

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 12th day of February, 2013

BETWEEN:

CITY OF OTTAWA

(the “City”)

AND

RIDEAU TRANSIT GROUP GENERAL PARTNERSHIP

(“Project Co”)

AND

ALTUS GROUP LIMITED

(the “Independent Certifier”)

WHEREAS:

- A. The City and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

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

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** is any change to the Certification Services.
 - (iii) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (iv) **[intentionally deleted]**
 - (v) **“Fee”** means the fees payable by the City and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in Appendix B to this Independent Certifier Agreement.
 - (vi) **“HST”** means the value-added tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.

- (vii) **“Intellectual Property”** means discoveries, research, developments, designs, industrial designs, improvements, innovations, inventions, software, computer programs and code of all types, layouts, interfaces, applications, tools, databases, hardware, methods, concepts, processes, know-how, formulae, mask works, works subject to copyright, and other technologies, works and creations now existing or developed in the future, whether or not registered or registrable, patentable or non-patentable, or confidential or non confidential.
- (viii) **“Intellectual Property Rights”** means all intellectual property rights of any kind whatsoever, whether or not registered or registrable, including copyright, patents and patent applications, database rights, industrial design registrations, rights in respect of trademarks, trade names, domain names, mask works, trade secrets and confidential information, and all applications, registrations, renewals, extensions, continuations, divisions, reissues, and restorations relating to any such rights (where applicable) now or hereafter in force and effect throughout all or any part of the universe.
- (ix) **“Lenders”** has the meaning given in the Project Agreement.
- (x) **“PA Parties”** means both the City and Project Co, and **“PA Party”** means either the City or Project Co, as the context requires.
- (xi) **“Project Agreement”** means that certain project agreement made on or about the date hereof between the City and Project Co with respect to the design, construction, financing, maintenance and rehabilitation of the System.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

- (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
- (vii) words denoting any gender include all genders;
- (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (ix) a reference to “\$” is to Canadian currency;
- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
- (xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

- (d) The Independent Certifier shall make such observations and evaluations of any Design and Construction Works pursuant to a Variation in order to certify any payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Section 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, the lesser of 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any

opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.
- (d) The Independent Certifier acknowledges that all Certification Services, Contract Material and all determinations, findings, reports, certificates and other information delivered by the Independent Certifier to the City pursuant to the Project Agreement may be relied upon by HMQ, represented by the Ministry of Transportation and the Government of Canada, represented by the Ministry of Transport, Infrastructure and Communities, and that the Independent Certifier shall owe each an equal duty of care as is owed to the City hereunder, notwithstanding the fact that HMQ, represented by the Ministry of Transportation and the Government of Canada, represented by the Ministry of Transport, Infrastructure and Communities are not parties to this Independent Certifier Agreement and/or the Project Agreement. The Independent Certifier will confirm the foregoing directly to either Contribution Agreement Party, if requested by the City.

3.5 Authority to Act

- (a) The Independent Certifier:
 - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
 - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;

- (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
- (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the System and Site including restrictions on any such access or protocols that are required; and
- (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party; and
 - (v) provide a copy of the Contract Material to each of HMQ, represented by the Ministry of Transportation and the Government of Canada, represented by the Ministry of Transport, Infrastructure and Communities at the same time as it is provided to the PA Parties. In respect of such Contract Material, HMQ, represented by the Ministry of Transportation or the Government of Canada, represented by the Ministry of Transport, Infrastructure and Communities as applicable, may make inquiries of the Independent Certifier and request further investigation or clarification in connection with, and subject to, its Contribution Agreement.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:

- (i) at the date of signing this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained, in respect of the Project Agreement, as an advisor to either of the PA Parties or as a technical advisor to the Lenders; and
- (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services. The PA Parties and the Independent Certifier confirm that any change to the individuals listed in Appendix C is an amendment to this Agreement which is subject to Section 12.9(c).
- (b.1) The Independent Certifier shall ensure that its personnel providing Certification Services have any required security clearances, including a minimum level II (secret) clearance with Public Works and Government Services Canada in order to access documentation from Public Works and Government Services Canada.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Project Co Commissioning shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable light rail transit system;
 - (iii) have an understanding of the appropriate standards, guidelines and policies related to commissioning for light rail transit systems, as well as other applicable transit commissioning standards; and

- (iv) have an understanding of any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but any pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish the PA Parties with evidence satisfactory to the PA Parties of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Project Co Commissioning.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Design and Construction Works.

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether any Milestone Acceptance, Substantial Completion, Revenue Service Availability and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:

- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the City Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (ii) Project Co or the City, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, System or Design and Construction Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the System and the Design and Construction Works;
 - (ii) not causing unreasonable delay to the carrying out of the Design and Construction Works by reason of its presence at the Site, the System and the Design and Construction Works; and
 - (iii) not causing any damage to the Site, the System or the Design and Construction Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN

5.1 Certification Quality Plan

- (a) The Independent Certifier must:

- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the City Representative and the Project Co Representative;
- (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the City Representative and the Project Co Representative;
- (iii) if satisfactory to each of the City Representative and the Project Co Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the City Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the City Representative and the Project Co Representative, and implement it if satisfactory to each of the City Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the City Representative or the Project Co Representative.

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
 - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:

- (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
- (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 **Recommencement**

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7. **INSURANCE AND LIABILITY**

7.1 **Independent Certifier's Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of \$2,000,000 per claim and \$4,000,000 in the aggregate, a deductible of not more than \$25,000 per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) commercial general liability insurance in the amount of \$5,000,000 per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$5,000 per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs and all other overhead including any fees or other charges required by law to perform the Certification Services. For clarity, all travel expenses are to be included in the Fee.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$50,000 is outstanding for more than 180 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a "Certification Services Variation Order" under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the City Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The City Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the City Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the City Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);

- (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the City Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the completion of the Design and Construction Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or

- (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
 - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
 - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 12.9 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or wilful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.

- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents,

permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.

- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
 - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.3 Conduct of Claims

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.

- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

12.4 Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Independent Certifier Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Independent Certifier Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to the City:

City of Ottawa
Finance Department
Supply Branch
100 Constellation Crescent
4th Floor, West Tower
Ottawa, ON K2G 6J8

Fax: (613) 580-9688
Attn.: Director, Rail Implementation

With a copy to:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, ON M5G 2C8

Fax: (416) 327-6387
Attn.: Vice President, Civil Infrastructure

Solely for the purposes of
Section 3.7(a)(v), with a copy to:

HMQ, represented by the Ministry of
Transportation

777 Bay Street, 30th Floor
Toronto, Ontario M7A 2J8
Fax: (416) 585-7343
Attn.: Director, Transit Policy Branch

Solely for the purposes of
Section 3.7(a)(v), with a copy to:

Government of Canada, represented by the
Ministry of Transport, Infrastructure and
Communities

Program Operations Branch
Infrastructure Canada
1100-180 Kent Street
Ottawa, Ontario K1P 0B6

and

Fax: (613) 960-9423
Attn.: Assistant Deputy Minister

Transport Canada
Place de Ville, 330 Sparks St.
Ottawa, Ontario K1A 0N5

Fax: (613) 990-9639
Attn.: Director General, Surface Infrastructure
Programs

If to Project Co:

Rideau Transit Group General Partnership

1 First Canadian Place, Suite 6000
PO Box 367, 100 King Street West
Toronto, Ontario M5X 1E2

Fax: (416) 365-7886
Attn: Eusebio Corregel

And a copy to:

ACS RTG Partner Inc.
c/o ACS Infrastructure Canada Inc.
155 University Avenue, Suite 1800
Toronto, ON M5H 3B7

Fax: (786) 272-7992
Attn.: Nuria Haltiwanger

And a copy to:

EllisDon RTG Partner Inc.

c/o 800-89 Queensway Avenue
Mississauga, ON L5B 2V2

Fax: (905) 803-3059
Attn.: Jody K. Becker

And a copy to:

SNC RTG Partner Inc.
c/o 455 René-Lévesque Blvd. West
Montreal, QC H2Z 1Z3

Fax: (514) 866-0795
Attn.: Gerry Grigoropoulos

If to the Independent Certifier:

Altus Group Limited
33 Yonge Street, Suite 500
Toronto, ON M5E 1G4

Fax: Mehran Avini, Director – Infrastructure
Attn.: (416) 641-9500

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.

- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its Discretion (including, in respect of the City, if so required pursuant to a Contribution Agreement); and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

12.7 Compliance and Good Standing

- (a) The Independent Certifier shall comply with all present and future laws, statutes, regulations, by-laws, treaties, judgments, decrees and binding judgments of relevant

courts of law having the force of law, all present and future official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Canadian government, including any federal, provincial or municipal government, and any government agency, ministry, tribunal, commission or other authority including any regulated or other utility exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government and shall obtain and at all times maintain and keep in good standing, any and all permits, certificates, authorizations, licenses and other similar authorizations.

12.8 Confidentiality

- (a) The Independent Certifier must ensure that:
- (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties

acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties (provided that, in respect of the City, such agreement may be subject to its obligations under a Contribution Agreement and require the consent of a Contribution Agreement Party) and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

12.11 Severability

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Independent Certifier Agreement. If any such provision of this Independent Certifier Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Independent Certifier Agreement as near as possible to its original intent and effect.

12.12 Enurement

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

12.13 Counterparts

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall promptly forward to such party an original signed copy of this Independent Certifier Agreement which was so faxed.

12.14 Maintenance of Records

- (a) The Independent Certifier shall retain and maintain in safe storage, at its expense, all records related to this Independent Certifier Agreement for a minimum period of the greater of:
- (i) 7 years;
 - (ii) 6 years following the Revenue Service Availability Date; and
 - (iii) such period as ends on December 31, 2026,
- or such longer period as required by Applicable Law.
- (b) All such records shall be available to the PA Parties and, at the written request of the City, the Contribution Agreement Parties.

[This Section intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

CITY OF OTTAWA

Per:

Name: Kent Kirkpatrick

Title: City Manager

I have authority to bind the Corporation

RIDEAU TRANSIT GROUP GENERAL PARTNERSHIP, by its partners, ACS RTG PARTNER INC., SNC RTG PARTNER INC. and ELLISDON RTG PARTNER INC.

ACS RTG PARTNER INC.

Per: _____
Name: _____
Title: _____

I have authority to bind the corporation.

SNC RTG PARTNER INC.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I / We have authority to bind the corporation.

ELLISDON RTG PARTNER INC.

Per: _____
Name: _____
Title: _____

I have authority to bind the corporation.

ALTUS GROUP LIMITED

Per:

Name: Michael Commons
Title: Senior Executive Vice President

I have authority to bind the corporation.

APPENDIX A**CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Design and Construction Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Design and Construction Works and the Queen Street Work, Albert Street Work, Rock Stabilization Work, Utilities Work and CSST Work.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) Prepare monthly reports to be submitted prior to Works Committee meetings.
- (g) Prior to any certification, consider the views and comments of both Project Co and the City in relation to the satisfaction of the conditions for certification.
- (h) Conduct inspections of the Design and Construction Works and the Queen Street Work, Albert Street Work, Rock Stabilization Work, Utilities Work and CSST Work as necessary for the Independent Certifier to be satisfied that the Design and Construction Works and the Queen Street Work, Albert Street Work, Rock Stabilization Work, Utilities Work and CSST Work are proceeding in accordance with the requirements of the Project Agreement.
- (i) Review relevant documentation, including the Final Design Development Submittals, certificates and approvals, Permits, Licences and Approvals, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.
- (j) Monitor the requirements, progress and results of all Project Co Commissioning.
- (k) Upon receipt of notice from Project Co requesting the issuance of certification of any Request for Civic Works Payment Approval, certification of Substantial Completion of

the Civic Works, a Milestone Acceptance Certificate in respect of a particular Milestone, the Substantial Completion Certificate, the Revenue Service Availability Certificate or the Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:

- (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (l) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Design and Construction Works, the Queen Street Work, Albert Street Work, Rock Stabilization Work, Utilities Work and CSST Work or re-consider the matters specified to be performed, and repeat the procedures in Section (k) of this Appendix A until the issuance of the applicable certificate.
- (m) Prepare, in consultation with Project Co and the City, as soon as reasonably practicable and, in the case of Milestones, Substantial Completion and Final Completion, in any event within, the time period specified in Section 26.4(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (n) [Intentionally Deleted]
- (o) Review and observe installation of all equipment, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into the System by the City or any agent or contractor of the City either before or after Revenue Service Availability and provide a report to the City and Project Co identifying any damage to the System which has been caused as a result of the installation of such Installed Equipment into the System by the City, its contractors and/or agents.
- (p) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement.
- (q) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (r) In accordance with Section 20.6a) of the Project Agreement, review any self-certification/testing carried out by Project Co, and any subsequent test results.

- (s) Prior to the issuance of the Revenue Service Availability Certificate ensure that all safety and regulatory documentation is complete and approved, including but not limited to Security Assessments, Hazard Analyses, Safety Case and any supplementary regulatory requirements.
- (t) Measure and verify any Bus Rapid Transit (BRT) Closures and Lane Closures during the Design and Construction Works in accordance with Schedule 37 – Mobility Matters to the Project Agreement.
- (u) Validation of the trial running acceptance in accordance with Schedule 14 – Commissioning to the Project Agreement.
- (v) Project Co Commissioning review and coordination in accordance with Schedule 14 – Commissioning, which shall include:
 - (i) review of test, verification and performance test forms;
 - (ii) review of commissioning progress management forms and performance testing;
 - (iii) review of the Commissioning Plan;
 - (iv) review of the Commissioning Schedule;
 - (v) sample witnessing of tests and performance testing;
 - (vi) review of the training agenda and scheduling;
 - (vii) review of the operations and maintenance manuals;
 - (viii) sample witnessing of seasonal performance testing;
 - (ix) review of the commissioning reports;
 - (x) attending commissioning meetings; and
 - (xi) report to City regarding the progress of commissioning.
- (w) Provide advice on other matters that may arise that both PA Parties may jointly require;
- (x) To the extent not already contemplated in the other Certification Services or otherwise in this Agreement, review and certify the determination of eligible costs under the Contribution Agreements to the Contribution Agreement Parties, including:
 - (i) conducting a due diligence assessment of the proposed Milestone and Revenue Service Availability payment schedule and certifying that this schedule is achievable, reviewing and certifying that eligible costs are reasonable and meet the eligible cost criteria in a Contribution Agreement, and reviewing and

certifying the percentage of a Contribution Agreement Party's eligible costs of the total eligible costs under a Contribution Agreement;

- (ii) reviewing and certifying that Milestone and Revenue Service Availability requirements have not changed in scope and have been completed in accordance with the Contribution Agreement;
- (iii) reviewing and certifying a claim by the City under a Contribution Agreement, including interim claims, that all costs are eligible costs and that the work has been constructed and completed in accordance with the terms and conditions of the Contribution Agreement;
- (iv) confirming that all information provided and/or submitted to the PA Parties and/or the Contribution Agreement Parties in this Agreement is true and accurate and prepared in good faith to the best of its skill, judgement and knowledge to the Contribution Agreement Parties;
- (v) confirming its commitments made to the PA Parties and/or the Contribution Agreement Parties in this Agreement to the Contribution Agreement Parties; and
- (vi) executing and delivering certificates in the form attached hereto as Appendix F (as may be amended by the City) when requested by the City.

APPENDIX B

INDEPENDENT CERTIFIER FEE

1. Fee for all Certification Services (other than Certification Services identified in Item (w) of Appendix A to this Independent Certifier Agreement)

Breakdown of the Total Fixed Fee for all Certification Services (other than the Certification Services identified in Item (w) of Appendix A to this Independent Certifier Agreement).

	CERTIFICATION SERVICES (as a reference to items in Appendix A to this Independent Certifier Agreement)	Fixed Fee per section
1.	Item (a) of Appendix A to this Independent Certifier Agreement	
2.	Item (b) of Appendix A to this Independent Certifier Agreement	
3.	Item (c) of Appendix A to this Independent Certifier Agreement	
4.	Item (d) of Appendix A to this Independent Certifier Agreement	
5.	Item (e) of Appendix A to this Independent Certifier Agreement	
6.	Item (f) of Appendix A to this Independent Certifier Agreement	
7.	Item (g) of Appendix A to this Independent Certifier Agreement	
8.	Item (h) of Appendix A to this Independent Certifier Agreement	
9.	Item (i) of Appendix A to this Independent Certifier Agreement	
10.	Item (j) of Appendix A to this Independent Certifier Agreement	
11.	Item (k) of Appendix A to this Independent Certifier Agreement	
12.	Item (l) of Appendix A to this Independent Certifier Agreement	
13.	Item (m) of Appendix A to this Independent Certifier Agreement	
14.	Item (o) of Appendix A to this Independent Certifier Agreement	
15.	Item (p) of Appendix A to this Independent Certifier Agreement	
16.	Item (q) of Appendix A to this Independent Certifier Agreement	
17.	Item (r) of Appendix A to this Independent Certifier Agreement	

18.	Item (s) of Appendix A to this Independent Certifier Agreement	
19.	Item (t) of Appendix A to this Independent Certifier Agreement	
20.	Item (u) of Appendix A to this Independent Certifier Agreement	
21.	Item (v) of Appendix A to this Independent Certifier Agreement	
22.	Item (x) of Appendix A to this Independent Certifier Agreement	
	TOTAL FIXED FEE	\$ 699,984.00

The fee for all Certification Services (other than the Certification Services identified at item (w) of Appendix A of this Independent Certifier Agreement) will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the Certification Services which is in form and substance satisfactory to the PA Parties and subject to (i) the fee for all Certification Services (other than the Certification Services identified in item (w) of Appendix A to this Independent Certifier Agreement) not exceeding, in aggregate, the Total Fixed Fee of Cdn\$699,984.00 (the “**Total Fixed Fee**”), and (ii) the fee for each individual Certification Service identified in items (a) through (and including) (x) of Appendix A to this Independent Certifier Agreement not exceeding, individually, the fee set forth above in respect of such individual Certification Service. The Total Fixed Fee includes all travel and travel-related expenses.

Invoices submitted by the Independent Certifier for Certification Services (other than the Certification Services identified in item (w) of Appendix A to this Independent Certifier Agreement) shall apportion all fees to reflect the Certification Services performed in respect of each of the elements of the Project Scope.

2. Hourly Rate for Certification Services Contemplated in Item (w) of Appendix A to the Independent Certifier Agreement for each Independent Certifier team member

TEAM MEMBER	HOURLY RATE
Director - Senior	
Consultant - Senior	
Technical Specialists	
Technical Specialist	
Technical Support	
Administration	

The hourly rates include all travel and travel-related expenses.

The fee for the Certification Services identified in item (w) of Appendix A of this Independent Certifier Agreement will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the performance of such Certification Services which is in form and substance satisfactory to the PA Parties; provided that, for certainty, the hourly rate chargeable for such Certification Services shall not exceed the hourly rates set out in the table in this Section 2 of Appendix B.

Invoices submitted by the Independent Certifier for Certification Services identified in item (w) of Appendix A of this Independent Certifier Agreement shall apportion all fees to reflect the Certification Services performed in respect of each of the elements of the Project Scope.

3. Disbursements

All disbursements of the Independent Certifier, including, without limitation, travel and travel-related expenses are included in the Total Fixed Fee and hourly rates payable for the Certification Services contemplated in Item (w) of Appendix A to this Independent Certifier Agreement, and the Independent Certifier shall not be entitled to any reimbursement for any such disbursements.

For clarity, disbursements for hospitality, food and/or incidentals are not reimbursable.

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

TEAM MEMBER	ROLE
Mehran Avini	Team Leader (Independent Certifier)
Monica Sechiari	Back-up Team Leader / Certification Manager, Commissioning Lead

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both the City and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

- (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where the City is the Beneficiary, the City may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or

other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:

- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (7) Any person taking any of the steps contemplated by this Appendix D shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

APPENDIX E

TIME TASK MATRIX

The fee for all Certification Services (other than the Certification Services identified at item (w) of Appendix A of this Independent Certifier Agreement) is based on this time-task matrix in Appendix E. For greater certainty, anytime in excess of the time noted in the Time Task Matrix which is given by the persons noted therein shall be included in the Total Fixed Fee.

The sections noted below, refer to Appendix A of the Project Agreement Schedule 6.

1	Appendix A, (a) Design Review & Monitor								
2	Appendix A, (b) Review Progress Reports from Project Team								
3	Appendix A, (c) Review Information due to Delay & Compensation events								
4	Appendix A, (d) Review Information relating to Variation Enquiries, Project Co Variation Notices								
5	Appendix A, (e) Attendance at Project / Works Committee Meetings								
6	Appendix A, (f) Prepare monthly reports								
7	Appendix A, (g) Consider the views and comments of both Project Co and the City in relation to the satisfaction of the conditions for certification								
8	Appendix A, (h) Conduct inspections of the Design and Construction Works and the Queen Street Work, Albert Street Work, Rock Stabilization Work, Utilities Work and CSST Work as necessary to be satisfied that the Works are proceeding in accordance to the Project Agreement.								
9	Appendix A, (i) Review all relevant Project Documentation provided to the Independent Certifier pursuant to Project Agreement.								
10	Appendix A, (j) Monitor the requirements, progress and results of all Project Co Commissioning								
11	Appendix A, (k) Certify Request for Civic Works Payment Approval, Substantial Completion of Civic Works, Milestone Acceptance, Substantial Completion, Revenue Service Availability or the Final Completion, and issue applicable certificate, or report.								
12	Appendix A, (l) Repeat item (k) until issuance of the applicable certificate								
13	Appendix A, (m) Prepare Minor Deficiencies List, and perform all tasks required by Independent Certifier								
14	Appendix A, (n) Intentionally deleted								
15	Appendix A, (o) Review, observe and report installation of Installed Equipment either before or after Revenue Service Availability								
16	Appendix A, (p) Provide any Determinations								
17	Appendix A, (q) Provide assistance to PA Parties in connection with any proceedings								
18	Appendix A, (r) Review any self-certification/testing carried out by Project Co and any subsequent test results								
19	Appendix A, (s) Ensure all safety and regulatory documentation is complete prior to issuance of Revenue Service Availability Certificate								
20	Appendix A, (t) Measure and verify any Bus Rapid Transit Closures and Lane Closures during the works								
21	Appendix A, (u) Validation of trial running acceptance in accordance with Schedule 14								
22	Appendix A, (v) Review Project Co Commissioning in accordance with Schedule 14								
23	Appendix A, (x) Review and certify the determination of eligible costs under the Contribution Agreements								

APPENDIX F

CONTRIBUTION AGREEMENT CERTIFICATES

[see attached]

SCHEDULE D.1 – RECIPIENT DECLARATION

In the matter of the Agreement entered into between Her Majesty the Queen, in right of Canada, as represented by the Minister of Transport and the City of Ottawa (“Ottawa”), as represented by the Mayor of Ottawa on _____, concerning the Ottawa Light Rail Transit Project (the “Agreement”).

I, _____ (name), of the City of _____ (City), _____ Province of _____ (Province), declare as follows:

1. That I hold the position of _____ with the Recipient and as such have knowledge of the matters set forth in this declaration.
2. a) That I have received the following documents from [INSERT NAME OF ARCHITECT OR ENGINEER] for those construction related parts of the Project procured by the Conventional Procurement Contracts:
 - i) [LIST APPROPRIATE AND APPLICABLE NAME OF DOCUMENT(S), i.e. Certificate of Completion, etc.];
 - ii) (...).
- b) That based on the above documents and the representations made to me by the [NAME OF ARCHITECT OR ENGINEER], I declare to the best of my knowledge and belief that those parts of the Project procured by Conventional Procurement Contracts:
 - i) have been substantially completed as described in Schedule B.1. of the Agreement, dated on the _____ day of _____ 20__;
 - ii) were carried out by _____ (the prime contractor), between the dates _____ (start date) and _____ (completion date)
3. That I have received the following documents from [INSERT NAME OF ENVIRONMENTAL CONSULTANT OR OTHER APPROPRIATE PERSON], and based on these documents and representations made to me by [INSERT NAME OF ENVIRONMENTAL CONSULTANT OR OTHER APPROPRIATE PERSON], I declare to the best of my knowledge and belief that those parts of the Project procured by Conventional Procurement Contracts conform with applicable environmental legislation, and that all mitigation measures have been implemented:
 - i) [LIST DOCUMENT(S)];
 - ii) (...).
4. That I have received the following documents from [INSERT NAME OF CONSULTANT/APPROPRIATE PERSON], and based on these documents and representations made to me by [INSERT NAME OF CONSULTANT/APPROPRIATE PERSON], I declare to the best of my knowledge and belief that the work conforms with the guidelines referenced in subsection 3.6 of the Agreement or any other equivalent provincially sanctioned guidelines approved by the Committee established under the Agreement:
 - i) [LIST DOCUMENT(S)];
 - ii) (...).

Declared at _____ (city), in the Province of _____
this _____ day of _____, 20_____.

Signature

SCHEDULE D.2 – MILESTONE INDEPENDENT ENGINEER DECLARATION OF COMPLETION

In the matter of the Agreement entered into between Her Majesty the Queen, in right of Canada, as represented by the Minister of Transport and the City of Ottawa, as represented by the Mayor and the City Manager on _____ concerning the Ottawa Light Rail Transit Project (the "Agreement").

I, _____, a Registered Professional Engineer in the Province of Ontario declare as follows:

1. That I am the Independent Engineer for the Ottawa Light Rail Transit Project and as such have knowledge of the matters set forth in this declaration;
2. That the work identified under the Ottawa Light Rail Transit Project as described in the Agreement has been completed as of the _____ day of _____ 201____, in accordance with Schedule B.2 of this Agreement.
3. That the Milestone has not changes in scope, unless such scope change has been approved in advance and in writing by the Committee.
4. That the costs claimed in respect of each Milestone are Eligible Costs; and
5. That the work has been completed as per the standards indicated in subsection 3.6.

Declared at _____ (city) _____, in the Province of Ontario

this _____ day of _____, 20____

(Signature)

SCHEDULE G.1

**CERTIFICATE/PAYMENT REQUEST
FROM RECIPIENT CO-CHAIR OR SENIOR OFFICIAL**

Ministry of Transportation File No.: _____

TO: Ministry of Transportation
Transit Infrastructure Policy Office
Suite 3000, 30th Floor
777 Bay Street
Toronto, ON M7A 2J8

Attention: Director
Telephone No.: (416) 585-7347
Facsimile No.: (416) 585-7343

FROM: **[Insert Address of the Recipient Co-chair or senior official]**

Attention: **[Insert name and title of Recipient Co-chair or senior official]**
Telephone No.: **[Insert telephone number of Recipient Co--chair or senior official]**
Facsimile No.: **[Insert facsimile number of Recipient Co-chair or senior official]**

RE: **Contribution Agreement for the City of Ottawa Light Rail Transit Project**

In the matter of the Contribution Agreement for the City of Ottawa Light Rail Transit Project entered into between Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation for the Province of Ontario, and the City of Ottawa (the "Recipient"), on _____, 2011 (the "Agreement").

I, _____ **[Insert name and title of the Recipient Co-chair or senior official]**, having made such inquiries as I have deemed necessary for this certificate, hereby certify that to the best of my knowledge, information and belief:

1. On and as of the date set out below:
 - a. all representations and warranties contained in Article 11 (Recipient Representations and Warranties) of the Agreement are true and correct;
 - b. the Recipient is in compliance with all the terms and conditions of the Agreement and no event of default, as described in the Agreement, has occurred and is continuing;
 - c. the Recipient has not incurred a cost overrun for the Project; and
 - d. the Recipient has complied with all provisions of the *Construction Lien Act* and no person is entitled to claim a lien under that Act.
2. Attached is [are] the [Project quarterly progress status report and] Claim Statement that relate[s] to the request for payment, which is [are] true and accurate and relate[s] to costs on account of the Project. **[Note: The Project quarterly progress status report is only required for general Eligible Costs claims pursuant to Schedule G (Claim and Payment Procedures), Paragraph G.3 c), of the Agreement.]**
3. The Eligible Costs and other costs set out in the Claim Statement have been paid to _____ **[Insert legal name of Concessionaire or Third Party]** during the period commencing _____ and ending _____.
4. The payment will only and entirely be used for the Project and in accordance with the Agreement.

The Recipient hereby requests a payment in the amount of \$ _____ on account of the Ministry's contribution towards the Eligible Costs of the Project Implementation pursuant to Paragraph 3.1 a) of the Agreement.

Declared at _____ (city) in the Province of Ontario this _____ day of _____, 20____.

(Signatures)

Name:

Title:

Witness Name:

Title:

SCHEDULE G.2

CERTIFICATE FROM INDEPENDENT ENGINEER

Ministry of Transportation File No.: _____

TO: Ministry of Transportation
Transit Infrastructure Policy Office
Suite 3000, 30th Floor
777 Bay Street
Toronto, ON M7A 2J8

Attention: Director

Telephone No.: (416) 585-7347
Facsimile No.: (416) 585-7343

FROM: **[Insert Address of the Independent Engineer]**

Attention: **[Insert name and title of Independent Engineer]**
Telephone No.: **[Insert telephone number of Independent Engineer]**
Facsimile No.: **[Insert facsimile number of Independent Engineer]**

RE: **Contribution Agreement for the City of Ottawa Light Rail Transit Project**

In the matter of the Contribution Agreement for the City of Ottawa Light Rail Transit Project entered into between Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation for the Province of Ontario, and the City of Ottawa (the "Recipient"), on _____, 2011 (the "Agreement").

I, _____ **[Insert name and title of the Independent Engineer]**, having made such inquiries as I have deemed necessary for this certificate, hereby certify that to the best of my knowledge, information and belief:

On and as of the date set out below:

1. in the case of a claim for Eligible Costs incurred and paid by the Recipient pursuant to a Concession Agreement, the _____ Milestone, as described in Schedule B (Project Description), Article B.3 (Project Milestones) of the Agreement:
 - a. has been completed; and
 - b. has not changed, unless such change has been approved, in advance and in writing by the Ministry; and
2. the costs claimed are Eligible Costs;
3. the work has been completed as per the standards contemplated in Section 13.16 (Compliance with Laws & Relevant Industry Standards) of the Agreement.

Declared at _____ (city) in the Province of Ontario this _____ day of _____, 20____.

(Signatures)

Name:

Title:

Witness Name:

Title:

**SCHEDULE G.3
SOLEMN DECLARATION OF SUBSTANTIAL COMPLETION**

Ministry of Transportation File No.: _____

TO: Ministry of Transportation
Transit Infrastructure Policy Office
Suite 3000, 30th Floor
777 Bay Street
Toronto, ON M7A 2J8

Attention: Director

Telephone No.: (416) 585-7347
Facsimile No.: (416) 585-7343

FROM: **[Insert Address of the Independent Engineer]**

Attention: **[Insert name and title of Independent Engineer]**
Telephone No.: **[Insert telephone number of Independent Engineer]**
Facsimile No.: **[Insert facsimile number of Independent Engineer]**

RE: **Contribution Agreement for the City of Ottawa Light Rail Transit Project**

In the matter of the Contribution Agreement for the City of Ottawa Light Rail Transit Project entered into between Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation for the Province of Ontario, and the City of Ottawa (Recipient), on _____, 2011 (the "Agreement").

I, _____, a professional engineer duly licensed in the province of Ontario and the Independent Engineer retained by the Recipient pursuant to the Agreement, having made such inquiries as I have deemed necessary for this declaration, do solemnly declare as follows:

3. I am the _____ (title, department, organization), and as such have knowledge of the matters set forth in this affidavit;
4. The work identified as Project _____ in the Agreement _____ (has / has not) reached Substantial Completion as defined in the Agreement, dated on the _____ day of _____ 20____ (the "Substantial Completion Date").
5. The value (dollar amount) of substantially completed work on the Project is _____ (dollars).
6. The work:
 - a. was carried out by _____ (the prime contractor), between _____ (start date) and _____ (completion date);
 - b. was supervised and inspected by qualified staff;
 - c. conforms with the plans, specifications and other documentation for the work;
 - d. conforms with applicable environmental legislation, and appropriate mitigation measures have been implemented; and
 - e. conforms with the requirements set out in Subsection 13.16 b) of the Agreement to comply with industry standards.

Declared at _____ (city), in the Province of Ontario this _____ day of _____, 20_____.

(Signatures)

Name:

Witness Name:

Title:

Title: