 1992			
		Highway 7/407 Transit Planning Strategy Study October 1996		
	Highway 407 East Preliminary Design Cultural Landscape and Built Environment Features Assessment from Highway 48 to Highway 7 East of Brougham, Town of Pickering May 13, 1997			

Item #	Report Name	Anticipated Date Available	Hardcopy for Viewing	Copy to Respondents
N	Non-Standard Special Provisions			
	All non-standard special provisions listed in Appendix 4			
O	Drainage			
	Drainage & Hydrology Guidelines (Nov 1998)	Dec. 7 th	✓	✓
	Design Criteria and Concept Development - Hwy. 407 East/Transitway from Markham Road to Highway 7 east of Brock Road.	Dec 7 th	✓	✓
P	Property			
	Highway 407 East Lease Agreements	Dec 18 th	✓	
	Conditions of Property Purchase	Dec 18 th	✓	

For survey data:

** The Digital Terrain Models (DTM) are available for consultant to generate cross-sections/profiles, desirable contours plots, etc.

All digital data are in AutoCad r.12/Softdesk v.7.5

All data are based on NAD27/74-adj., MTM

APPENDIX 6: REFERENCE DOCUMENTS

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
A MINISTRY PRELIMINARY DESIGN			
1.	Title: Hwy 403 Preliminary Design Report W.P.: 199-77-00 198-77-00 197-77-00 Author: McCormick Rankin Date: July, 1983 Addendum May, 1984	X	
2.	Title: Hwy. 407 - Hwy 10 Westerly to Hwy 401 & southerly to Hwy 403 W.P.: 173-80-00 86-78-00 Author: M. M. Dillon Ltd. Date: January, 1986		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
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B. MINISTRY PRE-DESIGN

- | | | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| 3. | <p>Title: Hwy 403 Structural
Planning Report (Pre-Design)
W.P.: 199-77-00
198-77-00
197-77-00
Author: McCormick Rankin
Date: October, 1983</p> | | X |
| 4. | <p>Title: Hwy. 403 Pre-Design Report
W.P.: 199-77-001
198-77-001
197-77-001
Author: McCormick Rankin
Date: Unknown</p> | X | |
| | <p>Title: Hwy. 403 Pre-Design Plans
(Washoffs) - 8 Rolls in total (3 pairs)
W.P.: 199-77-001
198-77-001
197-77-001
Author: McCormick Rankin
Date: Unknown</p> | X | |
| 6. | <p>Title: Hwy. 403 Pre-Design Profiles
(Washoffs - 14 rolls in total (3 pairs)
W.P.: 199-77-001
198-77-001
197-77-001
Author: McCormick Rankin
Date: Unknown</p> | X | |

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
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C. CROWN COMPLETED DESIGNS

7. Title: Hwy. 403 from Q.E.W. northerly to Hwy. 5
W.P.: 199-77-06
Author: McCormick Rankin
Date: July, 1995

- | | | | |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| (i) | Contract Drawings and Documents (reduced print)
- Books 1, 2 and 3
Note: floppy disks (5) available upon request for
Q-Sheets (Roads, Landscaping, and
Structures) and for Non-Standard Special
Provisions) | X | |
| (ii) | H.D.S. project files - floppy disk | X | |
| (iii) | Permanent and Temporary Pavement Marking
Plans | | X |
| (iv) | Construction Grading Report (Books 1&2) | | X |
| (v) | Cross-Section Line Report (Books 1&2) | | X |
| (vi) | Area and Volume Report | | X |
| (vii) | FTMS/Electrical/Barrier Protection Revisions to
W.P. 199-77-06 | X | |
| (viii) | As constructed grading rolls
(4 rolls in total) for Cont. 93-89
That Impact WP 199-77-06 | X | |
| (ix) | Title: Memorandum:
Emshih Developments
Waldale Orchard
Temporary Diversion of the
West Rambo Creek to the
East Hager Channel on Hwy. 407
File: S20-02-3/93
(Plus Accompanying Plan)
W.P. 199-77-06
Author: M. McCauley to
P. Kuyntjes
City of Burlington
Date: October 18, 1995 | X | |

ITEM	DESCRIPTION	COPY TO PROPONENTS	VIEWING IN DATA ROOM
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8. Title: Hwy. 403 Advance Structures from Walkers Line to Hwy. 25
W.P.: 410-85-00
Author: R. V. Anderson
Date: May, 1995
- | | | | |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| (i) | Contract Drawings
(11 Documents in total covering the following structures: Walkers Line, Appleby Line, Bronte Creek, CNR, Tremaine Rd., Hwy. 25) | X | |
| (ii) | Contract Non-Standard Special Provisions | X | |
| (iii) | Contract Special Provisions | X | |
| (iv) | Q-Sheets | X | |
| (v) | Document Review Report | | X |
| (vi) | TAPS Printout | | X |
| (vii) | Pavement Marking Drawings (1 roll) | | X |
| (viii) | Survey Notes (7 Books) | | X |
| (ix) | Corrected Volume Reports
(9 Books: Stripping; Walkers Line; Appleby Line; Reg. Rd. 22; Hwy. 25; Reg. Rd. 22 Detour & Hwy. 25 Detour; CN Rail Detour; Excavation Area at Bronte Creek & Appleby Line Detour; Excavation at Walkers Line) | | X |
| (x) | End Area Reports
(1 Book: Walkers Line; Appleby Line; Reg. Rd. 22; Hwy. 25; Reg. Rd. 22 Detour; Appleby Line Detour; Hwy. 25 Detour; CN Rail Detour; Excavation Area at Bronte Cr.; Excavation Area at Walkers Line) | | X |
| (xi) | Grading Reports
(10 Books: Walkers Line; Appleby Line; Tremaine Rd. (Reg. Rd. 22); Hwy. 25; Appleby Line Detour; Tremaine Rd. Detour; Hwy. 25 Detour; CN Rail Detour; Excavation Area at Bronte Creek; Excavation Area at Walkers Line) | | X |
| (xii) | Quantity Calculation Files (4 Books) | | X |
- Note: 1. Disks (4) are available for the above Q- Sheets and HDS Files.
2. Please refer to items #60 & 61 in conjunction with the above documents. (Items #60 & 61 supersede the above documents).

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B. MINISTRY PRE-DESIGN

3. Title: Hwy 403 Structural Planning Report (Pre-Design)
W.P.: 199-77-00
198-77-00
197-77-00
Author: McCormick Rankin
Date: October, 1983.
4. Title: Hwy. 403 Pre-Design Report
W.P.: 199-77-001
198-77-001
197-77-001
Author: McCormick Rankin
Date: Unknown
5. Title: Hwy. 403 Pre-Design Plans (Washoffs) - 8 Rolls in total (3 pairs)
W.P.: 199-77-001
198-77-001
197-77-001
Author: McCormick Rankin
Date: Unknown
6. Title: Hwy. 403 Pre-Design Profiles (Washoffs - 14 rolls in total (3 pairs)
W.P.: 199-77-001
198-77-001
197-77-001
Author: McCormick Rankin
Date: Unknown

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
9.	<p>Title: Hwy. 403 Advance Structures from 16 Mile Creek to Trafalgar Road W.P.: 406-85-00 Author: Philips Planning and Engineering Date: June, 1995</p>		
	(i) Contract Drawings (6 Documents covering the following structures: 16 Mile Cr.; Trafalgar Rd.; Sixth Line)	X	
	(ii) Q-Sheets	X	
	(iii) Contract Special Provisions (2 Books)	X	
	(iv) Contract Non-Standard Special Provisions	X	
	(v) Template Sheets (9 Reports)		X
	(vi) Quantity Calculation File		X
	(vii) Survey Notes (5 Books)		X
	(viii) Various Rolls of the following: (19 Rolls: HDS X-Sections of Sixth Line, Trafalgar Rd. (2 Rolls), E-N/S Ramp, S-E Ramp, N-E Ramp, N-E Ramp Connection, Designated Borrow Area; Hand Drawn Xsections of 14+175 to 14+975 Hwy. 403 at 16 Mile Cr. (2 Rolls), 19+525 to 20+275 Hwy. 403 at Trafalgar Rd. (2 Rolls), Entrance at Sixth Line, Entrance at Trafalgar Rd.; Original Drainage Mosaic of Hwy. 403 Corridor; Drainage Profiles and Culvert Design for 16 Mile Cr., Sixth Line and Trafalgar Rd. (4 Rolls))		X

Note: One Disk is available for the above HDS Files.

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
G. SURVEY INFORMATION			
27.	B-Plans - Digitized Section (Disks) - Non-Digitized Section (List of Plans)	X	
28.	Cross Sections (Disks for Mainline and Cross Roads)	X	
29.	H & V Sheets (Mainline and Cross Roads)	X	
30.	Hwy. 403 Designation Plans (3 sets)		X
31.	No Item Included		
H. MINISTRY APPROVED DESIGN CRITERIA			
32.	G.W.P. 199-77-00 (06-17)	X	
33.	G.W.P. 199-77-00 (19-20) (Advance Structures)	X	
34.	G.W.P. 406-85-00 (W.P. 13-88-01 & 02 406-85-00 406-85-01 & 02 407-85-02)	X	
35.	G.W.P. 410-85-00	X	
36.	W.P. 173-80-00 (Hwy. 401 Southerly to Hwy. 403)		X
37.	No Item Included		
38.	W.P. 12-86-00	X	
39A.	W.P. 197-77-20	X	
39B.	W.P. 197-77-01, 09	X	
39C.	W.P. 197-77-07, 16	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
D. RECENT CHANGES TO HWY 407 WEST			
10.	Title: Hwy. 403/407 Interchange Functional Design Study including plans and profiles Ontario Transportation Capital Corporation W.P.: Not Applicable Author: McCormick Rankin Date: August, 1995	X	
10A	Oakville Link Interchange Plans December 1998 Cole, Sherman	X	
11.	Title: Environmental Study Report Fourth Line/Neyagawa Blvd. Hwy. 5 to Hwy. 403 Author: McCormick Rankin Consulting Engineers Date: April 27, 1994	X	
11A	i) Plan - Phase I Improvements Fourth Line/Neyegawa Blvd. Interchange R.V. Anderson	X	
	ii) Memo : Sight Distance June 21, 1995 R.V. Anderson	X	
	iii) Memo : Access to H & H Vanbeek Property June 29, 1995 R.V. Anderson	X	
	iv) Memo : Cul-de-Sac for Fourth Line at Askin's Property June 29, 1995 R.V. Anderson	X	
11B	Truck Inspection Plans Cole Sherman	X	
11C	407 ETR cross section Cole Sherman	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
E. COMPLETED CONTRACTS			
		X	
12.	Contract 84-65 (Hwy. 403/407 IC Outfall Storm Sewer)	X	
13.	Contract 84-7B (Hwy. 403/407 IC Structures and Ninth Line)	X	
14.	Contract 88-66 (Interim Connection Between Hwy. 403/407 IC and Trafalgar Rd.) - Books 1 and 2	X	
15.	Contract 91-22 (Q.E.W./Hwy. 403 IC) - Books 1 and 2	X	
16.	Contract 93-43 (Hwy. 5 and Guelph Line Structures)	X	
17.	Contract 93-89 (Q.E.W./Hwy. 403 IC) - Book 1 & 2		X
18.	Contract 83-11 - Books 1 & 2		X
19.	Contract 89-26 - Books 1 & 2		X
19A.	Segment 1 - Non Structural 407 ETR - Central Hwy 401 to Hwy 403 CHIC Contract		X
19B.	Segment 1 - Structural 407 ETR - Central Hwy 401 to Hwy 403 CHIC Contract		

ITEM	DESCRIPTION	COPY TO PROPONENTS	VIEWING IN DATA ROOM
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F. UTILITIES

Note: This section should be referenced in conjunction with "APPENDIX 7: UTILITY LOCATION RELOCATION, RESPONSIBILITY CHART")

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| 20. | <p>Title: Memorandum: W.P. 199-77-06
Hwy. 403/407 Q.E.W. to Hwy. 5
Burlington
W.P.: 199-77-06
Author: H. L. Wojcinski, OTCC to A. Jaarsma, MTO
Date: October 4, 1995
Attachments:</p> <ol style="list-style-type: none"> 1. Memorandum: W. P. 199-77-06,
Hwy. 403/407
QE W to Hwy. 5, Burlington
Author: A. Jaarsma, MTO to E. Ellard,
OTCC
Date: September 28, 1995 2. Memorandum: Relocation of Existing Hydro Ducts
at Hwy.403 and Upper Middle Road, Burlington
Your File: 199-77-06
Burlington Hydro File: 4738
Sketch Sheets 436 to 444
Author: F. Lasowski, Burlington Hydro to A.
Jaarsma, MTO
Date: July 13, 1995 3. Memorandum: Relocation of Existing Hydro Ducts
at Hwy. 403 and Upper Middle Road, Burlington
Your File: 199-77-06
Burlington Hydro File: 4738
Drawings D-856-1 & 2
Author: F. Lasowski, Burlington Hydro to A.
Jaarsma, MTO
Date: July 13, 1995 | X |
| 21. | <p>Title: Memorandum: W.P. 199-77-06
Hwy. 403 (407) Q.E.W. to Hwy. 5, Burlington
Union Gas Relocations on the north side of Hwy. 5
and across Hwy. 403 north of Guelph Line
W.P.: 199-77-06
Author: A. Jaarsma to J. Elliot, MTO
Date: September 6, 1995
Attachments: Field Notes and Drawings</p> | X |

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
22.	<p>Title: Memorandum: W.P. 199-77-06 Hwy. 403, Q.E.W. to Hwy. 5, Burlington Union Gas relocation at the Brant St. crossing of Hwy. 403 W.P.: 199-77-06 Author: F. Scremin to A. Jaarsma, Union Gas Ltd. Date: August 25, 1995</p>		X
23.	<p>Title: Memorandum: Estimated Costs for CN Rail Detour and Associated Works (Pertinent Documentation attached) W.P.: 410-85-00 Author: D. Wong, MTO to H. Wojcinski, OTCC Date: February 27, 1996</p>		X
24.	<p>Title: Minutes of Meeting W.P. 199-77-06, Hwy. 403 from Freeman Interchange Northerly to Hwy. 5 To discuss a revised proposal for cost sharing the hydro relocation at Upper Middle Road and Highway 407 West, within the designated highway right-of-way. W.P.: 199-77-06/20 Author: H. Wojcinski, OTCC Date: May 30, 1996</p>		X
25.	<p>Title: Legal Agreements Between MTO and Interprovincial Pipelines for relocating pipelines south of Upper Middle Road and for construction of Hwy. 403 over the relocation pipelines. (NOTE: 1. Includes contract drawings) 2. Compaction Test Results also available upon request. W.P.: 199-77-06 Author: Interprovincial/MTO Date: August, 1995</p>		X
25A.	<p>Title: Corridor Control Manual Chapter 3 - Encroachment and Utilities W.P.: Not Applicable Author: MTO Date: Not Applicable</p>		X

ITEM	DESCRIPTION	COPY TO PROponents	VIEWING IN DATA ROOM
25B.	<p>Title: Utility Information Report Hwy. 403 Corridor & Associated Sideroads from Hwy. 5 to Hwy. 403/407 Interchange</p> <p>W.P.: N/A Author: R.V. Anderson Ltd. Date: March, 1995</p>		X
25C.	<p>Title: Memorandum: Highway 403 Property Utility Information from Hwy. 5 to Ninth Line IC (Previously known as Hwy. 403/407 IC)</p> <p>W.P.: N/A Author: T. H. McColm, RVA to H. Wojcinski, OTCC Date: July 5, 1995</p>		X
25D.	<p>Title: Memorandum: Appleby Line/Walkers Line 403 crossings</p> <p>W.P.: 410-85-00 Author: R. Young, Bell Canada to A. Jaarsma, MTO Date: September 29, 1995</p>		X
25E.	<p>Title: Encroachment Permit Granted to City of Burlington on Hwy. 403 North Service Road and Pertinent Correspondence</p> <p>W.P.: 199-77-06 Author: City of Burlington to MTO District Engineer (A. Jaarsma) Date: January 25, 1995</p>		X
25F.	<p>Title: Moving of Utilities Financial Breakdown</p> <p>W.P.: 410-85-00 Author: J. Robinson, MTO to W. Botts, Bell Canada Date: October 20, 1993</p>		X
25G.	<p>Title: Moving of Utilities Financial Breakdown</p> <p>W.P.: 410-85-00 Author: MTO to W. Botts, Bell Canada Date: April 19, 1994</p>		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
25H.	Title: Moving of Utilities Financial Breakdown W.P.: 410-85-00 Author: MTO to F. Lasowski, Burlington Hydro Electric Date: November 12, 1993		X
25I.	Title: Moving of Utilities Financial Breakdown W.P.: 410-85-00 Author: MTO to F. Lasowski, Burlington Hydro Electric Date: November 12, 1993		X
25J.	Title: Letter: Temp. Relocation and Reinstatement of Signal Cables, CNR Subway at Hwy. 403 W.P.: 410-85-00 Author: D. Wong, MTO to D. Bain, CN Rail Date: January 18, 1994		X
25K.	Title: Moving of Utilities Financial Breakdown W.P.: 410-85-00 Author: MTO to F. Lasowski, Burlington Hydro Electric Commission Date: November 12, 1993		X
25L.	Title: Letter: Hwy. 407 West (formerly Hwy. 403) Burlington to Mississauga W.P.: 406-85-00 & 410-85-00 Author: A. Jaarsma, MTO to C. Goosens, Bell Canada Date: January 26, 1996		X
25M.	Title: Letter: Hwy. 407 West Walkers Line to Hwy. 25 W.P.: 410-85-00 Author: A. Jaarsma, MTO to C. Goosens, Bell Canada Date: February 2, 1996		X
25N.	Title: Letter: Relocation of Existing Underground Plant, Brant Street and Hwy. 407 W.P.: N/A Author: D. Clooney, Bell to A. Jaarsma, MTO Date: February 6, 1996		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
25O.	Title: Encroachment Permit EC-96-208-080 for Gas Main Relocation along East side of Right-of-Way approx. 460m south of Brant Street, Burlington (including drawings) W.P.: 199-77-06 Author: MTO to Union Gas Ltd. Date: September 4, 1996		X
25P.	Title: Encroachment Permit EC-96-208-123 for Installation of Concrete Encased Duct Banks, along east side of right-of-way, approx. 500m south of Brant Street, Burlington (including drawings). W.P.: 199-77-06 Author: MTO to Burlington Hydro Date: September 26, 1996		X
25Q.	Title: Letter: Relocations for Proposed Hwy.407 West W.P.: 410-85-00 Author: F. Lasowski, Burlington Hydro to A. Jaarsma, MTO Date: February 23, 1996		X
25R.	Title: Encroachment Permit #21957. Enc. App. #93-4-211 New Pole Line along east side of Hwy. 25 (Crossing Hwy. 403 R.O.W.) Approximately 300m south of Bumhamthorpe Rd. Southerly, Oakville Lot 30, Con. 1 NDS, Geo. Twp. Trafalgar W.P.: 410-85-00 Author: MTO to Oakville Hydro Date: June 17, 1994		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
25S.	<p>Title: Letter, Encroachment Permit Application for Installation of a temporary 27.6 kV double CCT O/H line to connect to existing O/H line on east side of Hwy. #25 at future Hwy. 403 interchange</p> <p>W.P.: 410-85-00</p> <p>Author: W.B. Wood, Oakville Hydro to P. Kuynljes, MTO</p> <p>Date: March 3, 1997</p> <p>Attachments: Encroachment Permit #EC-96-208-273 and Pertinent Drawings</p>		X
25T	<p>Title: MC#97-07 (Order #955254)MTO Ref.#97-B-27 Pole Line Along East Side & Buried Cable & Pedestal Along West Side and Undercrossing 6th Line immediately south of Hwy. 407, Oakville Lot 15/16, Conc. 2, NDS, Geo. Twp. Trafalgar</p> <p>W.P. 406-05-00</p> <p>Author: P. Kuynljes, MTO to Bell Access Network Facilities</p> <p>Date: January 7, 1998</p>		X
26	<p>Title: Ontario Hydro Supply to the Town of Oakville (Oakville Link IC & Trafalgar Rd. IC. Package includes background correspondence and drawings. More documentation to follow)</p> <p>W.P. W.P. 406-85-00 & Oakville Link IC</p> <p>Author: B. Ziegler, Ontario Hydro to P. Kuynljes, MTO</p> <p>Date: July 31, 1998</p>		X

ITEM	DESCRIPTION	COPY TO PROponents	VIEWING IN DATA ROOM
1.	STORMWATER MANAGEMENT/ENVIRONMENTAL REPORTS		
40.	Title: Drainage Mosaic and Calculations (Walkers Line to Ninth Line) W.P. 199-77-01 Author: MTO Date: April, 1982	X	
41.	Title: Proposed Preliminary Stormwater Management Concept (Hwy. 407 West Mainline from Hwy. 5 to Ninth Line) W.P.: 412-85-00 and 413-85-00 Author: R. V. Anderson Date: October, 1995	X	
41A.	Title: Preliminary Stormwater Management for Property Requirements (Hwy. 407: Hwy. 5 to Bronte Creek City of Burlington) W.P. N/A Author: McCormick Rankin Date: June 1998	X	
42.	Title: Halton Region Conservation Authority Hager and Rambo Creeks Flood Control Pre-Design Study (Draft) Author: Philips Planning and Engineering Ltd. Date: November, 1984	X	
43.	Title: Halton Region Conservation Authority Hager/Rambo Creek Flood Control CNR to Q.E.W. contract Author: Philips Planning and Engineering Date: May, 1991	X	
44.	Title: Halton Region Conservation Authority Hager-Rambo Flood Control Hwy. 403 Flood Diversion Channel Plains Road to "Freeman Pond" Technical Report Author: Philips Planning and Engineering Ltd. Date: May, 1985	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
45.	Title: Hydrology & Hydraulics, Bronte Creek at Proposed Hwy. 403 Crossing W.P.: 410-85-00 Author: Cumming Cockburn Ltd. Date: September, 1990	X	
46.	Title: Initial Environmental Inventories of the Hwy. 403 Corridor at Bronte Creek and Sixteen Mile Creek W.P.: 410-85-00 and 406-85-00 Author: Ecological Services for Planning Ltd. Date: May, 1991	X	
47.	Title: Environmental Inventory for the Hwy. 403 Crossing of Bronte Creek W.P.: 410-85-00 Author: Ecological Services for Planning Ltd. Date: December, 1991	X	
48.	Title: Hwy. 403 Advance Structures from Walkers Line to Hwy. 25 Stormwater Management Plan W.P.: 410-85-00 Author: R. V. Anderson Date: June, 1993	X	
49.	Title: Stormwater Quality Management Study Interim Report No. 2 Hwy. 403 Structures and Approaches Sixteen Mile Creek, Sixth Line and Trafalgar Road. W.P.: 406-85-00 Author: Philips Planning and Engineering Ltd. Date: July, 1994	X	
50.	Title: Hwy. 403/407 IC Outlet Sewer Hydraulic Report W.P.: 197-77-08 Author: Gore and Storie Ltd. Date: January, 1984		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
51.	Title: Report on Erin Mills Development Corp. Storm Sewer Proposal Hwy. 403/407 IC W.P.: 197-77-08 Author: Gore and Storrie Ltd. Date: November, 1983		X
52.	Title: Hwy. 403/407 IC Outfall Sewer System Pre-Design Study Report W.P.: 197-77-08 Author: Gore and Storrie Ltd. Date: April, 1983		X
52A.	Title: Design and Construction Report Hwy. 403/Trafalgar Road Interchange W.P.: 197-77-01, 197-77-20 Author: McCormick Rankin Date: December 1984		X
52B.	Title: Design & Construction Report Hwy. 403/407 Interchange (And Addendum) W.P.: 197-77-06, 197-77-07 Author: McCormick Rankin Date: April 1984		X
52C.	Title: Design & Construction Report Hwy. 403 - Winston Churchill Blvd. To Trafalgar Road W.P.: 12-86-00 Author: McCormick Rankin Date: February 1987		X
53.	Title: Soil Contamination Report Hwy. 403 from Hwy. 5 to Hwy. 403/407 IC (Including covering memo) Author: R. V. Anderson Date: March, 1995	X	

ITEM	DESCRIPTION
54.	<p>Title: Design and Construction Report Freeman Interchange Q.E.W. from CNR to Brant St. Including Ramp Structures for Future Hwy. 403</p> <p>W.P. 199-77-01 Author: McCormick Rankin Date: March, 1993</p>
55.	<p>Title: Design and Construction Report Relocation of a Section of TransCanada Gas Pipeline near the Intersection of Gue and the Proposed Hwy. 403 in Burlington</p> <p>W.P.: 199-77-20 Author: The Greer Galloway Group Inc. Date: August, 1990</p>
56.	<p>Title: Addendum Addendum to Design and Construction Report for Highway 403 Advanced Structu Upper Middle Road, Guelph Line and High</p> <p>W.P.: 199-77-20 Author: The Greer Galloway Group Date: February, 1991</p>
57.	<p>Title: Design and Construction Report Hwy. 403 Advance Structures and Approa Walkers Line to Hwy. 25 - Grading, Drain Granular Base, Paving and Structures</p> <p>W.P.: 410-85-00 Author: R. V. Anderson Associates Ltd. Date: October, 1993</p>
58.	<p>Title: Design and Construction Report Hwy. 403 Advance Structures and Approa 16 Mile Creek, 6th Line and Trafalgar Roa</p> <p>W.P.: 406-85-00 Author: Philips Planning and Engineering Date: March, 1995</p>

ITEM	DESCRIPTION	COPY TO PROPONENTS	VOLUME IN DATA
59.	<p>Title: Design and Construction Report Hwy. 403 from Hwy. 403 (Freeman IC) Northerty to Hwy. 5 (Dundas St.) W.P.: 199-77-06 Author: McCormick Rankin Consulting Eng. Date: June, 1995</p>	X	
59A.	<p>Title: Design & Construction Report Hwy. 403/Brant St. including Two Structures W.P. 199-77-14 Author: Wyllie & Ufnal Consultants Ltd. Date: May 1990</p>		X
60.	<p>Title: Memorandum: Detention Pond at Hwy. 403 Between Bronte Creek and CNR Subway W.P.: 410-85-00 Author: MTO Date: April 6, 1993</p>	X	
61.	<p>Title: Memorandum: Bronte Creek - Hwy. 403 Drop Shaft and Tunnel Outfall W.P.: 410-86-00 Author: MTO/Golder Associates Date: February 21, 1994</p>	X	
62.	<p>Title: Hydrology Design Report 16 Mile Creek Crossing at Hwy. 403 Site No. 10-490 W.P.: 406-85-00 Author: Philips Planning and Engineering Ltd. Date: August, 1993</p>	X	
62A.	<p>Title: Sheldon Creek Watershed Master Plan W.P.: 413-85-00 Author: Philips Planning and Engineering Date: October, 1993</p>	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
J. STRUCTURAL DESIGN REPORTS			
63.	Title: Trafalgar Road Overpass (EBL & WBL) W.P.: 197-77-09 Site No.: 10-82-329 Author: H. Jagasia, MTO Date: February, 1983		X
64.	Title: Tremaine Rd. (RR#22) Underpass Hwy. 403 G.W.P.: 410-85-00 W.P.: 409-85-04 Site No.: 10-230 Author: D. Wong, MTO Date: August, 1990		X
65.	Title: Appleby Line Underpass Hwy. 403 G.W.P.: 410-85-00 W.P.: 411-85-02 Site No.: 10-229 Author: D. Wong, MTO Date: August, 1990		X
66.	Title: Walkers Line Overpass Hwy. 403 G.W.P.: 410-85-00 W.P.: 411-85-04 Site No.: 10-228 Author: D. Wong, MTO Date: August, 1990		X
67.	Title: Hwy. 25 Underpass Hwy. 403 G.W.P.: 410-85-00 W.P.: 409-85-02 Site No.: 10-479 Author: D. Wong, MTO Date: August, 1990		X
68.	Title: Bronte River Bridge Hwy. 403 G.W.P.: 410-85-00 W.P.: 410-85-01/02 Site No.: 10-220 Author: D. Wong, MTO Date: December, 1990		X

ITEM	DESCRIPTION	COPY TO PROPONENTS	VIEWING IN DATA RO
69.	Title: C.N.R. Subway Hwy. 403 G.W.P.: 410-85-00 W.P.: 408-85-01 Site No.: 10-478 Author: D. Wong, MTO Date: January, 1991		X
70.	Title: Investigation of Structure Alternatives Bronte Creek Bridges - Hwy. 403 G.W.P.: 410-85-00 W.P.: 410-85-01/02 Site No. 10-220 Author: Dr. R. Skelton, McCormick Rankin Date: March, 1991		X
71.	Title: Sixth Line Underpass G.W.P.: 406-85-00 W.P.: 407-85-02 Site No.: 10-489 Author: K. Wong, MTO Date: March, 1993		X
72.	Title: 16 Mile Creek Bridges (WBL & EBL) G.W.P.: 406-85-00 W.P.: 406-85-01/02 Site No.: 10-490 Author: K. Wong, MTO Date: July, 1993		X
73.	Title: Hwy. 403 WBL over the North Service Road (Bridge #31), W.P. 199-77-09, Site 10-483; Hwy. 403 EBL over the North Service Road (Bridge #32), W.P. 199-77-10, Site 10-484 Freeman Interchange District #4, Burlington Author: M. D. Bendayan, MTO Date: April, 1993		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
74.	Title: Ramp 403/W-Q.E.W./E Over Q.E.W. and Ramp Q.E.W./S-403/E Freeman Interchange W.P.: 199-77-03 Site: 10-333 (Bridge #41) Author: M. D. Bendayan, MTO Date: November, 1990		X
75.	Title: Ramp 403/W-Q.E.W./S Over Ramp 403/E-Fairview St. W.P.: 199-77-04 Site: 10-334 (Bridge #42) Author: M. D. Bendayan, MTO Date: December, 1990		X
75 A.	Title: 407 ETR - West Alternatives for Bridge Structures Author: MTO Date: November 25, 1998	X	
K. ARCHAEOLOGICAL AND HERITAGE REPORTS			
76.	Title: Final Report on the Phase I and II Archaeological Assessment of the Hwy. 403 Project from Highway 5 to Oakville Link Author: P.H.Pihl Date: August, 1992		X
77.	Title: An Archaeological Assessment of Hwy. 403 from Oakville Link to Freeman Interchange W.P.: 197-77-00, 198-77-00, 199-77-00 Author: M. T. Ambrose Date: November, 1984		X
78.	Title: The Ganong Site (AiGx-74) Author: M. T. Ambrose Date: March, 1993		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
79.	<p>Title: Archaeological Testing & Salvaging of Four Sites on Hwy. 403 Phase I and II Report for Site AiGw-143 W.P.: 410-85-00 Author: MCMi Date: August, 1994</p>		X
80.	<p>Title: Archaeological Testing and Salvaging of Four Sites on Hwy. 403 Phase I and II Report for Site AiGw-134 W.P.: 410-85-00 Author: MCMi Date: August, 1994</p>		X
81.	<p>Title: Archaeological Testing and Salvaging of Four Sites on Hwy. 403 Phase I Report for Site AiGw-156 (Also containing AiGw-158) W.P.: 410-85-00 Author: MCMi Date: August, 1994</p>		X
82.	<p>Title: Archaeological Testing and Salvaging of Four Sites on Hwy. 403 Phase I Report for Site AiGw-129 W.P.: 410-85-00 Author: MCMi Date: March, 1994</p>		X
82A.	<p>Title: Status of Archaeological Resource Concerns, Proposed Highway 407, From the Queen Elizabeth Way to Highway 403, City of Burlington and Town of Oakville, Regional Municipality of Halton W.P.: N/A Author: M. Home, MCzCR to G. Warrick, MTO Date: Nov. 25, 1998</p>	X	
82B.	<p>Title: Protected Areas Highway 407W W.P.: N/A Author: A. Murray, A.M. Archaeological Associates to G. Warrick, MTO Date: Nov. 25, 1998</p>	X	

ITEM	DESCRIPTION	COPY TO PROponents	VIEWING IN DATA ROOM
82C.	Title: Highway 407 West - Archaeology Reports W.P.: N/A Author: N/A Date: N/A		X
82D.	Title: Ministry of Transportation: Archaeological Investigations in the Central Region, Ontario (AARO VOL 2) W.P.: N/A Author: G. Warrick, MTO Date: 1991		X
82E.	Title: The Rasputive Site AjGW-34, Highway 403, Regional Municipality of Halton W.P.: 197-77-00 Author: M.T. Ambrose, MTO Date: Dec., 1984		X
82F.	Title: Final Report on Salvage Excavation of the Five Acre Field Site (AiGW-100) W.P.: N/A Author: L. J. Jackson, Northeastern Archaeological Associates Date: June 1, 1996		X
82G.	Title: Interim Report on the 1998 Archaeological Mitigation of the Ireland II Site (AiGW-94), Burlington W.P.: 412-85-00/413-85-00 Author: W.D. Finlayson and R. J. Pearce, London Museum of Archaeology Date: Nov. 13, 1998		X
82H.	Title: Archaeological Interim Report Stage 4: Excavation Highway 407 West The Bucolio Site (AiGW-301) The Corfu Site (AiGW-304) The Samos Site (AiGW-306) W.P.: 412-85-00 & 413-85-00 Author: MCM Date: Nov. 11, 1998		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
82I.	<p>Title: Archaeological Test Excavation of the White Beard Site (AiGW-132) Highway 407W, Town of Oakville W.P.: 412-85-00 Author: C. Murphy, MTO Date: June, 1995</p>		X
82J.	<p>Title: Interim Report for the Excavation of the Shagbark (AiGW-307) and Doug (AiGW-305) sites, Highway 407 West, Regional Municipality of Halton W.P.: N/A Author: New Directions Archaeology Date: N/A</p>		X
82K.	<p>Title: Museum of Indian Archaeology at the University of Western Ontario, London, Ontario A Final Report on the 1980-81 Phase 1 Archaeological Assessment of the Highway 403 - Freeman Interchange to Highway 5 Link W.P.: 198-77-00 Author: D. R. Poulton Date: May 1982</p>		X
82L.	<p>Title: The Archaeological Assessment of Highway 407 West (Stages 1-3) W.P.: N/A Author: A. M. Archaeological Associates Date: N/A</p>		X
82M.	<p>Title: Preliminary Report on the Stage 4 Excavations at the Downstairs Site (AiGW-302) and the Upstairs Site (AiGW-303) W.P.: N/A Author: A. M. Archaeological Associates Date: N/A</p>		X
83.	<p>Title: Status of Heritage Investigation Hwy. 403 Author: R. Zaryski Jackson, MTO Date: As of August, 1995</p>	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
L. GEOTECHNICAL AND FOUNDATION INVESTIGATION REPORTS			
84.	Title: Hwy. 407 - Hwy. 407/403 IC W.P.: 197-77-02 Site: 10-82-326 Author: J. Hayward, P. Payer, MTO Date: December 17, 1992		X
85.	Title: E-S Ramp Underpass Hwy. 403/407 Interchange Complex W.P.: 197-77-03 Site: 10-82-325 Author: P. Payer, K. G. Selby, MTO Date: December 2, 1982		X
86.	Title: W-S Ramp & Ninth Line Hwy. 403/407 Interchange Complex W.P.: 197-77-04/06 (Contract 84-78) Site: 10-82-328 Author: P. Payer, K. G. Selby, MTO Date: January 11, 1983		X
87.	Title: Ninth Line Underpass Hwy. 403/407 Interchange Complex W.P.: 197-77-05/06 (Contract 84-78) Site: 10-82-327 Author: P. Payer, K. G. Selby, MTO Date: December 24, 1982		X
88.	Title: High Mast Lighting Hwy. 403/407 Interchange Complex W.P.: 197-77-07 Author: B. E. Ruck, K. G. Selby, MTO Date: July 8, 1985		X
89.	Title: Hwy. 403/407 Interchange Complex Outfall Storm Sewer W.P.: 197-77-08 (Contract 84-65) Author: P. Payer, K. G. Selby, MTO Date: June 22, 1983		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
90.	Title: Hwy. 403 - Trafalgar Rd. Overpass (EB & WB) W.P.: 197-77-09 Site: 10-82-329 Author: D. H. Dundas, K. G. Selby, MTO Date: January 26, 1988	X	
91.	Title: High Mast Lighting Freeman Interchange Phase 2 W.P.: 199-77-01 Author: M. Vasavithasan, M. Devata, MTO Date: March 20, 1991		X
92.	Title: Freeman IC Phase II Pavement Design Report W.P.: 199-77-01 Author: T. Saad, R. MacLean, MTO Date: June 19, 1991		X
93.	Title: Memorandum: Geotechnical Recommendations for Hwy. 403 from Winston Churchill Blvd. to Trafalgar Rd. W.P.: 12-86-00 Author: G. Cautillo Date: September 8, 1986		X
94.	Title: Geotechnical Investigation Hwy. 403/Q.E.W. IC (Freeman Interchange) W.P.: 199-77-01 Author: D. C. Wismath - Geo-Canada Ltd. I. P. Lieszkowszky - Geo-Canada Ltd. Date: October, 1990		X
95.	Title: Stability of Slopes/Cut and Fill of Hwy. 403 Between Freeman IC and Hwy. 5 W.P.: 199-77-06 Author: T. C. Kim, M. Devata, MTO Date: April 8, 1992	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
96.	<p>Title: Geotechnical Investigation Hwy. 403 from Q.E.W. to Hwy. 5 W.P.: 199-77-06 Author: D. C. Wismath - Geo-Canada Ltd. I. P. Lieszkowszky - Geo-Canada Ltd. Date: November, 1990</p>	X	
97.	<p>Title: Proposed High Mast Lighting Pole and O/H Signs - Hwy. 403/Q.E.W. W.P.: 199-77-06a Author: Date: April 5, 1993</p>	X	
98.	<p>Title: Hwy. 403 - Upper Middle Rd. Underpass W.P.: 199-77-17,06 Site: 10-476 Author: T. C. Kim, M. Devata, MTO Date: November 1, 1990</p>	X	
99.	<p>Title: Hwy. 403 - Guelph Line Underpass W.P.: 199-77-19,20 (Contract 93-43) Site: 10-227 Author: T. C. Kim, M. Devata, MTO Date: November 1, 1990</p>		X
100.	<p>Title: Hwy. 403 - Hwy. 5 Underpass W.P.: 199-77-21, 20 (Contract 93-43) Site: 10-477 Author: T. C. Kim, M. Devata, MTO Date: November 7, 1990</p>		X
101.	<p>Title: Hwy. 403 - 16 Mile Creek Bridges G.W.P.: 406-85-00 W.P.: 406-85-01, 02 Site: 10-490 Author: T. Sangiuliano, M. Devata, MTO Date: November 29, 1993</p>	X	
102.	<p>Title: Bridge Structure - Hwy. 403 & Sixth Line Underpass G.W.P.: 406-85-00 W.P.: 407-85-02 Site: 10-479 Author: T. C. Kim, M. Devata, MTO Date: July 2, 1992</p>	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
103.	<p>Title: Foundation Investigation for Proposed Highway 403/CNR Subway G.W.P.: 410-85-00 W.P.: 408-85-01 Site: 10-478 Author: C. S. Bodimeade, Acres Int. Ltd. T. J. Bradshaw, Acres Int. Ltd. Date: March, 1991</p>	X	
104.	<p>Title: Bridge Structure - Hwy. 403 & Hwy. 25 Underpass G.W.P.: 410-85-00 W.P.: 409-85-02 Site: 10-479 Author: T. C. Kim, M. Devata, MTO Date: December 17, 1990</p>	X	
105.	<p>Title: Bridge Structure Hwy. 403 - Regional Road 22 Underpass G.W.P.: 410-85-00 W.P.: 409-85-04 Site: 10-230 Author: T. C. Kim, M. Devata, MTO Date: November 9, 1990</p>	X	
106.	<p>Title: CNR Detour at Hwy. 403 W.P.: 410-85-00 Author: T. Sanguiliano, M. Devata, MTO Date: July 2, 1992</p>	X	
107.	<p>Title: Geotechnical Investigation Design & Construction of Drop Shaft & Tunnel - Hwy. 403 and Bronte Creek W.P.: 410-85-00 Author: S.V.L. Barrett, Golder Associates C. M. K. Yuen, Golder Associates Date: September, 1993</p>	X	
108.	<p>Title: Detention Pond at Hwy. 403 Between Bronte Creek & CNR Subway W.P.: 410-85-00A Author: T. Sanguiliano, M. Devata, MTO Date: July 20, 1992</p>	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
109.	<p>Title: Foundation Investigation for Proposed Structures at the Crossing of Hwy. 403 and Bronte Creek G.W.P.: 410-85-00 W.P.: 410-85-01/02 Site: 10-220 Author: C. S. Bodimeade, Acres Int. Ltd. T. J. Bradshaw, Acres Int. Ltd. Date: February, 1991</p>	X	
110.	<p>Title: Hwy. 403 - Appleby Line Underpass G.W.P.: 410-85-00 W.P.: 411-85-02 Site: 10-229 Author: T. C. Kim, M. Devata, MTO Date: November 29, 1990</p>	X	
111.	<p>Title: Hwy. 403 - Walkers Line Underpass G.W.P.: 410-85-00 W.P.: 411-85-04 Site: 10-228 Author: T. C. Kim, M. Devata, MTO Date: November 19, 1990</p>	X	
112.	<p>Title: Pavement Design Report - Hwy. 403 from Freeman IC to Hwy. 5 W.P.: 199-77-06 Author: Geotechnical Section, MTO Date: July 30, 1991</p>	X	
113.	<p>Title: Hwy. 403 from Hwy. 5 to Trafalgar Rd. Pavement Design Report W.P.: 412-85-00 Author: A. C. Abel, Strata Engineering Corp. Date: November 15, 1991</p>	X	
114.	<p>Title: Hwy. 403 from Hwy. 5 to Hwy. 25 Soils Investigation W.P.: 413-85-00 Author: B. P. Walker, B.P. Walker Assoc. Ltd. U. S. Sappal, B.P. Walker Assoc. Ltd. Date: June 18, 1991</p>		X

ITEM	DESCRIPTION	COPY TO PROPOSENTS	VIEWING IN DATA ROOM
115.	Title: Hwy. 403 Proposed Bridge 42 W.P.: 199-77-04 Site: 10-334 Author: Golder Associates Ltd. Date: March, 1991.		X
116.	Title: Proposed Hager-Rambo Box Culvert W.P.: 516-90-02 Author: Golder Associates Ltd. Date: March, 1991		X
117.	Title: Hwy. 403 Proposed Bridge 35 W.P.: 199-77-08 Site: 10-481 Author: Golder Associates Ltd. Date: March, 1991		X
118.	Title: Hwy. 403 Proposed Bridge 41 W.P.: 199-77-03 Site: 10-333 Author: Golder Associates Date: March, 1991		X
118A.	Title: Pavement Selection Report W.P.: 199-77-06/412-85-00/413-85-00 Author: Geotechnical Section, MTO Date: May 30, 1995	X	
118B.	Title: Foundation Investigation for Proposed Culverts No. 3 and 4 Hwy. 403 Q.E.W. (Freeman IC to Hwy. 5) W.P.: 199-77-06 Author: K.S.W. Ahmad, MTO D. Dundas, MTO Date: Noyember 10, 1995	X	
118C.	Title: Consolidated Pavement Design Report Author: Strata Engineering Date: December 1998	X	
118D.	Historical Aggregate Sources List data for 407 ETR - West from previous MTO Capital construction Contracts (both licensed and unlicensed potential sources)		X

ITEM	DESCRIPTION	COPY TO PROponents	VIEWING IN DATA ROOM
M. APPROVALS AND CLEARANCES			
119.	<p>Title: Hwy. 403 Bronte Creek Crossing Approval under the <i>Navigable Waters Protection Act</i> (NWPA) W.P.: 410-85-00 Site: 10-220 (Bronte Creek) Author: D. Wong, MTO Date: Varies</p>	X	
120.	<p>Title: Hwy. 403 16 Mile Creek Crossing Approval under the <i>Navigable Waters Protection Act</i> (NWPA) W.P.: 406-85-00 Site: 10-490 (16 Mile Creek) Author: K. Wong, MTO Date: Varies</p>	X	
121.	<p>Title: Submission to National Transportation Agency for Proposed Hwy. 403/C.N. Rail Grade Separation W.P.: 410-85-00 Author: MTO Date: April 6, 1993</p>	X	
122.	<p>Title: Memorandum: Environmental Clearance Hwy. 403 Advance Structures and Approaches at Sixteen Mile Creek, Sixth Line and Trafalgar Rd. W.P.: 406-85-00 Author: F. R. Leech, MTO Date: September 22, 1995</p>	X	
123.	<p>Title: Memorandum: Environmental Clearance from Q.E.W. (Freeman IC) Northerly to Hwy. 5 (Dundas St.) City of Burlington, Regional Municipality of Halton W.P.: 199-77-06 Author: F. R. Leech, MTO Date: July 14, 1995</p>	X	

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
124.	Title: Memorandum: Environmental Clearance Hwy. 403 Advance Structures for Walkers Line, Appleby Line, Bronte Creek (2 Bridges), CN Rail Subway, Tremaine Road and Hwy. 25 in the Region of Halton W.P.: 410-85-00 Author: F. R. Leech, MTO Date: January 25, 1995	X	
124A.	Orders made under the <i>Environmental Assessment Act</i> to exempt Highway 407 from applications of the Act Exemption Orders MTC-21/2, MTC-47& MTC-52		X

ITEM	DESCRIPTION	COPY TO PROPOSERS	VIEWING IN DATA ROOM
N. TRAFFIC DOCUMENTATION			
125.	Title: Highway HOV Corridor Overview Study W.O.: 93-23013 Author: R. E. Winter & Associates Ltd. Date: March, 1994		X
126.	Memorandum: Signal Warrants for Hwy. 407 West at Hwy. 5, Appleby Line, Hwy. 25 and Trafalgar Road W.P.: N/A Author: B. Porter, MTO to H. Wojcinski, OTCC Date: 1996-06-10	X	
127.	Memorandum: Signal Warrants for Hwy. 407/Neyagawa Blvd., Oakville W.P.: N/A Author: B. Porter, MTO to E. Ellard, OTCC Date: 1995-10-04	X	
127A.	Memorandum: Signal Warrants for Hwy. 407/Neyagawa Blvd., Oakville W.P.: N/A Author: B. Porter, MTO to E. Ellard, OTCC Date: 1995-10-13	X	
127B.	407 ETR - Traffic Forecast Wilbur Smith & Associates December 1998		X
O. PROPERTY DOCUMENTATION			
128.	Property Documentation (Agreements, Expropriation and Reference Plans, Temporary Limited Interests) for Property Owners #1 to #85 as per Appendix #6: Property Sale Agreement Conditions	X	
129.	Pertinent Documentation for Access to Hydro Towers West of Tremaine Rd.		
130.	Pertinent Documentation for Cul-de-Sac for Bumhamthorpe Road at Morraine Property		

*X
Should be
reference to
Appendix 8*

ITEM	DESCRIPTION	COPY TO PROponents	VIEWING IN DATA ROOM
131.	Pertinent Documentation for Access to IPPL Valve System at Oakville Link IC:	X	
P. OTHER			
132.	407 ETR Sample Signing Manual Author: OTCC/CHIC		X
133.	1998 Update on Roadside Safety Practice Author: Tom Klement Research and Development Office MTO Date: June 25, 1998	X	
134.	Terms of Reference for Foundation Engineering Consultant Services Author: MTO Date: 98-11-10	X	
135.	All Non Standard Special Provisions (NSSP) identified in Appendix 4	X	

SCHEDULE 16

Province Completed Facilities

Province Completed Facilities consists of the attached information in Section B.2.3 Status of Construction, Figures 3, 4 & 5, and Appendix 5 in the Request for Proposals - Development and Design-Build for the Western Extension of the 407 Express Toll Route (ETR).

B.2.3 Status of Crown Completed Facilities

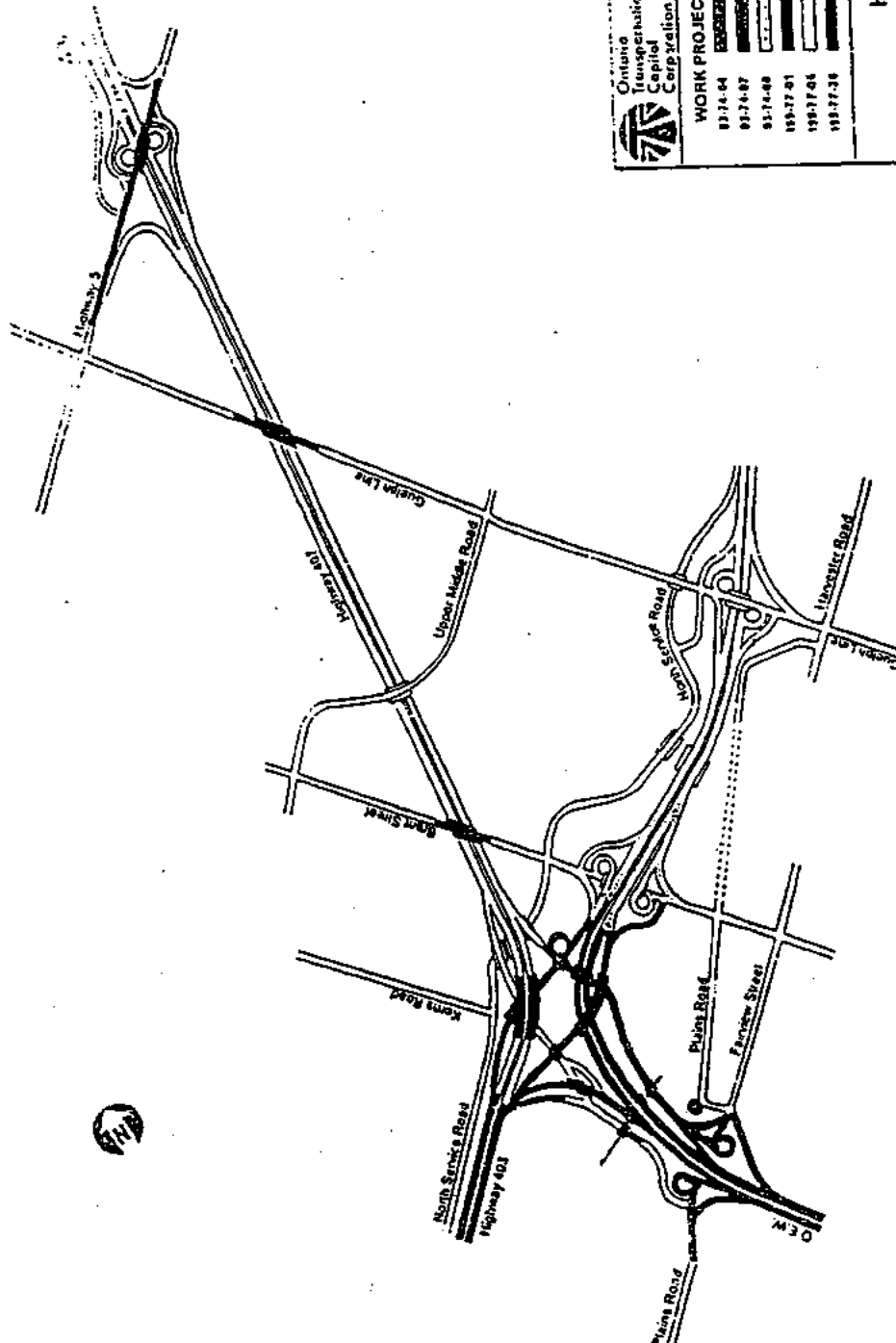
Construction of the Brant Street, Guelph Line and Highway 5 structures over 407 ETR West have been completed.

Ministry Contract 93-89 is completed at the Freeman Interchange. This work included construction of the 407 ETR West ramp structures at the interchange. Not included in this work are three structures over the North Service Road and the N-W, W-N and N-S ramp connections (part of W.P. 199-77-06 design), which will be part of this Project.

A number of ramps and structures have already been constructed at the Oakville Link Interchange. The 407 ETR Central contract included construction of the Ninth Line and the ramps and structures that connect the 407 ETR Central Section to existing Highway 403.

The Crown Completed Facilities are those facilities for which construction has been completed as depicted in Figures 3,4 and 5 and as shown in Appendix 5.

In accordance with Section 3.13 of the DDBA, the Contractor is required to incorporate the Crown Completed Facilities into the Project.



Ontario
Transportation
Capital
Corporation

Contract Staging Map

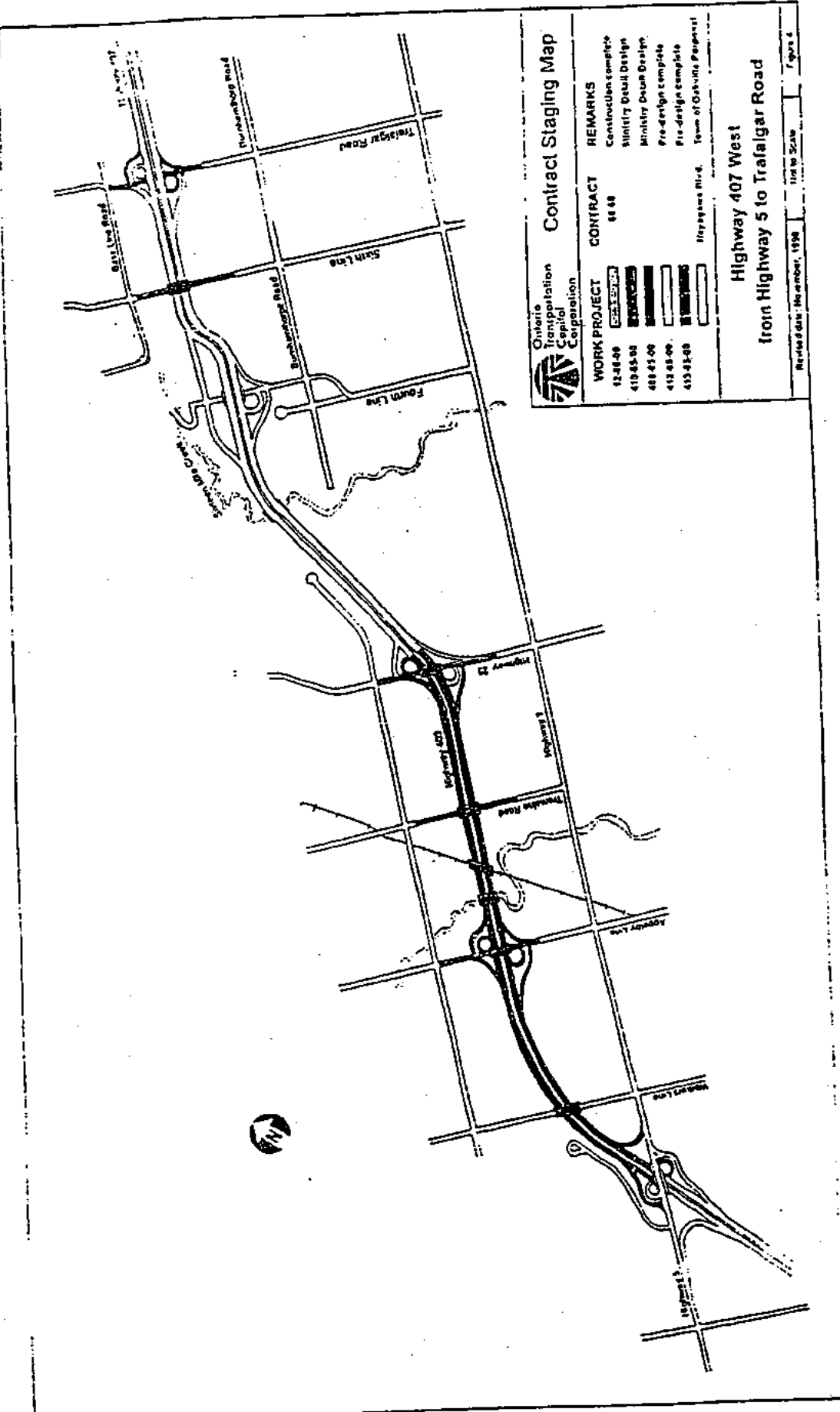
WORK PROJECT	CONTRACT	REMARKS
91-74-64	91-31	Construction complete
91-74-67	91-32	Construction complete
91-74-68	91-35	Construction complete
199-77-01	91-86	Construction complete
199-77-04		Minority Date Design
199-77-26	91-43	Construction complete

**Highway 407 West
from Q.E.W. (Freeman I.C.) to Highway 5**

Revised date: October, 1991

North Scale

Figure 3

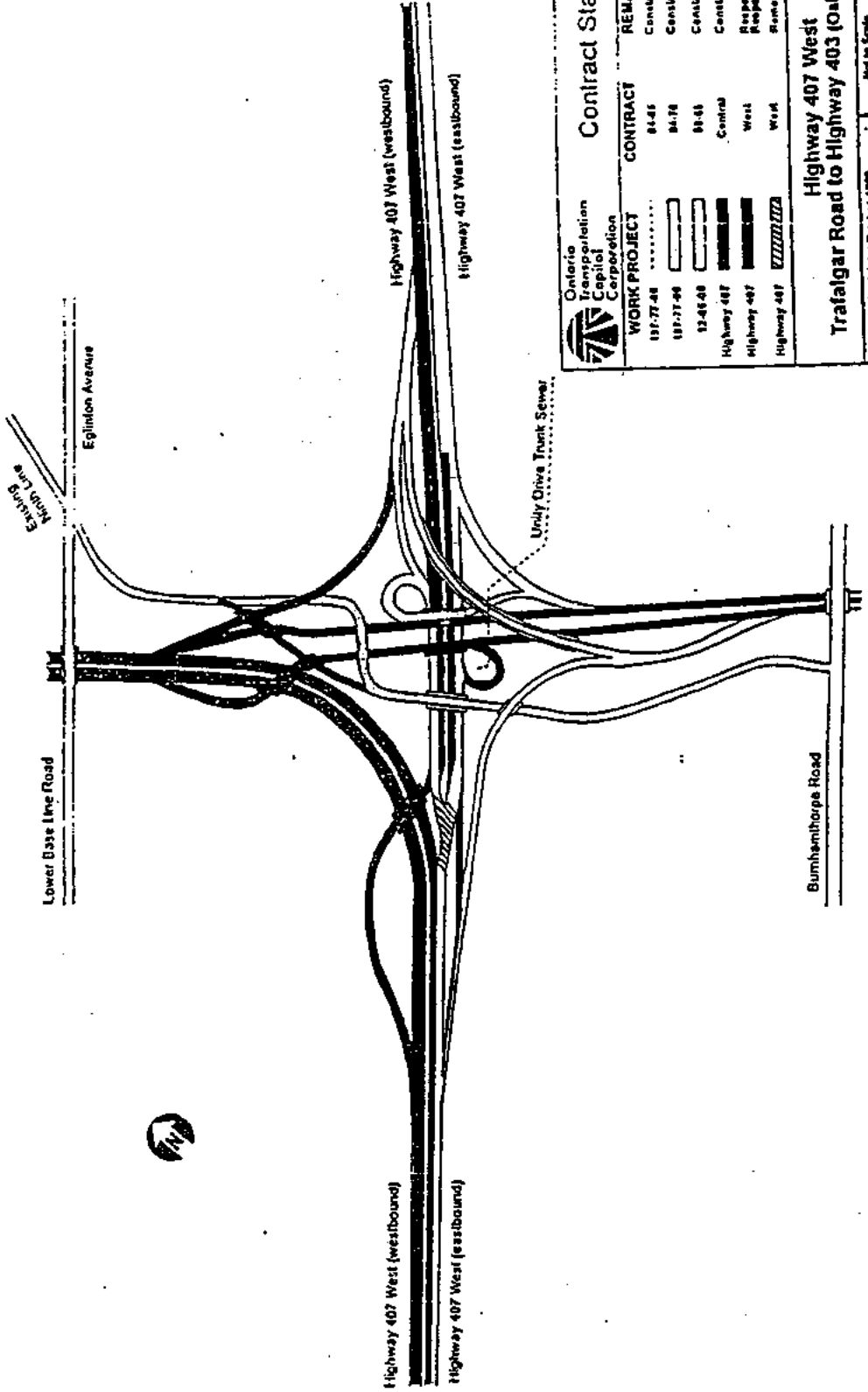


Contract Staging Map

WORK PROJECT	CONTRACT	REMARKS
42-46-00	41-00	Construction complete
419-45-00		Ministry Detail Design
408-42-00		Ministry Detail Design
412-43-00		Pre-design complete
413-42-00		Pre-design complete
		By-laws 211-4, Town of Oakville Proposed

Highway 407 West
from Highway 5 to Trafalgar Road

Revised date: November, 1998
1:10 to Scale
Figure 2



Ontario Transportation Corporation		Contract Staging Map	
WORK PROJECT	CONTRACT	REMARKS	
131-77-48	84-45	Construction complete	
131-77-98	84-78	Construction complete	
13-45-08	88-01	Construction complete	
Highway 407	Central	Construction complete	
Highway 407	West	Responsibility of 6-lane	
Highway 407	West	Reimbursement	
Highway 407 West		General	
Trafalgar Road to Highway 403 (Oakville Link I.C.)			

Revised 4/90; October, 1989

Not to Scale

Figure 5

APPENDIX 5: LIST AND STATUS OF STRUCTURES FOR BASE CASE

Freeman Interchange to Highway 5:

Description	Status	WP #
QEW O'Pass @ Fairview St.	Construction Complete	83-74-04
403W Ramp over CNR to Plains Rd.	Construction Complete	83-74-04
QEW N&S over CNR	Construction Complete	83-74-04
403W - QEW S. O'Pass @ 407 S - Plains Rd.	Construction Complete	199-77-04
403W - QEW E. O'Pass @ 407 N - QEW S.	Construction Complete	199-77-02
403W - QEW E. Ramp over QEW	Construction Complete	199-77-03
407N - 403W Ramp	Construction Complete	199-77-08
403W - 407N Ramp	Construction Complete	199-77-07
QEW E. - 403 W over Ramp 407 N - QEW S	Construction Complete	199-77-05
QEW E - 403 W, Ramp QEW S - 407 N, U'Pass	Construction Complete	83-74-28
QEW, Ramp QEW S - 407 N, U'Pass	Construction Complete	83-74-29
Hwy 407 - Upper Middle Rd., U'Pass	Ministry Detail Design	199-77-17
407N - QEW S., over North Service Rd.	Ministry Detail Design	199-77-11
407N - 403W, over North Service Rd.	Ministry Detail Design	199-77-09
403W - 407N, over North Service Rd.	Ministry Detail Design	199-77-10
QEW S. - 407N over North Service Rd.	Construction Complete	83-74-12
QEW - over Brant St. U'Pass	Construction Complete	83-74-08
Hwy 403 - Brant St. U'Pass	Construction Complete	83-74-13
Hwy 407 - Guelph Line U'Pass	Construction Complete	199-77-19
Hwy 407 - Hwy 5 U'Pass	Construction Complete	199-77-21

Highway 5 to Highway 25:

Description	Status	WP #	Site #
Walkers Line O'Pass	Ministry Detail Design	411-85-04	10-228
Appleby Line U'Pass	Ministry Detail Design	411-85-02	10-229
Bronte Creek O'Pass	Ministry Detail Design	410-85-02	10-220
CNR U'Pass	Ministry Detail Design	408-85-01	10-478
Tremaine Rd. U'Pass	Ministry Detail Design	409-85-04	10-230
Hwy 25 U'Pass	Ministry Detail Design	409-85-02	10-479

Sixteen Mile Creek to Trafalgar Rd.:

Description	Status	WP #	Site #
Sixteen Mile Creek O'Pass	Ministry Detail Design	406-85-00	10-490
Neyagawa Blvd. O'Pass	GA available	N/A	N/A
Sixth Line U'Pass	Ministry Detail Design	406-85-00	10-489
Trafalgar Rd. U'Pass	Ministry Detail Design	406-85-00	10-329

Oakville Link Interchange:

Description	Status	WP #	Site #
403S - 407N O'Pass @ 407/403 O'Pass	Construction Complete	199-77-06	10-326
407N - 403S/E O'Pass @ 407/403 EW Ramps	Construction Complete		10-509
407 O'Pass @ 403E - 407W	GA available		10-510
407N - 403S/E O'Pass @ 407 & 9 th Line	Construction Complete		10-511
9 th Line O'Pass @ 403 S- 407N & 403E - 407N	Construction Complete		10-512
407W - 403S O'Pass @ 9 th Line	Construction Complete	199-77-06	10-328
9 th Line O'Pass @ 407/403 EW Ramps	Construction Complete	199-77-06	10-327
403E-403S Ramp O'Pass @ 407/403 EW & SN Ramps	Construction Complete	199-77-06	10-325

SCHEDULE 19

RESTRICTION ON TRANSFER AGREEMENT

THIS AGREEMENT is made the • day of April, 1999

THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER WITHOUT PORTFOLIO WITH
RESPONSIBILITY FOR PRIVATIZATION

(the "Vendor")

- and -

407 ETR Concession Company Limited, a corporation continued under
the *Business Corporations Act* (Ontario)

(the "Company")

- and -

•, a corporation incorporated under the laws of •

(the "Purchaser")

- and -

• [Equity Participants]

BACKGROUND:

1. The Vendor has agreed to sell all of the issued shares of the Company to the Purchaser pursuant to a share purchase agreement dated April •, 1999 in order to transfer Highway 407 to the private sector.
2. The Company entered into the Highway 407 Concession and Ground Lease Agreement dated April •, 1999 with the Vendor pursuant to which the Vendor granted to the Company certain rights with respect to Highway 407, which include, *inter alia*, a long term ground lease of certain lands related to Highway 407.
3. Concurrent with the execution of the share purchase agreement, the Company, the Purchaser and the Equity Participants have agreed to enter into this agreement with the Vendor because the Vendor, as a matter of public policy, does not want the ownership of the shares of the Company to be transferred within 5 years of the Closing Date and accordingly wishes to prevent:

- (a) the Company, directly or indirectly, from disposing of (i) all or any of its assets or (ii) its future revenues, to a third party; and
- (b) the Purchaser from disposing of any voting securities of the Company either (i) directly, or (ii) indirectly through a change of control of the Purchaser or an Equity Participant.

IN CONSIDERATION of the premises and the mutual agreements in this Agreement, and of other consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

1. In this Agreement,

"Affiliate", when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such specified Person;

"Call Option" has the meaning set forth in Section 7;

"Change of Control" means with respect to an Equity Participant which is not a Publicly Traded Equity Participant, any occurrence whereby a majority of the Voting Power relating to such Equity Participant is Disposed of to a Person or Persons (other than to an Affiliate of such Equity Participant) who do not have a majority of the Voting Power relating to such Equity Participant on the date hereof;

"Control" means, with respect to any Person, the ownership, control or direction, directly or indirectly, of a majority of the Voting Power of such Person and **"Controlled"** and **"Controls"** shall have a similarly extended meaning;

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement between the Vendor and the Company dated April 4, 1999, as amended;

"Concessionaire's Interest" has the meaning ascribed to that term by the Concession Agreement;

"Default" means with respect to an Equity Participant or the Purchaser, the taking of any action or suffering or permitting any action to be taken on the part of such Equity Participant or the Purchaser which would result in a breach of its obligations under this Agreement and includes the negotiation of any proposed Disposition of Securities and in the case of an Equity Participant includes a Change of Control of such Equity Participant contrary to the provisions of Section 5;

"Disposition" means:

- (i) any Transfer of or the creation of any Encumbrance (other than a Permitted Encumbrance) on, any property, assets or securities of any kind; and
- (ii) any agreement to Transfer or to create an Encumbrance (other than a Permitted Encumbrance) on, any property, assets or securities of any kind,

and **"Dispose of"** has a corresponding meaning;

"Encumbrance" means any encumbrance of any kind whatever and includes a security interest, mortgage, lien, hypothec, pledge, hypothecation, assignment, charge, trust or deemed trust (whether contractual, statutory or otherwise arising), or any other right, option or claim of others of any kind and, with respect to any such right, option or claim, includes any of the foregoing which has the effect of (i) transferring any legal or beneficial interest in any Securities to any Person or (ii) permitting any Person to have control or direction over, any rights attached to any Securities;

"Equity Security" means any security or debt instrument of the Company or the Purchaser which is (i) entitled to a rate of return which varies with the profits or revenues of the Company or the Purchaser; or (ii) entitled to a fixed rate of return which is materially in excess of a commercial rate of return which would be charged by a *bona fide* Arm's Length lender or investor at the time of the issuance of such security or debt instrument and any securities which are convertible into or exchangeable for Voting Securities and any securities which entitle the holder thereof to purchase Voting Securities;

"Insolvency Event" means with respect to any Person:

- (i) the commencement of any *bona fide* proceeding, voluntary or involuntary pursuant to any statute relating to bankruptcy, insolvency, reorganization of debts, liquidation, winding up or dissolution, including any proceedings under the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* or the *Winding-up and Restructuring Act* and such proceeding is not terminated or permanently stayed within 90 days of its commencement; or
- (ii) the appointment (whether judicially or extra-judicially), in connection with the enforcement of any *bona fide* security, of any receiver, manager, receiver and manager, trustee, liquidator or Person with similar powers for such Person or in respect of all of its property and such appointment is not terminated or permanently stayed within 90 days of its having been made; and
- (iii) the enforcement of the rights of an encumbrancer under a *bona fide* Permitted Encumbrance and such enforcement is not terminated or permanently stayed within 90 days.

"Permitted Encumbrance" means any Encumbrance on Securities of the Company and/or the Purchaser in favour of a *bona fide* lender, in respect of indebtedness incurred in connection with the financing of the purchase of the Shares by the Purchaser or the construction of the Project by the Company or the operation of the Business, and any extension, renewal or refinancing of such indebtedness.

"Project" has the meaning ascribed to that term in the Concession Agreement;

"Publicly Traded Equity Participant" means any Equity Participant whose Voting Securities are listed on a recognized stock exchange, if more than a majority of the Voting Power attached to such Voting Securities is held by Persons who are not Affiliates of such Equity Participant;

"Restricted Period" means the five year period commencing on the Closing Date and ending on the fifth anniversary of the Closing Date;

"Securities" means Voting Securities and Equity Securities;

"Shares" means the ● issued common shares of the Company sold by the Vendor to the Purchaser pursuant to the SPA;

"SPA" means the share purchase agreement dated April ●, 1999 among the parties pursuant to which the Vendor agreed to sell all of the Shares to the Purchaser;

"Transfer" means any sale, assignment, lease, sublease, gift, exchange, transfer or other disposition, and the entry into any merger, amalgamation, consolidation or reorganization by an entity shall be deemed to be a "Transfer" for the purposes of this Agreement;

"Voting Power" means, with respect to outstanding Voting Securities, the highest number of votes that the holders of all such outstanding Voting Securities would be entitled to cast for the election of directors or, in the case of an entity which is not a body corporate, other persons who exercise management responsibilities similar to directors, assuming for purposes of this computation, the conversion of or exchange into Voting Securities of all securities which are convertible into or exchangeable for Voting Securities and the exercise of all rights attached to securities which entitle the holder thereof to purchase Voting Securities, to the full extent that any such action would increase the number of such votes; and

"Voting Securities" means

- (i) the common shares of a body corporate and all other securities of such body corporate of any kind or class having power to vote for the election of directors either under all circumstances or in certain circumstances or in certain events (whether or not such circumstances or events exist or have occurred); and
- (ii) securities of an entity other than a body corporate which entitles the holder thereof to vote for the election or appointment of persons who exercise management responsibilities similar to directors of a body corporate, either under all circumstances or in certain circumstances or in certain events (whether or not such circumstances or events exist or have occurred).

Terms defined in the SPA and used herein have the same meaning herein as in the SPA, unless otherwise defined herein or unless the context otherwise requires.

2. Restriction on Sale of Assets

The Company shall not, directly or indirectly, Dispose of all or any of Concessionaire's Interest whether in one or a series of transactions during the Restricted Period provided that:

- (i) the Company may grant or permit to exist an Encumbrance on or of the Concessionaire's Interest during the Restricted Period to the extent provided by the terms of the Concession Agreement; and
- (ii) the Company may Dispose of any part of the Project which has become worn out, unserviceable, undesirable or unnecessary for use in the operation thereof.

Notwithstanding anything else contained in this Agreement or the Concession Agreement, if an Insolvency Event has occurred and is continuing with respect to the Company, then the Concessionaire's Interest may be Disposed of free of the restrictions of this Section 2. Notwithstanding the foregoing, the Company may Dispose of the Concessionaire's Interest for *bona fide* accounting and/or financing purposes to any Person which is wholly-owned, directly or indirectly, by one or more of the Equity Participants, provided that the Company and the transferee comply with any applicable provisions of the Concession Agreement.

3. No Disposition of Securities of Company

The Purchaser shall not, directly or indirectly, Dispose of any Securities of the Company during the Restricted Period. No Encumbrance on or of such Securities shall be created or permitted by the Purchaser during the Restricted Period except for a Permitted Encumbrance. No Permitted Encumbrance on or of any such Securities shall be created or permitted by the Purchaser during the Restricted Period unless the encumbrancer agrees in writing with the Vendor to be bound by the provisions of this Agreement.

The Purchaser shall cause the Company not to issue any Securities of the Company to any Person, other than the Purchaser during the Restricted Period.

Notwithstanding anything else contained in this Agreement or the Concession Agreement, if an Insolvency Event has occurred and is continuing with respect to the Company, then such Securities may be Disposed of by the holder of a Permitted Encumbrance in realizing on the security constituted by such Permitted Encumbrance, free of the restrictions of this Section 3.

4. No Disposition of Securities of Purchaser

Each Equity Participant shall not, directly or indirectly, Dispose of any Securities of the Purchaser, during the Restricted Period.

No Encumbrance on or of the Securities of the Purchaser shall be created or permitted by an Equity Participant during the Restricted Period except for a Permitted Encumbrance. No Permitted Encumbrance on or of such Securities shall be created or permitted by an Equity Participant during the Restricted Period unless the encumbrancer agrees in writing with the Vendor to be bound by the provisions of this Agreement.

The Equity Participants shall cause the Purchaser not to issue any Securities of the Purchaser to any Person, other than the Equity Participants during the Restricted Period.

Notwithstanding anything else contained in this Agreement or the Concession Agreement, if an Insolvency Event has occurred and is continuing with respect to the Company, then Securities of the Purchaser which are subject to a Permitted Encumbrance may be Disposed of by the holder of a Permitted Encumbrance in realizing on the security constituted by such Permitted Encumbrance, free of the restrictions of this Section 4.

5. Change of Control of an Equity Participant

No Change of Control with respect to an Equity Participant shall occur within the Restricted Period, provided that (subject to the restriction provided hereafter), this Section 5 shall not apply to an Equity Participant unless its investment in the Purchaser represents more than 50% of the book value of the assets of such Equity Participant as at the date of the Change of Control. Such determination shall be based on a balance sheet of the Equity Participant prepared in accordance with Canadian generally accepted accounting principles, consistently applied. Equity Participants who do not individually have an investment in the Purchaser of more than 50% of the book value of their assets, shall not, acting jointly or in concert, or in one or a series of transactions, undergo a Change of Control if as a result, the same Person or group of Persons indirectly acquires Control of the Purchaser.

6. Certain Exceptions

The provisions of Sections 3, 4 and 5 hereof shall not apply to

- (i) any amalgamation of the Purchaser and/or the Company with each other and/or another Person or Persons, so long as after such amalgamation, the amalgamated entity continues to be Controlled, directly or indirectly, by one or more of the Equity Participants, to at least the same extent as the Company and the Purchaser are Controlled by the Equity Participants at the Time of Closing; or
- (ii) any Disposition of Securities of the Purchaser, the Company or an Equity Participant, so long as after such Disposition, no Person other than an Equity Participant or a Person that is Controlled by one or more Equity Participants Controls, directly or indirectly, the Person who owns the Concessionaire's Interest.

The Vendor may in its sole discretion consent in writing to any Disposition proposed to be made by a party hereto and any proposed Disposition which receives such consent shall not constitute a breach of or a Default under this Agreement. Any consent of the Vendor requested by a party, may be unreasonably withheld.

7. Remedies For Breach

- 7.1 Disposition by Concessionaire.** - If all or any part of the Concessionaire's Interest is Disposed of contrary to the provisions of Section 2, the Equity Participants and the Purchaser shall jointly and severally pay to the Vendor the full amount of the proceeds of Disposition forthwith after such Disposition together with interest thereon at the Bank Rate, from the date of Disposition to the date of payment.

2. **Default by Purchaser or Equity Participant.** - In order to secure performance of the Purchaser's and each Equity Participant's obligations under this Agreement, each Equity Participant hereby grants to the Vendor an option to purchase (a "Call Option") all of the Securities of the Purchaser or the Company owned by such Equity Participant directly or indirectly. Subject to Section 7.3, a Call Option shall become exercisable by the Vendor if there occurs within the Restricted Period a Default on the part of the Purchaser or such Equity Participant. The exercise price of a Call Option shall be the cost price of the Securities of the Purchaser or the Company owned directly or indirectly by the Equity Participant, net of any capital distributions on or on account of such Securities (the "Cost Price"). The Cost Price shall be determined based on the purchase price for the shares of the Company paid pursuant to the SPA or in the case of any Securities of the Company or the Purchaser acquired after the date hereof, the cost price to the Purchaser or the Equity Participant at the time such Securities were acquired by it. Each Equity Participant, the Purchaser and the Company shall provide all information over which it has control to the Vendor in order for the Vendor to calculate the Cost Price. If the parties are unable to agree on the Cost Price, it shall be settled pursuant to the dispute resolution procedures set forth in Article 8 of the SPA which shall apply *mutatis mutandis*.

7.3 **Closing.** - If a Default occurs within the Restricted Period, the Vendor shall, within 30-days of the date that the Vendor became aware of such Default, give to the Defaulting Party notice of the Default specifying in reasonable detail the nature and particulars of the Default. The Defaulting Party shall have 90 days from receipt of such notice to remedy the Default. If such Default is not fully remedied by the last day of such 90 day period, (the "Effective Date"), then the Vendor may thereafter, by notice ("Exercise Notice") to the Defaulting Party, exercise the Call Option. The closing of the purchase and sale of the Securities purchased pursuant to such Call Option, shall take place at the place specified in the Exercise Notice on the 20th Business Day after the Exercise Notice was given. On the closing, the Defaulting Party shall deliver to the Vendor certificates evidencing the Securities sold duly endorsed in blank for transfer and shall deliver to the Vendor a duly executed representation and warranty stating that the Defaulting Party has good and marketable title to such Securities free and clear of all Encumbrances (except for Permitted Encumbrances) and the Vendor shall pay the purchase price for such Securities to the Defaulting Party by bank draft or certified cheque. The Call Option shall expire, if unexercised, on the first anniversary of the Effective Date.

7.4 **Assignment.** - The Call Option and the rights of the Vendor under this Agreement which relate thereto, are transferable by the Vendor to any Person after the Effective Date, without the consent of the Company, the Purchaser or the Equity Participant.

8. Share Certificate Legend

This agreement is a [unanimous] shareholder agreement within the meaning of the *Business Corporations Act* (Ontario). All certificates representing Securities of the Company or the Purchaser shall bear the following legend:

"The securities represented by this certificate are subject to the provisions of a [unanimous] shareholder agreement made the 5th day of May, 1999 which contains restrictions on the right to transfer, pledge and

otherwise deal with such securities. Notice of such restrictions and of the other provisions of such agreement is hereby given."

9. **Right to Injunctive Relief and Specific Performance**

Each Equity Participant, the Purchaser and the Company acknowledge that a breach of any of the covenants or provisions contained herein would cause the Vendor to suffer loss which could not be adequately compensated for by damages and that the Vendor may, in addition to any other remedy or relief, enforce the performance of this agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage to the Vendor.

10. **Notices**

All communications which may be or are required to be given by any party to any other party, shall be in writing and (a) delivered personally, (b) sent by prepaid courier service or by registered mail, or (c) sent by prepaid telecopier or other similar means of electronic communication to the parties at their following respective address:

For the Purchaser, the Company and each Equity Participant:

•
Attention: •

Telecopier: •

with a copy to:

•
Attention: •

Telecopier: •

For the Vendor:

Privatization Secretariat
56 Wellesley Street
Suite 600,
Toronto, Ontario
M7A 1C1

Attention: Chief Executive Officer
Telecopier: (416) 325-8851

with a copy to:

Goodman Phillips & Vineberg
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Donald G. Pierce
Telecopier: (416) 979-1234

- and -

Fasken Campbell Godfrey
Suite 3700
Toronto Dominion Centre
Toronto, Ontario
M5K 1N6

Attention: W. Thomas Barlow
Telecopier: (416) 364-7813

Any such notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telecopier or other electronic communication or on the second Business Day following the sending thereof by private courier or on the fifth Business Day following the sending thereof by registered mail. Any party may from time to time change its address hereinbefore set forth by notice to the other parties in accordance with this Section.

11. General

- 11.1 **Invalidity.** - If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed from this Agreement, and the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.
- 11.2 **Remedies Cumulative.** - The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such party may be lawfully entitled for the same default or breach.

11.3 The provisions of Section 1.2 and Sections 9.2, 9.3, 9.4 and 9.6 to 9.13 inclusive of the SP shall apply to this agreement, *mutatis mutandis*.

**THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER WITHOUT
PORTFOLIO WITH RESPONSIBILITY FOR
PRIVATIZATION**

By: _____

COMPANY

By: _____ c/s

By: _____

PURCHASER

By: _____ c/s

By: _____

EQUITY PARTICIPANTS

By: _____ c/s

By: _____

SCHEDULE 20

SAFETY AND STANDARDS PROTOCOL

Definitions:

Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule the following terms have the following meanings:

“**CIM**” means the Confidential Information Memorandum dated December 23, 1998 relating to Highway 407.

“**Concession Agreement**” means the Highway 407 Concession and Ground Lease Agreement between the Crown in Right of Ontario as represented by the Minister without Portfolio with Responsibility for Privatization and Ontario Transportation Capital Corporation pursuant to which the Concessionaire is granted a concession to operate Highway 407.

“**ESAM**” means the explicit safety assessment methodology which is detailed in the Ministry document entitled “1998 Update on Roadside Safety Practice”, available from the Ministry Research and Development Office. (Sample calculations of ESAM are available).

“**Management**” means development, planning, design, construction, operation, maintenance and rehabilitation, and Manage has a corresponding meaning;

“**Minister**” means the Minister of Transportation of Ontario.

“**Ministry**” means the Ministry of Transportation of Ontario.

“**Road Safety Activity**” means monitoring of collisions and potential driver hazards and taking effective, state-of-the-art measures, in the Management of Highway 407, which shall result in the prevention of collisions and/or the mitigation of the severity of collisions.

1. Road Safety Principles

The following principles shall apply to the Management of Highway 407:

- (i) Road Safety Activity is a high priority for the Province on all roads, including Highway 407;
- (ii) the Ministry shall be responsible for setting Ministry Safety Standards,
- (iii) The Concessionaire shall be subject to Ministry Safety Standards in the manner set out in Article 6 of the Concession Agreement, this Schedule and the *Highway 407 Act, 1998*.

- (iv) The Concessionaire may use standards which differ from Ministry Safety Standards only as provided in Section 6.3 of the Concession Agreement;
- (v) the Concessionaire shall establish and implement effective, internal, on-going monitoring and checking processes to ensure compliance with Ministry Safety Standards. The Concessionaire shall act promptly to correct any lack of compliance with Ministry Safety Standards. The safety control processes shall be documented in: a design safety control plan, a construction safety control plan and an operation safety control plan. These processes and plans shall be reviewed and updated annually by the Concessionaire;
- (vi) once each calendar year the Concessionaire shall hire independent auditors to verify and report to the Grantor and to the Concessionaire as set out in this schedule that the Concessionaire has effective safety control processes and safety plans in place and that these processes are being followed by the Concessionaire. The auditors shall be required to provide certification to the Grantor that they do not have a conflict of interest and that they shall carry out their audits in a professional and objective manner;
- (vii) the Concessionaire shall maintain records and archives that document the Concessionaire's ongoing monitoring, checking and correction efforts. The records and archives shall be readily available in an electronic and hard copy format to the Grantor and the firm of independent safety auditors for six (6) years;
- (viii) the Concessionaire shall hire independent, qualified engineers to review the Concessionaire's ongoing Management of Highway 407, at critical milestone points as specified in this schedule and to certify to the Grantor that the Concessionaire's Management of Highway 407 is in accordance with Ministry Safety Standards;
- (ix) the Grantor may from time to time, randomly Audit the Concessionaire's records and the Concessionaire's ongoing Management of Highway 407; and
- (x) policing and commercial vehicle inspection on Highway 407 shall be carried out by the Ontario Provincial Police and the Grantor in accordance with Section 4.1 and Schedules 13 and 15 of the Concession Agreement.

2. Concessionaire is Responsible for Road Safety

The Concessionaire shall be responsible for Road Safety Activity on Highway 407. The Concessionaire shall be required to take anticipatory measures in the Management of Highway 407 to prevent collisions and mitigate the severity of collisions which occur. The Concessionaire shall continuously monitor collision experience and actively seek out potential collision hazards and establish an on-going program of safety improvement.

The Concessionaire must undertake Road Safety Activity on Highway 407 so as to ensure compliance with Ministry Safety Standards and the Concession Agreement.

3. Application of Ministry Safety Standards

Ministry Safety Standards change over time as driver profiles and vehicles change, as knowledge of driver behavior grows and as new technologies appear. The Concessionaire shall be responsible for applying the most up-to-date Ministry Safety Standards in the same manner that the Ministry is required to apply such standards on Comparable Controlled Access Highways. At present the Grantor advises that the most up-to-date Ministry Safety Standards are those used in the most current Ministry high volume freeway contracts.

3.1 Current Ministry Safety Standards

For the avoidance of doubt, substantially all of the Ministry Safety Standards which are applicable as at the Effective Date are contained in the documents listed in Table 1 below.

TABLE 1 - Reference Documents for Ministry Safety Standards:

Document	Current Distributor
Bridge Clearance and Load Restriction Manual	Ronen House Publishing
Commercial Site Access Policy and Standards Manual	Ronen House Publishing
Concrete Culvert Design and Detailing Manual	Ronen House Publishing
Contract Design Estimating and Documentation Manual	Ronen House Publishing
Design Manual for Highway Illumination – Metric	Sale Data Room
MTO Drainage Manual	Ronen House Publishing
Electrical Engineering Manual – Volume 1 – Electrical Design	Ronen House Publishing
Electrical Eng'g Manual – Volume 2 – Electrical Maintenance	Ronen House Publishing
Electrical Engineering Manual – Volume 3 – C.D.E.D.	Ronen House Publishing
Electrical Engineering Manual – Volume 4 – FTMS – CDED.	Ronen House Publishing
Form-work and False-work Manual	Ronen House Publishing
Geometric Design Standards for Ontario Highways – Metric	Ronen House Publishing
Construction Inspection Tasks Manual	Ronen House Publishing
Highway Engineering Standards Drawings: Structural	Ronen House Publishing
Kings Highway Guide Signing Policy Manual	Ronen House Publishing
Illumination Design Criteria	Sale Data Room
Integral Abutment	Ronen House Publishing
Maintenance Special Provisions	Sale Data Room
Maintenance Quality Standards	Sale Data Room
Manual for Condition Rating of Flexible Pavements (SP-024)	Sale Data Room
Manual for Condition Rating of Rigid Pavements (SP-005)	Sale Data Room
Manual of Uniform Traffic Control Devices	Ronen House Publishing

Modified Special Provisions and Non-Standard Special Provisions Related to Safety	Sale Data Room
Ont. Hwy Br. Design Code Commentary (3 RD edition 1991)	Ronen House Publishing
Ontario Highway Bridge Design Code Update (March 1995)	Ronen House Publishing
Ontario Provincial Standards and Specifications User's Guide	Ronen House Publishing
Ontario Provincial Standards and Specifications – Vol.1	Ronen House Publishing
Ontario Provincial Standards and Specifications – Vol. 2	Ronen House Publishing
Ontario Provincial Standards and Specifications – Vol. 3	Ronen House Publishing
Ontario Provincial Standards and Specifications – Vol. 4	Ronen House Publishing
Ontario Structure Inspection Manual	Ronen House Publishing
Ontario Traffic Signal Control Equipment Specifications	Ronen House Publishing
Pavement Design and Rehabilitation Manual	Ronen House Publishing
Post Tensioned Decks	Ronen House Publishing
Pre-stressed Concrete Manual	Ronen House Publishing
Procedures for the Design of High Mast Pole Foundations	Sale Data Room
Roadside Safety Manual	Ronen House Publishing
Shoulder Rumble Strip Draft Directive	Sale Data Room
Sign Support Manual	Ronen House Publishing
Structural Manual	Ronen House Publishing
Structural Inspection Manual	Ronen House Publishing
Structural Steel Coating Manual	Ronen House Publishing
Structure Rehabilitation Manual	Ronen House Publishing
Traffic Signal Timing & Capacity Analysis for Intersections	Sale Data Room
Traffic Control Manual for Roadway Work Operations	Ronen House Publishing
1993 AASHTO Guide for the Design of Pavement Structures for Rigid and Flexible Pavements	Sale Data Room
Winter Operations for Snow and Ice Control by Contractors	Sale Data Room

Except as set out in the Concession Agreement, the Grantor has no obligation to inform the Concessionaire of any changes to Ministry Safety Standards. Without limiting the operation of clause (ii) of section 6.1 of the Concession Agreement, the Grantor may advise the Concessionaire of changes to Ministry Safety Standards from time to time.

The Concessionaire shall be also be required to comply with the following changes in Ministry Safety Standards that over-ride the requirements of Table I above:

(i) Whenever the extent of the Highway 407 Lands and existing infrastructure allow, the Concessionaire shall use its best efforts to utilize radii greater than minimum ones.

(ii) The Concessionaire shall use inner loop ramp cross-falls of up to 8% depending on the radius of the curve and design speed.

(iii) The Concessionaire shall use hot mix surfaces on inner loops at interchanges, or maintain concrete surfaces with equivalent surface treatment.

(iv) The Concessionaire shall use fully paved right and left shoulders with rumble strips on both shoulders even if there is barrier or guide rail present.

(v) The Concessionaire shall use ESAM and the latest Ministry roadside safety practice when selecting from several possible design alternatives in order to choose the most cost cost-effective design alternatives. A design solution determined by ESAM takes precedence over a Ministry roadside safety warrant, such as a Clear Zone and Embankment Protection Warrant. Design consistency must also be considered and measures found cost effective in most locations shall be introduced on a Project wide basis. In addition the Concessionaire shall:

-use the ESAM to check warranting conditions beyond the existing Clear Zone standard (ten (10) metres on tangents, more on curves) up to a distance 1.5 times the Clear Zone to determine if enhanced protection is warranted ($B/C > 1$). Alternatively, without a calculation, the Concessionaire shall maintain a fifteen (15) metres clear zone instead of the standard Clear Zone. If such clear zones are not achievable because of space limitations, the hazard must be protected with barriers or crash attenuators in accordance with the approach used on Highway 407 Central;

(vi) unprotected fixed objects, such as high mast poles, located beyond the Clear Zone in the vicinity of ramps are subject to additional requirements. Such objects must be located either on the inside of the curve, or if on the outside, a stopping distance reduced by forty (40) metres must be provided when such objects are in the likely path of an errant vehicle that fails to negotiate the first curve;

(vii) the Concessionaire shall use fill side slopes and ditch slopes of 6:1 whenever practical; on steeper fills and where there is limited right-of-way, the Concessionaire shall ESAM to determine if a 4:1 slope or guide rail is more cost effective;

(viii) the Concessionaire shall ensure that the continuity of any guide rail is maintained (i.e. there shall be no short gaps between sections);

(ix) the Concessionaire shall not use any type of cable guide rail;

(x) slopes steeper than 6:1 which are perpendicular to Highway 407 must be protected with a steel beam guide rail when the potential impact point is within fifteen (15) metres from the edge of the pavement; such steel beam guide rail protection shall extend further where a terrain or drainage feature may reasonably be expected to guide an errant vehicle towards such slope;

(xi) cut slopes (including those under the structures) at any offset not steeper than 2:1 do not require guide rail protection;

(xii) the backside of toll structures must be protected if within fifteen (15) metres; or may be landscaped to guide an errant vehicle back to the mainline of Highway 407;

(xiii) a traversable area roughly thirty (30) metres long and three (3) metres wide, sloping at no more than 4:1, must be provided behind the nose of all guide rail end treatments on the mainline only to allow for gating of the guide rail end treatment;

(xiv) the Concessionaire shall avoid longitudinal drainage features that may guide errant vehicles into fixed objects;

(xv) the Concessionaire shall install hazard protection or splayed treatment for parallel culvert ends, (similar in design to those used on Highway 407 Central and Highway 410 at Highway 407) and for eligible concrete box cross culverts similar to those used on Highway 401 at Bowmanville;

(xvi) the Concessionaire shall use only frangible base poles for conventional lighting, unless the base poles are shielded by a guide rail that was provided for another reason;

(xvii) the Concessionaire shall use chevron signs on the outside of all inner loops and other off-ramp first curves where the difference between the design speeds of the main line and that of the first curve is greater than thirty-five (35) kilometres per hour for freeway-to-freeway ramps and forty-five (45) kilometres per hour for arterial road ramps;

(xviii) the Concessionaire shall not use barrier curbs along the mainline shoulder; mountable curbs must be used only when hydrology necessitates; the use of curbs must be kept to a minimum, especially at bullnoses; and

(xix) all Highway 407 mainline structures shall incorporate shoulders of no less than two point five (2.5) metres.

For the purposes of this Schedule the following shall also be considered Ministry Safety Standards:

A freeway flexible pavement is deemed to be in need of immediate rehabilitation when the Pavement Condition Index reaches 60. A freeway rigid pavement is deemed to be in need of immediate rehabilitation when the Pavement Condition Rating reaches 60. However, when either or both of an individual distress or a distortion reaches a severity rating of severe, regardless of the extent, the Concessionaire shall establish and implement a schedule for immediate mitigation.

For freeway pavements, when the surface friction skid number reaches $SN_{100}=30$ as measured by a breakforce trailer, conforming to ASTM Standard E-274 and E-501, the Concessionaire shall undertake immediate investigation, and if appropriate, establish and implement a schedule for immediate mitigation. Remedial action is also to be undertaken whenever a surface friction problem is thought to exist irrespective of the surface friction skid number.

The Concessionaire shall implement appropriate improvements within one (1) year of a request by the Grantor in collision prone areas (locations with a disproportionately high number of collisions, whether involving fatal or near fatal injuries or any property damage), or when the collision rate for any section of Highway 407 exceeds 0.9 collisions/million vehicle kilometres of travel.

3.2 Higher or Different Ministry Safety Standards

There may be situations in which the Concessionaire has applied sound engineering judgement in the use of the most up-to-date Ministry Safety Standards, but nevertheless the Grantor instructs the Concessionaire to use a Higher Ministry Safety Standard. In this case, the Grantor shall enter into an agreement to compensate the Concessionaire for the extra costs associated with using the Higher Ministry Safety Standard, in accordance with section 6.5 of the Concession Agreement.

The Concessionaire may voluntarily use a Higher Ministry Safety Standard. No compensation shall be provided to the Concessionaire for the use of such Higher Ministry Safety Standards.

The Concessionaire may request the use of standards that are different from Ministry Safety Standards in accordance with section 6.3 of the Concession Agreement.

3.3 Dispute or Contravention of Ministry Safety Standards

Where a dispute arises between the Concessionaire and the Grantor with respect to compliance with, applicability or interpretation of Ministry Safety Standards the matter shall be dealt with as in section 6.4 of the Concession Agreement.

If a contravention of any Ministry Safety Standard is discovered, the Grantor shall deal with such contravention as in section 6.4(b) of the Concession Agreement.

4. Qualifications of Key Personnel

Without limiting the requirements of sections 4.4(a) and 4.4(b) of the Concession Agreement, but subject to the Management Plan, the Concessionaire shall retain the services of qualified personnel as set out in this section. The Concessionaire shall retain only competent and qualified staff to Manage Highway 407. The Concessionaire shall retain an operations and maintenance manager and a safety control plan manager at all times. The Concessionaire shall retain the following key personnel to Manage the design and construction of any major portion of Highway 407:

- (a) a project manager,
- (b) a design manager,
- (c) a construction manager, and
- (d) an environmental manager

The qualification requirements for key staff are set out in this Schedule. For the avoidance of doubt, any key staff identified in the Management Plan shall be deemed to be qualified personnel meeting the requirements set out in this Schedule.

4.1 Qualifications of Project Management, Design Management and & Construction Management Staff

The Concessionaire shall retain the services of a project manager and key personnel to Manage design and construction on Highway 407.

The project manager and key personnel must have experience in project management and the integration of the various disciplines required on design and construction activities on highway projects.

The project manager must also have experience in the supervision of any one of: a design manager, a construction manager or a maintenance/operations manager (as set forth below in this section) and experience in those areas in which the project manager does not have supervisory experience.

The Concessionaire's design activities shall be managed by a design manager with the following minimum qualifications:

- (i) -professional civil engineer licensed in the Province of Ontario,
- (ii) -minimum of fifteen (15) years experience in highway design, at least half applied in climates similar to Ontario,
- (iii) -design experience on three (3) one hundred thousand (100,000)+AADT freeway projects with construction value over ten million dollars (\$10,000,000) in the last ten (10) years,
- (iv) -five (5) years of experience in direct supervision of design engineers,
- (v) -experience with Ministry Safety Standards, and
- (vi) -experience in consulting with provincial agencies, municipalities, public interest groups, and the public.

The Concessionaire's construction activities shall be managed by a construction manager with the following minimum qualifications:

- (i) -minimum of ten (10) years experience in highway construction supervision,
- (ii) -construction experience on three (3) one hundred thousand (100,000)+AADT freeway projects with construction value over ten million dollars (\$10,000,000) in the last ten (10) years,
- (iii) -five (5) years of experience in direct supervision of construction field staff,
- (iv) -familiarity with Ontario specifications, standards and practices,
- (v) -experience in the coordination of construction activities in a design/build environment, and
- (vi) -experience on a project that used a quality control plan.

The construction manager must have access on his or her team to a professional engineer, licensed in the Province of Ontario.

4.2 Qualifications of Environmental Manager

The Concessionaire must retain the services of an environment manager and key staff with collective experience in environmental assessment and protection in:

- (i) environmental assessment,
- (ii) obtaining environmental permits and approvals,
- (iii) compliance with Laws and Regulations,
- (iv) familiarity with Ontario specifications and standards
- (v) stream, river and wetland protection,
- (vi) soil erosion control,
- (vii) wildlife habitat protection,
- (viii) wayside pit operation and mitigation measures,
- (ix) emergency response and communication,
- (x) construction noise control, and
- (xi) operating noise control.

The environmental manager must have:

- (i) recent successful experience in the preparation and submission of three environmental study reports or environmental assessments for projects in the Province of Ontario,
- (ii) recent, relevant successful experience in environmental protection and coordinating the identification of environmental constraints, development of environmental design and mitigation elements in the Province of Ontario and implementation and monitoring of associated construction protection for complex highway projects in the Province of Ontario,
- (iii) recent successful experience in securing formal approvals or agreements required for design and construction of complex highway projects in the Province of Ontario, and
- (iv) experience consulting with provincial agencies, municipalities, public interest groups, and individual members of the public.

The environmental manager must ensure that proper consultation is conducted during the design and construction phases, that required reports are submitted in accordance with Laws and Regulations and other pre-approval conditions referred to in the Concession Agreement and the CIM, and that proper environmental measures are part of the design. During construction, the environmental manager will ensure that environmental measures are properly installed and are effective.

4.3 Qualifications of Safety Control Plan Manager

The Concessionaire shall retain the services of a safety control plan manager, who is a licensed civil engineer in Ontario, with at least five (5) years experience in construction quality control. The safety control plan manager must have recent experience in the administration of a quality control plan for at least one major highway construction project valued at least ten million (\$10,000,000). The safety control plan manager shall manage the safety control plans.

4.4 Qualifications of Design Staff

The Concessionaire shall retain the services of key design personnel who have experience in the design of major roadways including road design, pavement design, bridges, overpasses, other structures, drainage facilities, hydraulic design of major water crossings and geotechnical work.

4.5 Qualifications of Construction Staff

The Concessionaire shall retain the services of key construction personnel who have experience in the construction of major roadways (i.e. road design, pavement design, bridges, overpasses, other structures, drainage facilities, hydraulic design of major water crossings and geotechnical work), and the Management of freeway traffic during construction.

4.6 Qualifications of Operations & Maintenance Staff

The Concessionaire shall retain the services of an operations manager and key operations and maintenance personnel who collectively have experience in:

- (i) -routine one hundred thousand (100,000)+ AADT freeway maintenance (summer and winter),
- (i) -specialty maintenance (bridge repair, striping, illumination, crack sealing, tolling),
- (ii) -maintenance and operations management,
- (iii) -tolling management,
- (iv) -public relations and administration,
- (v) -freeway traffic operations (corridor control and traffic control),
- (vi) -familiarity with Ontario freeway maintenance and operation standards, and
- (vii) -emergency response support (e.g. pothole repair, sign collapse, accident cleanup etc.)

5. Design Safety Control Plan

The Concessionaire shall implement effective monitoring, checking, testing, correlation and technical review control processes, to ensure that pre-engineering input data and design output products are free from errors and omissions and are in compliance with Ministry Safety Standards.

For the avoidance of doubt, control processes shall include:

- (i) -listing and sign-off on applicable design standards by the design manager prior to the start of the design,
- (ii) -checking of pre-engineering data, supplier drawings and other design input data for accuracy,
- (iii) -laboratory staff, equipment, technician and procedure certification programs,
- (iv) -accuracy, quality checking and double stamping of design products (e.g. reports, drawings, calculations etc)
- (v) -milestone design safety audits and constructability reviews, and
- (vi) -certification by the design manager and project manager that the design products comply with Ministry Safety Standards as each design milestone is completed and prior to proceeding to the next design phase.

The control processes used during design shall be documented in a design safety control plan ("DSCP"). The Concessionaire shall update the DSCP as control processes are changed and improved.

When design activities are being carried out, the Concessionaire shall use the control processes and provide the Grantor with:

- (i) -names and qualifications of staff responsible for ensuring control processes are used,
- (ii) -a diary of monitoring and checking activities,
- (iii) - a list of identified instances of non-compliance with Ministry Safety Standards
- (iv) -the actions and time taken to correct non-compliance with Ministry Safety Standards

Each year the Concessionaire shall hire an independent consulting firm, with expertise in quality control processes, to audit and file a report within forty-five (45) Business Days after the end of the most recent Fiscal Year on the Concessionaire's design control process and DSCP. The independent consultant shall audit the Concessionaire to ensure:

- only qualified project management and design staff are being used,
- design safety control processes are in place, and are functioning effectively,
- design safety control plans are in place which adequately document control processes, and
- record keeping is adequate to document control process activities and compliance with Ministry Safety Standards.

If the independent consultant finds instances of non-compliance with Ministry Safety Standards, the consultant shall include such information in the report to the Grantor and the Concessionaire. Upon receipt of the report, the Concessionaire shall promptly forward to the Grantor a work-plan indicating necessary corrective measures. If the Grantor is not satisfied with the Concessionaire's response, the Grantor may give notice of non-compliance to the Concessionaire requiring it to make specific improvements within a reasonable time period specified by the Grantor. If action is not taken within the specified time period, the Grantor may prohibit further construction until adequate design control processes are in place.

6. Safety Audit of Design Products

The Concessionaire shall hire an independent design safety auditor ("IDSA") licensed to practice civil engineering in Ontario, who shall:

- (i) -be licensed to practice civil engineering in Ontario,
- (ii) -have a minimum of ten (10) years of traffic engineering experience,
- (iii) -have knowledge of human factors theory related to driver performance, and
- (iv) -have formal state of the art training in the quantification of the collision costs alternative engineering decisions and collision prevention and mitigation techniques.

The IDSA shall review the Concessionaire's design at the appropriate stages of completion in accordance with prudent design auditing practice to ensure that the design meets Ministry Safety Standards. Upon completion of that design review, the IDSA shall promptly provide a report to the Concessionaire and the Grantor. If the report indicates that there are design deficiencies or non-compliance with Ministry Safety Standards, the Concessionaire shall promptly forward to the Grantor a work-plan indicating necessary corrective measures. If the Grantor is not satisfied with the Concessionaire's response, the Grantor may give notice of non-compliance to the Concessionaire requiring it to make specific improvements within a reasonable time period specified by the Grantor. If action is not taken within the specified time period, the Grantor may prohibit the start of further construction, until Ministry Safety Standards are met. The Grantor shall provide notice to the Concessionaire, immediately upon the expiry of the specified time period, of the Grantor's decision to prohibit the start of further construction.

For the avoidance of doubt, the IDSA shall review the following design safety elements and any other elements that impact on safety:

6.1 Mainline Design Information Required

- Horizontal and Vertical Alignments
- Related Stopping Sight Distances
- Number of Lanes, Lane and Shoulder Width
- Cross-fall and Super-elevation
- Side and Back-slopes and Roadside Ditch Cross-Section
- Median Barrier Types
- Roadside Barrier and Curb and Gutter Types and Locations
- Hazard Protection for Barrier Ends and Drainage Structures
- Horizontal and Vertical Clearances to Obstructions
- Crash Attenuation Devices at Light Poles, Structures, Overhead Sign Support etc
- Other Roadside Safety Appurtenances
- Fencing and Other Pedestrian Restrictions
- Traffic and Commercial Sign Designs (Including TODS and Logos), Layout, Reflectivity
- Pavement Marking Layout, Reflectivity
- Delineators, Rumble Strips and Other Traffic Control Devices
- Special Design Features (Vehicle Inspection Lay-bys, Highway Toll Infrastructure etc)

- 6.2 Interchange Design Information**
 Interchange Type, Layout and Spacing
 Bull Nose Locations and Stopping Sight Distance
 Gore Protection Measures,
 Approaching Side-Road and Ramp Cross-Sections, Barrier Protection, Radii and Alignment
 Deceleration/Acceleration Lane Lengths and Tapers,
 Weave Sections and Lane Continuity
 Sign and Pavement Marking Design and Layout
 Intersection Layout and Turning Lanes at Ramp Junction with Intersecting Side roads
- 6.3 Structural Design Information Required**
 Structure Type and Span
 General Arrangement Drawing
 Sidewalk Location and Width
 Barrier Wall and Railing Type on Deck
 Guide-rail and Curb Type on Approaches and Connection to Structure
 Substructure Traffic Clearances At Over/Underpasses with Intersecting Roads
- 6.4 Electrical Design Information Required**
 Illumination Type and Layout of Poles (permanent and temporary, full and partial)
 Preliminary Traffic Signal Type and Layout Drawings (PHM 125) and Final
 Traffic Sign Design at Ramp Junction with Intersection Side-Roads
 Locations of Above Ground Electrical Equipment (including Highway Tolling System requirements)
- 6.5 Pavement Structure Design Information Required**
 Pavement Skid Resistance
 Strategy To Maintain Skid Resistance and Ride Quality
- 6.6 Traffic Management Information Required**
 Traffic Staging Drawings
 Detour Design Speed, Cross-Section, Clearances & Horizontal/Vertical Alignment
 Temporary Signs, Pavement Markings, Signals and Traffic Protection Measures
 Certifications By Professional Engineer That Form-work, False-work, Temporary Protection and Removals Schemes Have Been Designed and Checked In
 Accordance with Ministry Requirements
 Temporary Closure Communication Plan

Without limiting the operation of clause (ii) of section 6.1 of the Concession Agreement, as design standards and methodologies and as infrastructure and vehicle technologies change, the Grantor may periodically update the list of design safety elements that the IDSA shall be required to review.

7. Construction Safety Control Plan

The Concessionaire shall implement effective monitoring, checking, testing, and correlation control processes, to ensure that:

- (i) -the Concessionaire complies with Ministry Safety Standards for construction
- (ii) - the Concessionaire constructs Highway 407 in accordance with the designs reviewed by the IDSA,
- (iii) -original designers and the IDSA review design changes during
- (iv) -traffic is managed safely during construction,
- (v) -construction drawings and reports produced during construction are checked and double stamped,
- (vi) -laboratory staff, equipment and technicians undertake certification programs, and
- (vii) -the construction manager has certified that construction products comply with Ministry Safety Standards as construction milestones are completed and prior to proceeding to the next construction phase.

A construction safety control plan ("CSCP") shall document the control processes used during construction. The Concessionaire shall update the CSCP for each construction project as control processes are changed and improved.

When construction activities are being carried out, the Concessionaire shall use the control processes set out in this schedule and provide the Grantor with:

- (i) -names and qualifications of staff responsible for ensuring control process are used,
- (ii) -a diary of monitoring and checking activities,
- (iii) -a list of identified instances of non-compliance with Ministry Safety Standards
- (iv) -the actions and time taken to correct non-compliance with Ministry Safety Standards

In each year the Concessionaire shall hire an independent consulting firm, with expertise in quality control processes, to audit and file a report within forty-five (45) Business Days following the end of the most recent Fiscal Year with respect to the Concessionaire's constructions safety control plan. The independent consultant shall audit the Concessionaire to ensure that:

- (i) only qualified construction staff are being used,
- (i) construction safety control processes are in place, and functioning effectively,
- (i) construction safety control plans are in place that adequately document control processes, and
- (i) record keeping is adequate to document control process activities and compliance with Ministry Safety Standards.

If the independent consultant finds that the processes are not in place or are not effective, the consultant shall include such information in the report to the Concessionaire and the Grantor. If the report indicates that adequate control processes are not in place or not effective, the Concessionaire shall promptly forward the Grantor a work-plan indicating necessary corrective measures. If the Grantor is not satisfied with the Concessionaire's response, the Grantor may

give notice of non-compliance to the Concessionaire requiring it to make specific improvements within a reasonable time period specified by the Grantor. If action is not taken within the specified time period, the Grantor may prohibit further construction until adequate control processes are in place.

8. Safety Audits of Construction Activities

The Concessionaire shall hire an independent structure safety auditor ("ISSA"), licensed to practice civil engineering in the Province of Ontario, with a minimum of ten (10) years of structural engineering experience.

The ISSA shall review the following structural operations at key milestones during construction established by the Grantor to ensure compliance with the design documents and Ministry Safety Standards:

- Removal of Structure
- Concrete Structures
- Reinforcing Steel
- Structural Steel
- Structural Wood Systems
- Steel Barrier Rail and Pedestrian Handrail
- Pre-stressed Concrete - Precast Members
- Post tensioning of Concrete
- Sign Support Structures
- Formwork and Falsework
- Temporary Modular Bridges
- Deck Joints
- Bearings
- Retained Soil System
- Shoring and Bracing
- Roadway Protection
- Concrete Footings for High Mast Poles
- Excavating & Backfilling for Structure
- Piling and Caissons
- Anchors
- Rock and Earthwork
- Blasting
- Tunnelling
- Large Culverts
- Grounding
- Girder Fabrication and Erection

The Concessionaire shall also hire an independent construction safety auditor ("ICSA") to monitor traffic control and other construction activities throughout construction operations on Highway 407. The ICSA must be licensed to practice civil engineering in the Province of Ontario, with a minimum of ten (10) years of freeway traffic engineering experience,

The ICOSA shall monitor all aspects of the Concessionaire's construction operations including the following traffic control activities for compliance with design documents and Ministry Safety Standards:

- Traffic Staging
- Detours,
- Clearances,
- Temporary Signs,
- Temporary Pavement Markings,
- Temporary Illumination,
- Traffic Signals Operations at Ramp Terminals
- Traffic Protection Measures, and
- Temporary Closures and Communication Plan

If the ISSA or the ITSA observes any safety deficiency or non-compliance with Ministry Safety Standards the ISSA or the ITSA shall provide a report to the Grantor and the Concessionaire indicating immediate corrective actions that need to be taken. If the Concessionaire does not remedy the non-compliance within a reasonable period of time, the ISSA or ITSA shall advise the Grantor. The Grantor may, not later than thirty (30) days after the expiry of the specified time period, give notice to the Concessionaire to stop construction until the matter is resolved.

Upon completion of construction of each element subjected to the safety review, the ISSA and the ICOSA shall provide a report to the Concessionaire and the Grantor stating that the work was performed in accordance with the design reviewed by the IDSA and in accordance with Ministry Safety Standards.

9. Pre-Opening Audit

Prior to the completion of construction of any section of Highway 407 and before such section is opened to traffic the Grantor shall complete a pre-opening audit to determine if obvious safety deficiencies exist or if there is obvious non-compliance with Ministry Safety Standards or with the Concession Agreement. In addition, safety deficiencies that result from using particular combinations of design elements, not previously detected, shall be brought to the attention of the Concessionaire for correction, within a reasonable time period specified by the Grantor. Until the Concessionaire corrects such deficiencies or non-compliance, the Grantor shall have no obligation to give the Concessionaire notice pursuant to the Concession Agreement that such section of Highway 407 is Commissioned and Opened. Any field safety review conducted by the Grantor shall not relieve the Concessionaire of any of its obligations under the Concession Agreement.

10. Operations Safety Control Plan

The Concessionaire shall implement effective information management and control processes, to ensure compliance with Ministry Safety Standards for the operations and maintenance of Highway 407.

For the avoidance of doubt, control processes shall include, but shall not be limited to the following:

Weather Forecasting System,

Inspection and Reporting Systems

- Work Operations,
- Weather Conditions,
- Roadway Conditions (ice, snow, rain),
- Patrolling to Locate Problems Requiring Immediate Action Per Ministry of Transportation Quality Standard,
- Debris on Driving Surface or Shoulders,
- Pavement Potholes, Joint Failures and Drop-offs,
- Flooding and Washouts,
- Damaged or Missing Fences or Signs
- Malfunctioning Illumination, Signals or Traffic Control Devices,
- Faded Pavement Markings,
- Damaged Barriers or Bridge Rail,
- Trespassers or Unauthorized Use of Right of Way,
- Stranded or Abandoned Vehicles,
- Dangerous Goods Spills, and
- Structure Failures

Road Safety Activity

Collisions Reporting and Response,

Communications System Among Field Staff,

Communication System to Emergency Services (OPP, Ambulance, Fire & Tow Trucks),

Call Out Procedures and Response Times,

Material Storage,

Training Programs,

Compliance with the Occupational Health and Safety Act,

Collision Clean-up and Operations Restoration, and

Emergency Responses Procedures.

The control processes used during the operation of highway 407 shall be documented in an operations safety control plan ("OSCP"). The Concessionaire shall update the OSCP annually.

When operations with respect to Highway 407 are being carried out, the Concessionaire shall use the control processes and provide to the Grantor:

- (i) -names and qualifications of staff responsible for ensuring control process are used,

- (ii) -a diary of monitoring and checking activities,
- (iii) -non-compliance with Ministry Safety Standards detected, and
- (iv) -the actions and time taken to correct non-compliance with Ministry Safety Standards.

In each year of the Term the Concessionaire shall hire an independent consulting firm, with quality control experience, to audit and file with the Grantor and the Concessionaire a report within forty-five (45) Business Days following the end of the most recent Fiscal Year with respect to the Concessionaire's OSCP. The independent consultant shall audit the Concessionaire to ensure that:

- (i) only qualified operations and maintenance staff are being used,
- (ii) operations and maintenance safety control processes are in place, and functioning effectively,
- (iii) operations and maintenance Safety control plans are in place which adequately document control processes,
- (iv) the Concessionaire's record keeping is adequate to document control process activities and compliance with Ministry Safety Standards.

If the independent consultant finds that the processes are not in place or are not effective, the consultant shall include such information in the report. If the report indicates processes are not in place or not effective, the Concessionaire shall promptly forward the Grantor a work-plan indicating necessary corrective measures for the Grantor's Approval. If the Grantor does not Approve the work-plan, the Grantor may give notice of non-compliance to the Concessionaire requiring it to make specific improvements within a reasonable time period specified by the Grantor. If action is not taken within the specified time period, the Grantor may, until adequate control processes are in place, (i) prohibit further construction and/or (ii) perform necessary operation and maintenance activities and bill the Concessionaire for its costs, together with an administration fee of fifteen per cent (15%).

11. Safety Audits of Operations Activities

In each year of the Term, the Concessionaire shall hire an independent operations safety auditor ("IOSA") to complete random field reviews during operations and maintenance activities at times specified by the Grantor to monitor compliance with Ministry Safety Standards. The IOSA must have a minimum of ten (10) years experience in on hundred thousand (100,000)+ AADT freeway operations and maintenance in climates similar to the Province of Ontario. The IOSA shall audit the Concessionaire's field operations randomly throughout the year and provide periodic Safety audit reports to the Concessionaire and to the Grantor.

Upon completion of the audits, the IOSA shall provide a report to the Concessionaire, with a copy to the Grantor within 45 Business Days following the end of the most recent Fiscal year. If the safety audit report indicates that the processes are not in place or are not effective, the Concessionaire shall promptly forward the Grantor a work-plan indicating necessary corrective measures. If the Grantor is not satisfied with the Concessionaire's response, the Grantor may give notice of non-compliance to the Concessionaire, requiring it to make specific improvements

within a reasonable time period specified by the Grantor. If action is not taken within the specified time period, the Grantor may, until adequate control processes are in place, perform necessary operation and maintenance activities, and bill the Concessionaire for its costs, together with an administration fee of fifteen per cent (15%).

12. Annual Safety Improvement and Rehabilitation Program

For each year of the Term the Concessionaire shall, using qualified staff, undertake a detailed annual inspection and evaluation program of Highway 407 to take inventory the physical condition of pavements (surface), structures (load carrying capacity and barriers) and traffic control devices (signs, pavement markings, traffic signals and devices, barriers, crash attenuation devices etc). In addition, the Concessionaire shall also undertake an annual traffic volume counting program and investigate collisions that occur on Highway 407.

In order to provide comparability with other Provincial Highways, the physical condition, traffic volume and collision inventories shall be in a format similar to that required to be used by the Grantor. Subject to the Concessionaire entering into a license agreement with the Grantor, infrastructure condition software shall be available, at no charge to the Concessionaire, to be used only with respect to Highway 407. The Concessionaire shall use the inventory information to establish condition indices and performance measures comparable to those required to be used by the Ministry.

These inventories and predetermined criteria shall be used by the Concessionaire to establish an annual rehabilitation and safety improvement program. Triggers for rehabilitation works and safety improvements are as follows:

12.1 Pavement Rehabilitation

A freeway flexible pavement is deemed to be in need of immediate rehabilitation when the Pavement Condition Index reaches a value greater than considered safe by Ministry Safety Standards. However, when either or both of an individual distress or a distortion reaches a severity rating of severe, regardless of the extent, the Concessionaire shall establish a schedule for immediate mitigation.

For freeway rigid pavements, when the surface friction skid number reaches a value greater than considered safe by Ministry Safety Standards, the Concessionaire shall undertake immediate investigation, and if appropriate, establish a schedule for immediate mitigation.

12.2 Structure Rehabilitation

Structures are deemed to be in need of rehabilitation when Ministry Safety Standards are not met for safe loading, roadway width, vertical clearance, deck condition or structure components. Rehabilitation needs and timing shall be determined through periodic inspections under the direction of a professional engineer and in accordance with the Ontario Structure Inspection Manual or its successor.

12.3 Safety Improvements:

The Concessionaire shall consider making improvements in response to concerns associated with the number and severity of collisions, coroner's recommendations or public complaints. The Concessionaire shall implement improvements within one (1) year of a request by the Grantor in collision prone areas (locations with a disproportionately high number of collisions, whether involving fatal or near fatal injuries or any property damage), or when the collision rate for any section of Highway 407 exceeds the level prescribed by Ministry Safety Standards.

13. Annual Safety Improvement and Rehabilitation Program Audit

In each year of the Term the Concessionaire shall hire an independent safety auditor ("ISA") to review the adequacy of the Concessionaire's Annual Safety Improvement and Rehabilitation Program processes and program, to ensure that the program is adequate to ensure road user safety.

The ISA must:

- (i) -be licensed to practice civil engineering in the Province of Ontario,
- (ii) -have a minimum of ten (10) years of traffic engineering experience,
- (iii) -have knowledge of human factors theory related to driver performance, and
- (iv) -have formal state of the art training in the quantification of the collision costs of alternative engineering decisions and collision prevention and mitigation techniques.

Upon completion of the annual audit, and within forth-five (45) Business Days following the end of the most recent Fiscal Year the ISA shall provide a report to the Concessionaire, with a copy to the Grantor. If the report indicates that the safety improvement and rehabilitation program is not in place or is not effective, the Concessionaire shall promptly forward the Grantor a work-plan indicating necessary corrective measures. If the Grantor is not satisfied with the Concessionaire's response, the Grantor may give notice of non-compliance to the Concessionaire requiring it to make specific improvements within a reasonable time period specified by the Grantor. If action is not taken within the specified time period, the Grantor may, until the Concessionaire has an adequate program in place, perform safety improvement or rehabilitation activities, and bill the Concessionaire for the costs including an administrative fee of fifteen per cent (15%).

14. Safety Audits

At any time or times during the Term the Grantor may perform random audits of the Concessionaire's design, construction, operation, maintenance and annual work programming activities, safety control processes or safety control plans in relation to Highway 407, to determine if the Concessionaire's efforts meet Ministry Safety Standards and are adequate to ensure Road Safety. The Grantor may order the Concessionaire to institute corrective action within a reasonable time period specified by the Grantor if (1) Ministry Safety Standards are not being met, (2) adequate control systems are not in place, (3) control systems are not functioning adequately or (4) safety control plan documentation is lacking. If the Concessionaire fails to institute corrective action in the specified time period, the Grantor may, until the Concessionaire demonstrates an ability to adequately and safely perform the work, complete any work the

Grantor reasonably deems necessary and bill the Concessionaire together with an administration fee of fifteen per cent (15%).

15. Start-up Requirements

Prior to the start of construction on any portion of Highway 407 the Concessionaire shall first have completed the following tasks:

- (i) retained the services of qualified project management, design, construction, quality staff,
- (ii) developed and implemented design and construction safety control processes,
- (iii) prepared design and construction safety control plans,
- (iv) retained the services of independent consultant firms and ensured such firms have completed audits of the design and construction safety control processes and control plans of the Concessionaire,
- (v) corrected any deficiencies in the Concessionaire's safety control process or plan to the satisfaction of the Grantor,
- (vi) retained the services of independent design, structural and traffic safety auditors,
- (vii) engaged the independent design safety auditor in the review of the Concessionaire's design products, and
- (viii) corrected any design deficiencies to the satisfaction of the Grantor.

Subject to the exception set out below, at all times throughout the Term the Concessionaire must,

- (i) retain the services of qualified operations and maintenance staff,
- (ii) develop and implement operations and maintenance safety control processes,
- (iii) prepare operations and maintenance safety control plans,
- (iv) retain the services of an independent consultant firm to audit the operations and maintenance safety control processes and control plans of the Concessionaire,
- (v) correct any deficiencies in the Concessionaire's safety control process or plan to the satisfaction of the Grantor,
- (vi) retain the services of an independent operations safety auditor,
- (vii) engage the independent operations safety auditor to audit field operations, and
- (viii) demonstrate to the Grantor that sufficient operation and maintenance equipment, manpower and material resources are in place and available to take over operations.

Exception: The Concessionaire shall have until six (6) months after the Effective Date to effect initial performance of the obligations in items (ii) through (vii) above.

Within one year following the Effective Date, the Concessionaire must:

- (i) produce an inventory of the physical condition of the Highway 407 infrastructure,
- (ii) set up a collision monitoring and investigation system,
- (iii) develop a safety improvement and rehabilitation plan, and
- (iv) retain the IDSA to review the adequacy the Concessionaire's annual safety improvement and rehabilitation program processes and program, to ensure that the processes and programs are adequate to ensure road user safety.

If the Concessionaire replaces the facility operator, the Concessionaire must first have performed either of the following prior to the new facility operator taking over operations of Highway 407:

- A.
 - (i) retained the services of qualified operations and maintenance staff.
 - (ii) developed and implement operations and maintenance safety control processes,
 - (iii) prepared operations and maintenance safety control plans,
 - (iv) retained the services of an independent consultant firm to audit the operations and maintenance safety control processes and control plans of the Concessionaire,
 - (v) corrected any deficiencies in the Concessionaire's safety control process or plan to the satisfaction of the Grantor,
 - (vi) retained the services of an independent operations safety auditor to audit field operations, and
 - (vii) demonstrated to the Grantor that sufficient operation and maintenance equipment, manpower and material resources are in place and available to take over operations; or

- B. Developed an acceptable transition plan with the Grantor for the smooth transition of operating responsibility to a new facility operator.

16. Dispute Resolution

To the extent that the dispute resolution process contained in Article 25 of the Concession Agreement is available with respect to Ministry Safety Standards, such dispute resolution process may only be used if the notice to be given pursuant to section 25.2 of the Concession Agreement is given within one hundred and eighty (180) days of the occurrence of the latter of (a) the incident giving rise to the dispute and (b) any auditor's report referencing any matter subject to dispute resolution with respect to Ministry Safety Standards.

SCHEDULE 23

Toll Collection/Enforcement Procedures

Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule the following terms have the following meanings:

“Concession Agreement” the Highway 407 Concession and Ground Lease Agreement between the Crown in Right of Ontario as represented by the Minister without Portfolio with Responsibility for Privatization and Ontario Transportation Capital Corporation pursuant to which the Concession is granted to operate Highway 407.

“Daily Electronic File” means the daily electronic file supplied by the Concessionaire containing a listing of plates to be denied with the Toll Charges owed in respect of them, updates on dollar amounts to be refreshed on plates already posted for denial and a listing of plates that that are to be removed from the denial process because of payment.

“Heavy-Multiple Unit” means trucks or tractors with one (1) or more trailers.

“Heavy-Single Unit” means single unit trucks, tractors, school buses, transit buses or inter-city buses weighing over five thousand (5,000) kilograms.

“Ministry” means the Ministry of Transportation of Ontario.

“Pending Toll Change” has the meaning ascribed thereto in Subsection 2.4(a) of the Tolling, Congestion Relief and Expansion Agreement, being Schedule 22 to the Concession Agreement.

“Schedule” means this service schedule, including, for the avoidance of doubt, all schedules referred to herein.

“Standard Vehicle” means any vehicle which is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407, and (iii) equipped with operating monitoring and collection technology prescribed and validated pursuant to the *Highway 407 Act, 1998*.

“Toll Charge” means any toll, related fee or interest charge authorized by Subsection 2.3 of the Tolling, Congestion Relief and Expansion Agreement, being Schedule 22 to the Concession Agreement, payable for the operation of a vehicle on Highway 407 .

“Toll Charge Plate Denial” means the refusal by the Registrar of Motor Vehicles to validate a person’s vehicle permit or the refusal to issue a vehicle permit to the person for failure to pay a Toll Charge within the time period specified in the *Highway 407 Act, 1998*.

"Unequipped Vehicle" means any vehicle that is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407, and (iii) not a Standard Vehicle.

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Concession Agreement.

1. Electronic Link

The Grantor shall ensure the establishment of an electronic link between the Ministry and the Concessionaire to facilitate:

- (i) posting of Toll Charge Plate Denials,
- (ii) updating and/or deleting Toll Charge Plate Denials and amounts owed, in response to a Daily Electronic File
- (iii) collecting outstanding Toll Charges by the Ministry, and informing the Concessionaire on a daily basis of Toll Charges collected by the Ministry; and
- (iv) remitting the outstanding Toll Charges collected by the Ministry, less fees on a monthly basis from the Ministry to the Concessionaire.

2 Concessionaire Responsibility

2.1 Anonymous Accounts

The Concessionaire shall permit any person desiring to do so to open an anonymous account with respect to the operation of a Standard Vehicle on Highway 407. The Concessionaire shall not

- (a) require any personal information in order for an anonymous account to be opened;
- (b) send any bill or invoice for payment of Toll charges to the holder of an anonymous account in good standing.

The Concessionaire may, however,

- (c) require the holder of an anonymous account to use monitoring and collection technology prescribed and validated pursuant to the *Highway 407 Act, 1998*; and
- (d) require the holder of an anonymous account to make prepayments prior to using Highway 407

2.2 Option re Marketing

After the expiry of three months from the Effective Date, the Concessionaire shall incorporate into the first invoice sent to any person using Highway 407 an option by which such user may elect not to receive any promotional material disseminated by the Concessionaire.

3. Charges

The Grantor may charge the Concessionaire fees for any services required in the plate denial process on a cost recovery basis. The Concessionaire shall pay all fees charged by the Grantor. As at the Effective Date the fees for such services on a cost recovery basis are as follows:

- 3.1 For the posting of unpaid fees resulting in plate denial -- \$0.55 for each plate denial request.

For services in relation to collection of outstanding tolls:

- Collection of outstanding Toll Charges--\$2.00 for each Toll Charge collected through the issuer network.

Collection of outstanding Toll Charges set at:

- \$1.55 for each Toll Charge collected through a Ministry kiosk from and after the Effective Date until January 1, 2000

- 3.2 If requested by the Concessionaire, the Grantor shall provide collision data normally generated by the Ministry to the Concessionaire on a cost recovery basis.

- 3.3 The Grantor shall give the Concessionaire thirty (30) days' prior written notice of any change in the fees charged pursuant to this Agreement.

- 3.4 The Grantor shall provide the Concessionaire, upon request, with a list of licence plate numbers and gross vehicle weights for all commercial vehicles registered with the Ministry that have a registered gross vehicle weight of 5,000 kilograms or more. Such information will be provided on a cost recovery basis. As at the Effective Date the cost of such information is \$300.

4. Temporary Distribution of Transponders

- 4.1 For a period of six months after the Effective Date, or for such other period as the Grantor and the Concessionaire may mutually agree upon, the Grantor shall ensure that the Ministry shall continue to distribute transponders for the Concessionaire and shall continue to have transponders distributed in accordance with the terms and conditions set out in the document entitled, "Transponder Registration—Business Principles" dated September 8, 1997 a copy of which is attached hereto.

- 4.2 In consideration for the payment of the service fees set out below, the Grantor shall ensure that the Ministry shall:

- (i) assist customers in completing new personal and business account registration forms and anonymous account agreements;
- (ii) accept initial payments required for new account registrations and agreements;

- (iii) distribute the activated transponder upon receiving initial payments from the customer;
- (iv) provide general information about Highway 407 and how tolling works and direct customers to the concessionaire, where appropriate; and
- (v) provide customers with an appropriate envelope to return transponders to the Concessionaire.

4.3 The Grantor shall ensure that agents or contractors of the Ministry will carry out the day-to-day business transactions in respect of the distribution of transponders.

4.4 The Concessionaire shall pay the service fees set out below and shall:

- (i) provide Highway 407 registration and promotional material necessary for assisting customers with registering accounts and receiving transponders;
- (ii) ship transponders directly to the Ministry at the Concessionaire's cost; and
- (iii) provide a toll free call-in service to provide general support and provide a toll free dedicated facsimile transmission line to receive registration and transmittal forms.

4.5 The service fees for the distribution of transponders is as follows:

New Accounts Registered	Number of Transponders	Service Fees
Personal	1-3	\$7.00 for up to three transponders purchased at the same time
Anonymous	1-3	\$5.00 for up to three transponders purchased at the same time
Business	10 or fewer transponders	\$10.00 for up to 10 transponders purchased at the same time
Business	More than 10 transponders	\$1.00 for each transponder when more than ten transponders are purchased at the same time

5. Dispute Resolution

Any dispute relating to this Schedule shall be resolved using the dispute resolution process in Article 25 of the Concession Agreement.

SCHEDULE 22

**TOLLING, CONGESTION
RELIEF AND EXPANSION AGREEMENT**

BETWEEN:

**THE CROWN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTER WITHOUT PORTFOLIO
WITH RESPONSIBILITY FOR PRIVATIZATION**

- and -

407 ETR CONCESSION COMPANY LIMITED

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TOLLING, CONGESTION RELIEF AND EXPANSION AGREEMENT

THIS TOLLING, CONGESTION RELIEF AND EXPANSION AGREEMENT is made as of the 6th day of April, 1999,

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER WITHOUT
PORTFOLIO WITH RESPONSIBILITY FOR
PRIVATIZATION

(the "Grantor")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "Concessionaire").

For consideration, the receipt and sufficiency of which are acknowledged by each of them, the parties hereto covenant and agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"Agreement" means this tolling, congestion relief and expansion agreement, including, for the avoidance of doubt, all schedules referred to herein.

"Arbitrator" has the meaning ascribed thereto in Section 5.4.

"Article", "Section", "Subsection", "Paragraph", "Subparagraph" and "Schedule" mean and refer to the specified article, section, subsection, paragraph, subparagraph or schedule of or to this Agreement.

"Audit" means, with respect to any matter or thing, the performance by or on behalf of the Grantor of such reviews, investigations, inspections, audits,

confirmations, certifications, tests, studies and determinations of or relating to such matter or thing as the Grantor may determine, in its sole and absolute discretion, to be advisable or desirable in the circumstances.

"Average Segment Flow Rate" means, (i) with respect to any Segment and any portion of a calendar year during which all Specific User Charges applicable to travel on such Segment during the Peak Period remain constant, the average of the Segment Flow Rate as calculated during Peak Hours during the sixty percent (60%) of Business Days in such portion of such calendar year for which the average Segment Flow Rate during Peak Hours is the highest (rounded upwards to the next whole Business Day), and (ii) with respect to any Segment and any calendar year, the weighted average of the Average Segment Flow Rate for each portion of such calendar year during which the Specific User Charges applicable to travel on such Segment during the Peak Period remain constant, with the weighting of each of the said portions determined as the ratio of the number of Business Days in the said portion to the number of Business Days in such calendar year.

"Base Segment Flow Rate" means, with respect to any Segment, ninety-five percent (95%) of the Average Segment Flow Rate on such Segment during the Base Year.

"Base Year" means (i) with respect to any Highway 407 Section, the first calendar year commencing on or after the Section Commencement Date for which (A) notice is given by the Concessionaire to the Grantor within the first thirty (30) days following the beginning of the said calendar year, designating the said calendar year as the "Base Year" and (B) the Standard Rate does not exceed one hundred and five percent (105%) of the Toll Threshold and (ii) with respect to any Segment or Link, the Base Year for the Highway 407 Section which contains such Segment or Link.

"CPI" means the index called the "All-items Consumer Price Index" for Canada, not seasonally adjusted, published by Statistics Canada in its monthly publication; provided that if the Government of Canada determines not to publish such index, then whatever substitute index is used to determine the Government of Canada's obligations under its Real Return Bonds if any Real Returns Bonds are then outstanding, or otherwise such substitute index as the parties agree upon.

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement made as of the date hereof between the parties hereto.

"Congestion" has the meaning ascribed thereto in Section 3.1.

"Construction Period" has the meaning ascribed thereto in Section 3.5.

"Corresponding Segment" means, with respect to any Segment, the Segment which connects the same two (2) points as such Segment but in the opposite direction.

"Current Lane-Kilometres" means, with respect to any Link at any time, the product of the Link Length of the said Link multiplied by the number of core (non-auxiliary) lanes in operation on the said Link at such time.

"Expandable Segment" has the meaning ascribed thereto in Section 4.1.

"Full Rate" means, with respect to any User Charges, the rate which would apply to a Standard Vehicle to which no discounts (including discounts for volume of use, number of vehicles covered by a single account, election of an optional billing plan and promotional discounts) apply, other than a discount that applies to ninety percent (90%) or more of Standard Vehicles.

"GTA" means the geographic area of jurisdiction of the City of Toronto and the regional municipalities of Durham, Halton, Peel and York as constituted from time to time.

"Heavy-Multiple Unit" means a truck or tractor with one (1) or more trailers.

"Heavy-Single Unit" means a single unit truck, tractor, school bus, transit bus or inter-city bus having a registered gross vehicle weight of greater than five thousand (5,000) kilograms.

"Highway Portion" means any Highway 407 Section, Segment or Link.

"Highway 407 Section" means any section of Highway 407 as set forth in Schedule 1.

"Hour" means a sixty (60)-minute period starting on an hour or half hour.

"Index Base Month" means January, 1999.

"Index Ratio" means, with respect to the calendar year which includes the Effective Date, 1.000 and, with respect to any subsequent calendar year, the ratio of (i) the highest value of the CPI for the Index Base Month and the months of October in each calendar year from and including the calendar year which includes the Effective Date to but excluding such subsequent calendar year, to (ii) the value of the CPI for the Index Base Month.

"Initial Toll Threshold" means eleven cents (\$0.11) per kilometre.

"Initiating Party" has the meaning ascribed thereto in Section 5.3.

"Initiation Notice" has the meaning ascribed thereto in Section 5.3.

"Intersection" means a full or partial intersection or interchange of Highway 407 with a Municipal Highway, Provincial Highway or Private Highway at which a vehicle can enter or exit Highway 407. For purposes of this Agreement, a partial intersection or interchange shall be treated as if it were a full intersection or interchange.

"King's Highway" has the meaning ascribed thereto in the Concession Agreement.

"Lane Flow Rate" means, with respect to any Highway Portion and any Hour, Total VKT on the said Link for the said Hour divided by the Current Lane-Kilometres for the said Link in the said Hour.

"Link" means a length of Highway 407 in a single direction from an Intersection (the "Originating Intersection") to the immediately following Intersection (the "Terminating Intersection"), excluding any length of Highway 407 on which (i) no User Charges are charged, and (ii) either (a) no User Charges are charged for any travel on Highway 407 to the west of the said length of Highway 407 or (b) no User Charges are charged for any travel on Highway 407 to the east of the said length of Highway 407.

"Link Length" means, with respect to any Link, the distance in kilometres along Highway 407 from the centre line of the intersecting Municipal Highway, Provincial Highway or Private Highway at the Originating Intersection of the said Link to the centre line of the intersecting Municipal Highway, Provincial Highway or Private Highway at the Terminating Intersection of the said Link.

"Municipal Highway" means any Ontario highway or road owned by a municipality.

"Notice of Dispute" has the meaning ascribed thereto in Subsection 3.4(d).

"Originating Intersection" has the meaning ascribed thereto in the definition of Link in Section 1.1.

"Peak Hour" means (i) with respect to any Segment in the calendar year which contains the Effective Date, each of the two (2) Hours (not overlapping and not necessarily contiguous) for which the average of Total VKT in the period of time which comprises all Business Days from the Effective Date and ending on December 31 of the said calendar year was highest, (ii) with respect to any Segment in any calendar year after the calendar year containing the Effective Date that precedes or constitutes the Base Year for such Segment, each of the two (2) Hours (not overlapping and not necessarily contiguous) for which the average of Total VKT in the period of time which comprises all Business Days in the twelve (12)-month period ending on September 30 of the said calendar year was highest, and (iii) with respect to any Segment and any calendar year after the Base Year

for such Segment, each of the two (2) Hours (not overlapping and not necessarily contiguous) for which the average of Total VKT in the period of time which comprises all Business Days in the twelve (12)-month period ending on September 30 of the prior calendar year was highest.

“Peak Period” means, with respect to any Segment and any calendar year, the Peak Hours during Business Days for such Segment and such calendar year.

“Pending Toll Change” has the meaning ascribed thereto in Subsection 2.3(a).

“Private Highway” means any Ontario highway or road that is not owned by the Province or a municipality.

“Provincial Highway” means any Ontario highway owned by the Province.

“Qualifying Year” has the meaning ascribed thereto in Section 4.1.

“Responding Party” has the meaning ascribed thereto in Section 5.3.

“Section Commencement Date” means (i) with respect to any of Highway 407 Central, Highway 407 West and Highway 407 East Partial if there is no delay in Highway 407 East Partial being Commissioned and Opened as a result of the delay referred to in Paragraph 18.1(a)(ix) of the Concession and Ground Lease Agreement, the January 1 first following at least four (4) months following the date when all of such Highway 407 Sections are Commissioned and Opened along their full length, (ii) with respect to any of Highway 407 Central and Highway 407 West if there is a delay in Highway 407 East Partial being Commissioned and Opened as a result of the delay referred to in Paragraph 18.1(a)(ix) of the Concession and Ground Lease Agreement, the January 1 first following at least four (4) months following the date when both Highway 407 Central and Highway 407 West are Commissioned and Opened along their full length, (iii) with respect to Highway 407 East Partial if there is a delay in Highway 407 East Partial being Commissioned and Opened as a result of the delay referred to Paragraph 18.1(a)(ix) of the Concession and Ground Lease Agreement, the January 1 first following at least six (6) months following the date when Highway 407 East Partial is Commissioned and Opened along its full length, and (iv) with respect to any other Highway 407 Section, the January 1 first following at least six (6) months following the date when such Highway 407 Section becomes Commissioned and Opened along its full length.

“Segment” means any segment of Highway 407 as set forth in Schedule 1, in a particular direction.

"Segment Flow Rate" means, with respect to any Segment and any Hour, Total VKT on the said Segment for such Hour divided by the Segment Length of the said Segment.

"Segment Length" means, with respect to any Segment, the sum of the Link Lengths of all Links in such Segment.

"Senior Operating Officer" means the person designated by notice from time to time by the Concessionaire for the purposes of Article 5.

"Senior Responsible Official" means the person designated by notice from time to time by the Grantor for the purposes of Article 5.

"Single Arbitrator" has the meaning ascribed thereto in Section 5.3.

"Specific User Charges" means User Charges established on a basis as described in Subsection 2.4 (ii) or a component of User Charges established on a basis as described in Subsection 2.4(iv), which component is established on a basis as described in Subsection 2.4(ii).

"Standard Rate" means, with respect to any Segment and any period of time, the Standard Revenue for the said Segment and the said period of time divided by the Standard VKT for the said Segment during the Peak Period for the said Segment during the said period of time.

"Standard Revenue" means, with respect to any Segment and any period of time, User Charges for Standard Vehicles allocated to the said Segment and to Peak Hours for the said Segment during such period of time. For this purpose, allocations shall be effected in accordance with Section 2.4.

"Standard Vehicle" means any vehicle which is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407, and (iii) equipped with operating monitoring and collection technology prescribed and validated pursuant to the Highway 407 Act.

"Standard VKT" means, with respect to any Highway Portion and any period of time, the total number of kilometres travelled on all Links in such Highway Portion by Standard Vehicles entering Highway 407 during such period of time.

"Statement of Claim" has the meaning ascribed thereto in Subsection 5.5(a).

"Statement of Defence" has the meaning ascribed thereto in Subsection 5.5(b).

"Statement of Reply" has the meaning ascribed thereto in Subsection 5.5(c).

"Statement of Reply to Counterclaim" has the meaning ascribed thereto in Subsection 5.5(d).

"Terminating Intersection" has the meaning ascribed thereto in the definition of Link in Subsection 1.1.

"Toll Threshold" means, with respect to any calendar year, the product of (i) the Initial Toll Threshold, multiplied by (ii) a factor which equals 1.00 in the calendar year which includes the Effective Date and grows by adding 0.015 for the calendar year following the Effective Date and 0.02 for each calendar year thereafter to a maximum of 1.30, multiplied by (iii) the Index Ratio for such calendar year.

"Total VKT" means, with respect to any Highway Portion and any period of time, the total number of kilometres travelled on all Links in such Highway Portion by all vehicles during such period of time.

"Traffic Threshold" means, with respect to any Segment in any calendar year after the Base Year for the said Segment, the product of the Base Segment Flow Rate for the said Segment multiplied by the Traffic Threshold Growth Index for the said Segment and such calendar year, but in no event greater than the product of the Ultimate Number of Core Lanes of the said Segment multiplied by one thousand five hundred (1,500).

"Traffic Threshold Growth Index" means, with respect to any Segment in any calendar year during or after the Base Year for such Segment,

- (i) 1.00 if the said calendar year is the Base Year for the said Segment, or otherwise
- (ii) the Traffic Threshold Growth Index for the said Segment in the immediately prior calendar year, increased by
 - (A) three percent (3%) if the Traffic Threshold for the said Segment in the immediately prior calendar year is less than the product of nine hundred (900) multiplied by the Ultimate Number of Core Lanes for the said Segment, except, if the said Segment is a part of the Highway 407 East Partial Section and Highway 407 has not been Commissioned and Opened to the Whitby/Oshawa area, including a connection in such area to Highway 401, two percent (2%), or
 - (B) two percent (2%) if the Traffic Threshold for the said Segment in the immediately prior calendar year is equal to or greater than the product of nine hundred (900) multiplied by the Ultimate Number of Core Lanes for the said Segment and less than the product of one

thousand two hundred (1,200) multiplied by the Ultimate Number of Core Lanes for the said Segment, or

- (C) one percent (1%) if the Traffic Threshold for the said Segment in the immediately prior calendar year is equal to or greater than the product of one thousand two hundred (1,200) multiplied by the Ultimate Number of Core Lanes for the said Segment.

"Ultimate Lane Kilometres" means, (i) with respect to any Link, the product of the Link Length multiplied by the Ultimate Number of Core Lanes of the said Link, and (ii) with respect to any Highway Portion, the total of the Ultimate Lane-Kilometres of all Links in such Highway Portion.

"Ultimate Number of Core Lanes" has the meaning ascribed thereto in Schedule I.

"Unequipped Threshold" means, with respect to any calendar year, the product of

- (i) (A) in the case of the calendar year which includes the Effective Date, one dollar (\$1.00),
 - (B) in the case of the next calendar year, one dollar and fifty cents (\$1.50),
 - (C) in the case of the next calendar year, two dollars (\$2.00),
 - (D) in the case of the next calendar year, two dollars and fifty cents (\$2.50), and
 - (E) in the case of any calendar year thereafter, three dollars (\$3.00)

multiplied by

- (ii) the Index Ratio for such calendar year.

"Unequipped Vehicle" means any vehicle that is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407, and (iii) not a Standard Vehicle.

"User Charges" means tolls established pursuant to Paragraph 2.2(a)(i), administration fees established pursuant to Paragraph 2.2(a)(ii) and charges related to the registration and distribution of toll devices established pursuant to Paragraph 2.2(a)(v), other than

- (i) administration fees relating to the late payment of any amounts payable to the Concessionaire,

- (ii) administration fees relating to dispute proceedings,
- (iii) administration fees relating to the evasion, obstruction of or interference with the effective operation of the Toll System (which, for the avoidance of doubt, includes the operation of a Heavy-Multiple Unit or a Heavy-Single Unit which is not equipped with operating monitoring and collection technology prescribed and validated pursuant to the Highway 407 Act, and operation of an Unequipped Vehicle the relevant (currently rear) licence plate of which is not visible to or recognizable by the Toll System), and
- (iv) charges relating to the replacement of transponders.

1.2 Other Definitions

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Concession Agreement.

1.3 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

1.4 Headings

The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.5 References to this Agreement

The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it.

1.6 References to any Agreement

A reference in this Agreement to any agreement or document (including, for avoidance of doubt, this Agreement) refers to that agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

1.7 Meaning of Including

In this Agreement the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation",

respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

1.8 Trade Meanings

Unless otherwise defined herein, words or abbreviations which have well-known trade meanings are used herein in accordance with those meanings.

1.9 Statutes

Unless specified otherwise, a reference in this Agreement to a statute refers to that statute as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto. A reference to a statute shall be deemed to include any regulations made thereunder.

1.10 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to lawful currency of Canada.

1.11 Generally Accepted Accounting Principles

All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

1.12 Calculation of Time

For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern standard time or Eastern daylight time, as the case may be) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern standard time or Eastern daylight time, as the case may be) on the next Business Day.

1.13 Performance on Holidays

If any action is required by this Agreement to be taken on or by a day which is not a Business Day, such action shall be valid if taken on or by the next succeeding Business Day.

1.14 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral,

or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

1.15 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by the parties hereto.

1.16 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.17 Invalidity

If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent, (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Article 5. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

1.18 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Article 5, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

1.19 Schedules

The following schedule forms part of this Agreement

Schedule 1 Highway 407 Sections and Segments

1.20 Time of Travel

For purposes of this Agreement, the time at which any vehicle is deemed to have travelled along Highway 407 or any Highway Portion on any particular trip shall be determined by the Concessionaire in a consistent and reasonable manner, with due regard to the capabilities of the Tolling System. For example, the time of travel of a vehicle on a trip on a particular Link may be deemed to be the time when such vehicle is first recognized as entering or having entered Highway 407 on such trip or the time when it is estimated to have entered such Link.

1.21 Alternative Method of Calculating Standard VKT

In the event that the Concessionaire is unable to determine Standard VKT as a result of the nature of the Toll System or the basis on which tolls are established, it shall calculate Standard VKT based on a method determined by the parties, acting reasonably.

1.22 Purpose of Agreement

The purpose of this Agreement is to establish a regime which offers the Concessionaire flexibility to manage the basis on which tolls will be established, the assurance of a minimum level of tolls, administration fees and charges which will be acceptable, regardless of traffic levels and the freedom to establish higher tolls if prescribed traffic levels are achieved, while offering to the Grantor the assurance that the Concessionaire will be financially motivated to provide congestion relief to other roads and highways by achieving prescribed traffic levels, providing open access to all vehicles permitted to travel on Comparable Controlled Access Highways, providing access on reasonable terms to trucks and expanding Highway 407 as required.

**ARTICLE 2
TOLLS**

2.1 Term

This Agreement shall commence on the date hereof and shall terminate at the same time as the expiration or sooner termination of the term of the concession granted under the Concession Agreement.

2.2 Right to Establish Tolls and Administration Fees

(a) As of and with effect from the Effective Date, the Concessionaire shall have the right to

- (i) establish, collect and enforce payment of tolls with respect to the operation of any vehicle or class of vehicles on Highway 407,

- (ii) establish, collect and enforce administration fees based on such criteria as the Concessionaire considers appropriate, and fees to commence or appeal any dispute proceedings,
- (iii) establish interest rates to be charged on unpaid tolls and fees, and collect interest charged at such rates,
- (iv) exempt any vehicle or class of vehicles from the application of section 13 of the Highway 407 Act,
- (v) establish terms and conditions for the registration and distribution of toll devices,
- (vi) require security for the provision of any toll devices, and
- (vii) determine the methods of payment of tolls, fees and interest

at any time while this Agreement is in force in accordance with the provisions of this Agreement.

(b) The Concessionaire may establish tolls and administration fees for Unequipped Vehicles that are different from those established for Standard Vehicles and may establish such tolls and administration fees for Unequipped Vehicles on a different basis than that for Standard Vehicles.

(c) The Concessionaire shall not have the right to establish, collect or enforce payment of tolls, administration fees or other fees or charges in respect of vehicles used in fire fighting or law enforcement or bearing diplomatic licence plates or in respect of ambulances.

2.3 Notice of Toll Changes

(a) If the Concessionaire desires to change any toll or administration fee, it shall give notice of such change (the "Pending Toll Change") to the Grantor at least four (4) weeks prior to the implementation of such change.

(b) The Concessionaire shall make commercially reasonable efforts to inform the public of all tolls and administration fees for the use of Highway 407. After the giving of the notice referred to in Subsection 2.3(a), the Concessionaire shall include a description of the Pending Toll Change on or with all invoices or statements sent by the Concessionaire to users of Highway 407. The Concessionaire shall maintain a website on the internet that states all tolls, administration fees, temporary discounts and Pending Toll Changes. The Concessionaire shall make known to the public and maintain a telephone number to enable any person to request a printed description of all tolls, administration fees, temporary discounts and Pending Toll Changes. The Concessionaire may modify any of the aforesaid means of communication with the

public consistent with any developments in common practice relating to means of comparable communication. Upon the implementation or withdrawal of a Pending Toll Change, the obligations of the Concessionaire in this Subsection 2.3(b) in respect of such Pending Toll Change shall cease.

- (c) Notwithstanding Subsection 2.3(a), if the Concessionaire desires to establish or terminate a temporary discount in respect of any fee or charge, it shall give notice of the establishment or termination of the said temporary discount to the Grantor at least one (1) Business Day prior to the implementation or termination of the said temporary discount.

2.4 Allocation of Tolls, Administration Fees and Equipment Charges

For purposes of this Agreement, User Charges billed in respect of Highway 407 shall be allocated to Segments and to time periods as set forth below.

- (i) The aggregate of allocations to all times and all Segments with respect to any User Charge in respect of Highway 407 shall equal one hundred percent (100%) of the amount of the User Charge billed.
- (ii) Where a User Charge relates to a particular trip and is established on a basis whereby total User Charges for any trip would equal the sum of User Charges for multiple trips which collectively traversed the same Highway Portions at the same time (for example, ten cents (\$0.10) per kilometre), such User Charge shall be allocated to the time of the trip as set forth in Section 1.20 and to each Segment in an amount equal to the User Charge which would have related to traversing at the same time the portion of the Segment (if any) which the particular trip traversed.
- (iii) Where a User Charge relates to a particular trip and is established as a flat dollar amount (for example, three dollars (\$3.00) per trip), then such User Charge shall be allocated to the time of the trip as set forth in Section 1.20. The Concessionaire may elect to allocate such User Charges on a consistent basis either to all Segments of Highway 407 in proportion to the Standard VKT in the calendar year of the trip of each Segment during Peak Hours with respect to such Segment in the calendar year of the trip or, if the trip entrance and exit points are known, to specific Segments used in proportion to the distance travelled on each Segment used.
- (iv) Where a User Charge relates to a particular trip and is a sum of two (2) or more components (for example, fifty cents (\$0.50) plus five cents (\$0.05) per kilometre), then such User Charge shall be allocated in the same manner as if each individual component was allocated for a separate trip.
- (v) Where a User Charge relates to a period of time during which multiple trips might be made (for example, three hundred dollars (\$300.00) per

month), then the said User Charge shall be allocated to all time periods and Segments for which it permits travel in direct proportion to the Standard VKT of each such Segment in each such time period during the period of time to which the said User Charge relates.

- (vi) Where a User Charge or a collection of User Charges is or are subject to a maximum and/or minimum amount and/or a discount (for example, ten cents (\$0.10) per kilometre to a maximum of five dollars (\$5.00) per trip or a maximum of three hundred dollars (\$300.00) per month), then such User Charge or User Charges shall be allocated to Segments and time periods in the same proportions as it or they would have been allocated if the maximum and/or minimum amount and/or discount had not applied.
- (vii) Where a User Charge relates to the registration and distribution of toll devices, such User Charge shall be allocated to the calendar year during which it is billed and to all Segments of Highway 407 and time periods within such calendar year in direct proportion to the Standard VKT on such Segments in such time periods.
- (viii) Where Subsections 2.4(i) to (vii), alone or in combination, are insufficient to establish the manner in which a User Charge shall be allocated, then the Concessionaire and the Grantor, acting reasonably and in accordance with the general principles of such clauses, shall determine the manner in which such User Charge shall be allocated.

ARTICLE 3 CONGESTION RELIEF

3.1 Congestion

The occurrence of any one of the following events with respect to Highway 407 shall constitute Congestion

- (i) if, with respect to any Segment in any calendar year prior to completion of the Base Year for such Segment, the Standard Rate is greater than the Toll Threshold,
- (ii) if, with respect to any Segment in any calendar year subsequent to the Base Year, the Standard Rate in the said calendar year is greater than the Toll Threshold and the Average Segment Flow Rate for the said calendar year is less than the Traffic Threshold,

- (iii) if, during a Construction Period on any Segment, Specific User Charges allocated to the said Segment with respect to any trip exceed the average level of Specific User Charges established for the use of the said Segment during Peak Hours within the twelve (12) month-period immediately prior to the commencement of such Construction Period,
- (iv) if, during any calendar year, the total of all User Charges allocated in respect of administration fees charged to Standard Vehicles exceeds the product of (A) the number of such Standard Vehicles, multiplied by (B) sixty dollars (\$60.00), multiplied by (C) the Index Ratio with respect to such calendar year,
- (v) if the total of all User Charges allocated to any calendar year in respect of Unequipped Vehicles exceeds the sum of (A) the total of all User Charges which would have been allocated to the said calendar year in respect of all Unequipped Vehicles if the said Unequipped Vehicles had all been Standard Vehicles and had all been billed at the Full Rate for Standard Vehicles at the same time of travel, plus (B) the product of the Unequipped Threshold with respect to the said calendar year, multiplied by the total number of trips of Unequipped Vehicles for the said calendar year,
- (vi) if, during any calendar year, the total User Charges allocated in respect of any Heavy-Single Unit exceed two (2) times the User Charges which would have been allocated to such calendar year in respect of such Heavy-Single Unit if it had been a Standard Vehicle and had been billed at the Full Rate for Standard Vehicles at the same time of travel.
- (vii) if, during any calendar year, the total User Charges allocated in respect of any Heavy-Multiple Unit exceed three (3) times the User Charges which would have been allocated to such calendar year in respect of such Heavy-Multiple Unit if it had been a Standard Vehicle and had been billed at the Full Rate for Standard Vehicles at the same time of travel, and
- (viii) if, during any calendar year, any tolls charged for the use of Highway 407 outside of Peak Hours (other than under an optional billing plan) exceed the tolls which would have been charged if the same use of Highway 407 had occurred during Peak Hours.

3.2 Congestion Payments

In the event of the occurrence of Congestion, the Concessionaire shall pay the following amounts to the Grantor in accordance with Section 3.4

- (i) in the case of Congestion under Subsection 3.1(i), an amount equal to two (2) times the product of (A) all User Charges allocated to the applicable

Segment in the applicable calendar year, multiplied by (B) the Standard Rate minus the Toll Threshold, divided by such Toll Threshold,

- (ii) in the case of Congestion under Subsection 3.1 (ii), an amount equal to two (2) times the product of (A) all User Charges allocated to the use of the applicable Segment in the applicable calendar year multiplied by (B) the lesser of (a) the Traffic Threshold minus Average Segment Flow Rate, divided by the Traffic Threshold, and (b) the Standard Rate minus the Toll Threshold, divided by the Toll Threshold,
- (iii) in the case of Congestion under Subsection 3.1(iii), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(iii),
- (iv) in the case of Congestion under Subsection 3.1(iv), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(iv),
- (v) in the case of Congestion under Subsection 3.1(v), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(v),
- (vi) in the case of Congestion under Subsection 3.1(vi), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(vi),
- (vii) in the case of Congestion under Subsection 3.1(vii), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(vii), and
- (viii) in the case of Congestion under Subsection 3.1(viii), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(viii).

3.3 Purpose of Congestion Payments

The purposes for which the Highway 407 Act has been passed include reducing traffic congestion. In view of the difficulty and complexity in establishing the amount of all components of the costs and expenses which the Grantor could incur if Highway 407 does not provide the level of congestion relief contemplated in Section 3.2, the payments required under Sections 3.2 and 3.4 are intended to compensate the Grantor for the said costs and expenses. Notwithstanding that the said payments may not constitute a genuine pre-estimate of the said costs and expenses, the parties acknowledge that the said payments are a fair and reasonable means of compensating the Grantor for the said costs and expenses. The Concessionaire shall not assert the unenforceability of the obligation of the Concessionaire to pay any amount under Sections 3.2 and 3.4. In the event that the Concessionaire asserts the unenforceability of such obligation in any forum which has the authority to make such determination and does not withdraw such assertion within thirty (30) days following the date of receipt by the Concessionaire of a notice from the Grantor requiring the Concessionaire to do so, the Grantor shall have the right to enact and cause to come into force any law or regulation to provide for the same or substantially the same level of compensation to the Grantor as contemplated by

Sections 3.2 and 3.4 on the assumption that Sections 3.2 and 3.4 are enforceable in accordance with their terms.

3.4 Audit Requirements

- (a) Within one hundred and twenty (120) days following the end of each calendar year, the Concessionaire shall prepare and deliver to the Grantor a report
- (i) on whether Congestion has occurred in such calendar year and which sets out the amounts, if any, required to be paid by the Concessionaire to the Grantor under Section 3.2, and
 - (ii) which sets out the information required under Subsection 4.1(a). The Concessionaire shall at the same time make the designation, if any, required under Subsection 4.1(b) failing which the Grantor may make such designation.

The said report shall be accompanied by an opinion, expressed by the external auditors of the Concessionaire that the report is fairly presented in all material respects. If the Concessionaire does not have external auditors, an independent firm of chartered accountants shall be appointed by the Concessionaire to express the said opinion. For purposes of the said opinion and subject to the provisions of Subsection 3.4(b), materiality shall be plus or minus five percent (5%) at a confidence level of ninety-five percent (95%). The Concessionaire shall pay the amounts, if any, required to be paid by the Concessionaire to the Grantor under Section 3.2 at the same time as it delivers the said report to the Grantor.

(b) In preparing its report, the Concessionaire may employ such unbiased approximation techniques as may be reasonably required with due regard to the capabilities of the Tolling System and the capabilities that a tolling system might reasonably be expected to possess at such time.

(c) The Grantor shall, after receipt of said report, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Grantor may reasonably consider necessary.

(d) If the Grantor wishes to dispute any of the information in the said report, it shall give notice of dispute (the "Notice of Dispute") to the Concessionaire within thirty (30) days following the date of receipt of the said report stating the grounds for such dispute.

(e) If, within thirty (30) days following the date of receipt of the Notice of Dispute by the Concessionaire, the Notice of Dispute has not been withdrawn, the matter shall be submitted to dispute resolution in accordance with Article 5.

(f) Without limiting the rights of the Grantor under the Concession Agreement, the Grantor may, at all reasonable times, cause a Provincial Advisor designated by it to carry out an Audit for the purpose of ascertaining compliance with this Agreement.

3.5 Concessionaire's Election

"Construction Period" means, with respect to a Segment, a contiguous period of time during which there will be substantial core lane closures on such Segment due to major construction, such as the addition of an interchange, widening or substantial paving, and with respect to which period of time the Concessionaire at its sole option has, prior to the commencement of such period of time, given notice to the Grantor of the commencement date thereof. The Concessionaire shall give notice to the Grantor of the end date of the Construction Period on or prior thereto or promptly thereafter. Subsections 3.1(i) and (ii) shall not apply to the said Segment during the Construction Period.

ARTICLE 4 EXPANSION

4.1 Expansion Requirements

(a) The Concessionaire shall determine during each Peak Hour the Lane Flow Rate for each Link in a Segment that has not been expanded to its Ultimate Number of Core Lanes in accordance with Schedule 1 and for which the Base Year has elapsed. The Concessionaire shall also determine for each calendar year after the Base Year the number of Hours during which the Lane Flow Rate on any such Link exceeds one thousand seven hundred (1,700) vehicles. A "Qualifying Year" means, with respect to any Link, a calendar year in which such number of Hours exceeds one hundred and twenty-five (125), unless such excess is the result of an external event which is not reasonably likely to recur as determined jointly by the Grantor and the Concessionaire, each acting reasonably. After a Qualifying Year with respect to any Link, the Segment which contains such Link shall be designated as an Expandable Segment and shall retain such designation until expanded in accordance with Subsection 4.1(b).

(b) In each calendar year, the Concessionaire shall designate for expansion the Expandable Segment, if any, which contains the Link with the highest average Lane Flow Rate during all Peak Hours in the prior calendar year by giving notice thereof to the Grantor. The Concessionaire shall thereupon proceed to widen such Expandable Segment and the Corresponding Segment, each by at least a single core lane and complete such widening within two (2) years following the date of receipt of such notice by the Grantor or, if such completion cannot reasonably be achieved within such two (2)-year-period of time due to a factor outside the control of the Concessionaire, then as soon as reasonably possible. The remaining Expandable Segments, if any, shall continue to be

subject to expansion in the same manner and on the same basis in the following year and thereafter together with any other Expandable Segments designated pursuant to this Section 4.1. If in any calendar year the Concessionaire designates two (2) Expandable Segments for expansion the Concessionaire shall not be obliged to designate an Expandable Segment for expansion in the following calendar year. In such event, the Concessionaire shall complete the widening of both the said Expandable Segments in accordance with the preceding provisions of this Subsection 4.1(b).

ARTICLE 5 DISPUTE RESOLUTION

5.1 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Grantor and the Concessionaire under or relating in any way to this Agreement, including a dispute with respect to the obligations of the Concessionaire or the Grantor hereunder or the occurrence of a default hereunder, such dispute shall, in the first instance, by notice from either party to the other requiring the dispute to be resolved, be referred to the Senior Responsible Official of the Grantor and the Senior Operating Officer of the Concessionaire for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within fifteen (15) Business Days (or such longer period as the parties may agree) following such notice, the dispute shall, by notice from either party to the other requiring the dispute to be resolved at a higher level, be referred to the then chief executive officer of the Concessionaire and the then responsible Minister of the Grantor or such Minister's designee. If the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following such latter notice, either party may by notice to the other require that the dispute be resolved by mediation as set out below.

5.2 Mediation

The mediation shall be held within thirty (30) Business Days following the end of the thirty (30)-Business Day negotiation period.

Within seven (7) Business Days following the end of such thirty (30)-Business Day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be final and binding on them. If the parties fail to agree on a mediator within seven (7) Business Days or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following the date of receipt of

the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

5.3 Initiation of Arbitration Proceedings

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request an arbitration. Within fifteen (15) Business Days following receipt of the Initiating Notice by the Responding Party, the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party, either party shall be entitled to make application under the *Arbitration Act*, 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator, and the provisions of the *Arbitration Act*, 1991 (Ontario) shall govern such appointment.

5.4 Qualified to Act

The Single Arbitrator or panel of arbitrators appointed to act hereunder (the "Arbitrator") shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

5.5 Submission of Written Statements

(a) Within thirty (30) Business Days following the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send to the Responding Party a statement of claim (the "Statement of Claim") stating in sufficient detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims.

(b) Within fifteen (15) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim (collectively, the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the

Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.

(c) Within fifteen (15) Business Days following receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the Arbitrator a statement of reply (the "Statement of Reply").

(d) Within fifteen (15) Business Days following receipt of the Statement of Reply, the Responding Party may send to the Initiating Party a statement of reply to counterclaim (the "Statement of Reply to Counterclaim").

(e) Every Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the party concerned relies.

(f) After submission of the Statement of Claim, the Statement of Defence, the Statement of Reply and the Statement of Reply to Counterclaim, if any, the Arbitrator shall forthwith meet with and give directions to the parties for the further conduct of the arbitration.

(g) There shall be no oral discovery unless ordered by the Arbitrator.

5.6 Meetings and Hearings

(a) Meetings and hearings of the Arbitrator shall take place in the City of Toronto or in such other place as the parties agree upon and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties adequate notice thereof. Subject to any adjournments which the Arbitrator allows, the arbitration hearing shall be continued on successive Business Days until it is concluded.

(b) All meetings and hearings shall be in private unless the parties otherwise agree.

(c) Each party may be represented at any meetings or hearings by legal counsel.

(d) Each party may examine and re-examine its witnesses and cross-examine those of the other parties at the arbitration.

5.7 The Decision

(a) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days

following the conclusion of all hearings referred to in Section 5.6 unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reasons for the decision.

(b) If the Arbitrator is a panel, the decision of the majority of the panel shall be deemed to be the decision of the Arbitrator.

(c) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), and with the exception of monetary claims in excess of ten million dollars (\$10,000,000) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice.

(d) If the decision results in an award in excess of ten million dollars (\$10,000,000) the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

5.8 Jurisdiction and Powers of the Arbitrator

(a) The object of an arbitration hereunder shall be to ensure the just, expeditious, economical and final determination of any dispute.

(b) Without limiting the jurisdiction of the Arbitrator at law, a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to

- (i) determine any question of law arising in the arbitration,
- (ii) determine any question as to the Arbitrator's jurisdiction,
- (iii) determine any question of good faith or dishonesty arising in the dispute,
- (iv) order any party to furnish further details of its case, in fact or in law to the other parties,
- (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so,

- (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law,
- (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues pending the final resolution of any dispute hereunder,
- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of parties hereto,
- (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant,
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties,
- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
- (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

(c) The jurisdiction and powers referred to in Subsection 5.8(b) shall be exercised at the discretion of the Arbitrator subject to only to Laws and Regulations and the provisions of this Agreement.

5.9 Arbitration Act, 1991 (Ontario)

The rules and procedures of the *Arbitration Act, 1991* (Ontario) shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Article 5 or by agreement of the parties.

5.10 Provisional Remedies

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the

appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

5.11 Continuing Performance

At all times, notwithstanding the existence of any dispute, the Grantor and the Concessionaire shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.

5.12 Costs of Arbitration

Pending determination by the Arbitrator, the parties shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator.

ARTICLE 6 MISCELLANEOUS

6.1 Respecification

If, at any time following the fifth (5th) anniversary of the Effective Date, either party requests an amendment to this Agreement to more fully achieve the purpose of this Agreement and such party has not made any other request under this Section 6.1 within the five (5) years immediately prior to the date of receipt of such request for an amendment by the other party, the parties shall negotiate such amendment in good faith. Unless the parties agree to the contrary, such amendment shall not result in a material increase or decrease in the current or future earnings of the Concessionaire or the current or future attainment by the Grantor of its objectives relating to congestion relief, open access, truck access and expansion. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Article 5, provided that, unless the parties agree to the contrary, such determination shall not result in a material increase or decrease in the current or future earnings of the Concessionaire or the current or future attainment by the Grantor of its objectives relating to congestion relief, open access, truck access and expansion.

6.2 Notice

All notices and other communications required or permitted by this Agreement shall be in writing and shall be delivered, sent by telecopier or by registered mail (return receipt requested) to:

in the case of the Grantor, at:

56 Wellesley Street West
Suite-600
Toronto, Ontario
M7A 1C1

Attention: CEO, Privatization

Fax Number: (416) 325-4576

in the case of the Concessionaire, at:

200 King Street West
20th Floor
Toronto, Ontario
M5H 3T5

Attention: President

Fax Number: (416) 326-6460

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received (i) on the day it is delivered or on the day on which transmission is confirmed by the sender's telecopier records, if telecopied, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by registered mail.

6.3 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

6.4 Interest

Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus

three percent (3%), from the date such payment is due until payment and both before and after judgment.

6.5 Costs

Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

6.6 Enurement and Binding Effect

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and assigns.

6.7 No Partnership

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Grantor and the Concessionaire.

6.8 Cumulative Remedies

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

6.9 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

6.10 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

6.11 Language

The parties hereto hereby confirm their request that this Agreement and all documents related directly or indirectly thereto be drafted in the English language. Les parties aux présentes reconnaissent avoir requis que la présente convention ainsi que tous

les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**THE CROWN IN RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER
WITHOUT PORTFOLIO WITH
RESPONSIBILITY FOR PRIVATIZATION**

By:


Name:

Title:

407 ETR CONCESSION COMPANY LIMITED

By:


Name: A. SCOTT CARSON

Title: DIRECTOR

SCHEDULE 1
HIGHWAY 407 SECTIONS AND SEGMENTS

Highway 407 Section	Segment	Location	Ultimate Number of Core Lanes in each direction
Highway 407 West	W-1	QEW - Dundas Street (R.R. 5)	4
	W-2	Dundas St. (R.R. 5) - Neyagawa Boulevard (R.R.4)	4
	W-3	Neyagawa Boulevard (R.R. 4) - Highway 403	4
Highway 407 Central	C-1	Highway 403 - Highway 401	4
	C-2	Highway 401 - Highway 410	5
	C-3	Highway 410 - Highway 427	5
	C-4	Highway 427 - Highway 400	5
	C-5	Highway 400 - Yonge Street	5
	C-6	Yonge Street - Highway 404	5
	C-7	Highway 404 - McCowan Road	5
Highway 407 East Partial	E-1	McCowan Road - R.R. 30	5
	E-2	R.R. 30 - Highway 7 (near Brock Road)	5

SCHEDULE 21

Description of Toll System

The Toll System on Highway 407 is described in the attached Section B.3 of the Request for Proposals - Development and Design-Build for the Western Extension of the 407 Express Toll Route (ETR).

B.3 TOLL SYSTEM DESCRIPTION

The Toll System is a fully accessible, all-electronic toll collection system with no toll booths or automatic coin machines. Users of the highway are identified and billed either through the use of an electronic transponder or from a video image of the vehicle's licence plate. The Toll System is comprised of various elements necessary to identify users (transponder or video), identify class of vehicle, determine trip details (time, entry & exit location), formulate toll charges and issue invoices.

The major system components are:

- | | |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| Gantry Mounted Equipment | - located at exit and entrance ramps and includes cameras, antennas, Video Detection and Classification units (VDAC), light sources |
| Roadside Toll Collection (RTC) Units | - Roadside units that process information from Gantry mounted equipment for transmission to Operations Centre |
| Fibre Optic Cable and Communication | - Cable and communication system used to transmit data to Operations Centre. Laid along both sides of the roadway |
| Toll Transaction Processor (TTP) | - Processing unit that receives data at the Operations Centre. Tabulates trips for billing purposes. |
| Revenue Management System (RMS) | - Toll calculation, account and billing system at Operations Centre |

SCHEDULE 24

Documents on Completion

Upon Total Completion of each of Highway 407 West, Highway 407 East Partial and Highway 407 Central Deferred Interchanges and thereafter when any Work is completed pursuant to the Agreement, the Concessionaire shall prepare and submit complete sets of original and as built drawings in both hard copy and electronic format for the Work completed. In addition, the Concessionaire shall provide a hard copy and electronic file of the final geometric alignment (Softdesk importable format), plans (AutoCAD format), profile (AutoCAD format) and cross section (HDS importable format).

The drawings and documents (in metric scale) to be submitted upon Total Completion as aforesaid shall consist of the following: Drawing, plans and documents required to be provided by the Concessionaire to the Grantor pursuant to the foregoing will be provided at no cost to the Grantor.

- as built plans to Ministry standards at a scale of 1:500, showing all constructed features including: roadway, ramps, interchanges, lane delineation, property lines (fencing limits), roadside appurtenances, drainage systems, noise barriers, Toll System components, overhead sign gantries and other ground features;
- vertical and horizontal alignment;
- as built profiles and cross-sections of all roadway components at a scale of 1:500;
- as built structural drawings showing measured structural opening clearances;
- all electrical as built drawings;
- fisheries and terrestrial mitigation and compensation plans, including realignments, with confirmation that all approval requirements have been met;
- final archaeological reports, with attached clearances;
- all Hazardous Substance mitigation reports; and
- utility relocation plans.

All hard copy drawings shall be sealed by a Professional engineer licensed in the Province of Ontario.

All archaeological reports shall be signed by an archaeologist with a valid license to conduct Archaeological Exploration Survey or Field Work.