



**CONTRACT FOR ENTER DESCRIPTION**

<b>VIA Contract No.</b>	
<b>Other Party</b>	
<b>VIA Contract Administrator</b>	
<b>VIA Department</b>	

## CONTRACT FOR MAJOR CONSTRUCTION WORK

BETWEEN: **VIA RAIL CANADA INC.**  
[INSERT VIA'S ADDRESS]

(hereinafter “**VIA**”)

AND: [INSERT THE COMPANY'S NAME]  
[INSERT CONTRACTOR'S ADDRESS]

(hereinafter “**Contractor**”)

**WHEREAS** on [INSERT THE DATE], VIA has issued the Invitation to Tender bearing number [INSERT THE NUMBER] entitled “[INSERT THE TITLE] ” (the “**Invitation to Tender**”), a copy of which is attached as Appendix “**A**”; and

**WHEREAS** on [INSERT THE DATE], the Contractor has submitted a tender in answer to the Invitation to Tender, which **VIA** has selected (the “**Contractor's Tender**”), a copy of which is attached as Appendix “**B**”.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. PREAMBLE AND DEFINITIONS

1.1 The preamble forms an integral part of this Contract.

1.2 Unless the context requires otherwise, the following terms and expressions have the meaning mentioned below:

1.2.1 “**Attorney Fees**” includes without limitation, attorneys’ costs and fees, of whatever nature, reasonably incurred in the context of:

- (i) a judicial action (judicial and extra judicial costs and fees); and / or
- (ii) a dispute arising from an enforcement or interpretation of this Contract or any other circumstances directly or indirectly related to the performance or non-performance of this Contract.

1.2.2 “**Changes in the Work**” includes additions, deletions, or other revisions to the Work within the general scope of the Contract as approved by the Project Manager, in accordance with Section 2.3.1 of the Contract.

1.2.3 “**Claims**” includes all claims, costs, charges, losses, liabilities, damages, demands, legal actions, Attorney Fees and expenses of whatever nature, source and kind in any manner.

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- 1.2.4 “**Contract**” means the present stipulated price contract for major construction work, which represents the entire agreement between VIA and the Contractor.
- 1.2.5 “**Contract Documents**” includes the Contract between VIA and the Contractor, the General Terms and Conditions, Supplementary Conditions if any, General Safety Rules, specifications, drawings, riders, amendments and such other documents relevant to the Contract.
- 1.2.6 “**Contract Price**” means the price for the cost of all Work in accordance with Section 4 of the Contract.
- 1.2.7 “**Contract Time**” means the time to complete the Work of the Contract within the allotted time in accordance with the Contract Documents.
- 1.2.8 “**Contractor and its Representatives**” includes, collectively and individually, the Contractor, its directors, officers, shareholders, employees, mandataries, agents, servants, representatives, Subcontractors, consultants and those for whom the Contractor is in law responsible.
- 1.2.9 “**Extrinsic Elements**” shall include any document or information, whether written or oral, communicated between the parties or not, expressly or tacitly, regardless of the nature of the medium, with the exception of information and documents specifically mentioned in this Contract. For example, the term Extrinsic Elements shall include any discussion, talk, negotiation, offer, proposal, electronic recording, electronic mail, correspondence, letter, memorandum, statement, promise, commitment, understanding, agreement, preliminary document, letter of intent, draft contract, preliminary contract, invitation to tender, tender and other contract previously entered into by the parties with regard to the subject matter of this Contract.
- 1.2.10 “**Other Contractor**” means a person, firm or corporation other than the Contractor or any Subcontractor having indirectly or directly contracted with VIA a distinct contract for performing work other than the Work.
- 1.2.11 “**Place of the Work**”: means the designated site or location of the Project of which the Work may be the whole or a part.
- 1.2.12 “**Products**” includes material, machinery, equipment and fixtures forming the Work but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work and normally referred to as construction machinery and equipment.
- 1.2.13 “**Project**” means the total construction contemplated of which the Work may be the whole or a part.

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- 1.2.14 “**Project Manager**” means the person, firm or corporation appointed and identified as such by VIA from time to time.
- 1.2.15 “**Subcontractors**” means a person, firm or corporation having directly contracted a contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked.
- 1.2.16 “**Substantial Performance of the Work**” is as defined in the security legislation applicable to the Place of the Work, and if such legislation is not in force or does not contain such definition, Substantial Performance of the Work shall have been reached when the Work is ready for use or is being used for the purpose intended and is so certified by the Project Manager.
- 1.2.17 “**Total Performance of the Work**” means when the entire Work, except items arising from the provisions of Section 11.2 of the Contract, has been performed to the requirements of the Contract Documents and is so certified by the Project Manager.
- 1.2.18 “**VIA and its Representatives**” shall include collectively and individually VIA, its directors, officers, shareholders, employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom VIA is in law responsible.
- 1.2.19 “**Work**” means the total construction and related services required by the Contract Documents and in particular in Section 2 of the Contract.

## 2. **THE WORK**

### 2.1 **Scope of Work**

- 2.1.1 The Contractor shall in accordance with the terms and conditions of the Contract, perform all the work described in the attached Appendix “C” entitled “**Scope of Work and Special Provisions**”, required hereunder and which encompasses: [INSERT DESCRIPTION OF THE LOCATION] (hereafter the “**Work**”).

### 2.2 **Interpretation**

- 2.2.1 In the event of conflicts between Contract Documents the following shall apply:
- 2.2.1.1. documents of later date shall govern;
- 2.2.1.2. figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing,

- 2.2.1.3. drawings of larger scale shall govern over those of smaller scale of the same date;
- 2.2.1.4. specifications shall govern over drawings;
- 2.2.1.5. the Contract shall govern over Appendices “A”, “B”, “C”, “D”, “E” and “F”;
- 2.2.1.6. Appendix “C” shall govern over Appendices “A”, “B”, “D”, “E” and “F”;
- 2.2.1.7. Appendix “E” shall govern over Appendices “A”, “B”, “D” and “F”;
- 2.2.1.8. Appendix “D” shall govern over Appendices “A”, “B” and “F”;
- 2.2.1.9. Appendix “A” shall govern over Appendices “B” and “F”; and
- 2.2.1.10. Appendix “F” shall govern over Appendix “B”.

2.2.2 Without limiting in any way the scope of the work to be performed under the Contract, the Contractor expressly acknowledges all the stipulations, terms and conditions of the attached Appendix “A” entitled “**Invitation to Tender**”, of Appendix “B” entitled “**Contractor’s tender**”, Appendix “C” entitled “**Scope of Work and Special Provision**”, Appendix “D” entitled “**General Terms and Conditions**”, Appendix “E” entitled “**Supplementary Conditions**”, Appendix “F” entitled “**Change Order Form**”. These Appendices “A”, “B”, “C”, “D”, “E” and “F” shall form an integral part of the Contract as fully and effectively as if the same were set forth herein at length.

2.2.3 Without limiting in any way the scope of the work to be performed under the Contract, the Contractor expressly acknowledges all the stipulations, terms and conditions of VIA’s Code of Ethics, the “**Contractors Safety Guidelines**”, the “**Environmental Guidelines**”, the “**Hot Works**”, the “**Alcohol and drug Policy**” and the “**Policy for Preventing the Solicitation and Acceptance of Privileges and Gifts**” which are available at <http://www.viarail.ca/en/about-via-rail/buying-and-selling/policies-and-guidelines>. These Policies shall form an integral part of the Contract as fully and effectively as if the same were set forth herein at length.

## 2.3 Modifications

### 2.3.1 CHANGES IN THE WORK

2.3.1.1. Except as provided in Section 2.3.2 of the Contract:

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2.3.1.1.1. VIA, through the Project Manager without invalidating the Contract, may make Changes in the Work with the Contract Price and Contract Time being adjusted accordingly by Change Order, a copy of the “**Change Order Form**” is attached as Appendix “**F**”; and

2.3.1.1.2. No Changes in the Work shall be valid without a written Change Order Form signed by the parties and no claim for a change in the Contract Price or change in the Contract Time shall be valid unless so ordered and at the same time valued or agreed to be valued as provided in Section 2.3.2 of the Contract.

## 2.3.2 VALUATION AND CERTIFICATION OF CHANGES IN THE WORK

2.3.2.1. VIA shall determine which of the following methods will be used to determine the price of any modification:

2.3.2.1.1. Estimate and acceptance of a lump sum;

2.3.2.1.2. Unit prices set out in the Contract or subsequently agreed upon;

2.3.2.1.3. Cost plus a fixed or percentage fee.

2.3.2.2. When a Change in the Work is proposed or required, the Contractor shall present to the Project Manager for approval its claim for a change in the Contract Price and change in Contract Time with appropriate documentation in a form acceptable to the Project Manager. The Project Manager will satisfy itself as to the correctness of such claim, and when approved by VIA, a change order shall be issued to the Contractor amending the Contract Price and Contract Time as appropriate. The value of work performed in the change shall be included for payment with the regular certificates for payment.

2.3.2.3. In the case of Changes in the Work to be paid for under methods of Sections 2.3.2.1.2 and 2.3.2.1.3 of the Contract, the Contractor shall keep accurate records, as agreed upon, of quantities or costs and present an account of the cost of the Change in the Work, together with vouchers where applicable.

## 2.4 Conformity

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- 2.4.1 While carrying out the Work, the Contractor is bound to act in the best interests of VIA, with the highest degree of prudence and diligence, in accordance with standard business practices and rules of art.
- 2.4.2 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction safety legislation and in conformity with provisions of the Contract.
- 2.4.3 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure in conformity with the Contract Documents. The Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures and for co-ordinating the various parts of the Work under the Contract.

## 2.5 Inspection of Work

- 2.5.1 VIA and the Project Manager or their authorized mandataries or representatives shall at all reasonable times have access to the Work. If parts of the Work are in preparation at locations other than the Place of the Work, VIA and the Project Manager or their authorized mandataries or representatives shall be given access to such Work whenever it is in progress. The Contractor shall provide proper facilities for such access and for inspection.
- 2.5.2 If work is designated for special tests, inspections or approvals in the Contract Documents, or by the Project Manager instructions, or the laws or ordinances of the Place of the Work, the Contractor shall give the Project Manager timely notice requesting inspection. Inspection by the Project Manager shall be made promptly. The Contractor shall arrange for inspections by other authorities and shall give the Project Manager timely notice of the date and time.
- 2.5.3 If the Contractor covers or permits Work that has been designated for special tests, inspections or approvals to be covered before such special tests, inspections or approvals are made, given or completed, then the Contractor shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed and make good such Work at its own expense.
- 2.5.4 The Project Manager may order any part or parts of the Work to be specially examined should the Project Manager believe that such Work is not in conformity with the requirements of the Contract Documents. If, upon examination such Work is found not in conformity with the requirements of the Contract Documents, the Contractor shall correct such work and pay the cost of examination and correction. If such work be found in conformity with the requirements of the Contract Documents, VIA shall pay the cost of examination and replacement.

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2.5.5 The Contractor shall furnish promptly to the Project Manager two (2) copies of certificates and inspection reports relating to the Work.

2.5.6 Such inspection by VIA shall in no way relieve the Contractor from its obligations under the Contract.

## 2.6 Rejected Work

2.6.1 Any defective work, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the Project Manager as failing to conform to the Contract Documents and to standard business practices and rules of art shall be removed promptly from the Place of the Work by the Contractor and replaced or re-executed promptly in conformity with the Contract Documents and with standard business practices and rules of art at the Contractor's expense.

2.6.2 Such work found to be deficient or any materials and supplies found to be unacceptable to VIA, in addition to any other breach, shall be rectified by the Contractor within the prescribed period mentioned in VIA's notice to this effect, without additional cost to VIA. If the Contractor does not rectify and remove unacceptable materials or supplies within the time fixed by written notice, VIA may remove them and may store such materials or supplies, at the expense of the Contractor. If the Contractor does not pay the expense of such removal within five (5) days, thereafter, VIA may, upon ten (10) days written notice sell such materials or supplies at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

2.6.3 Other Contractors' work destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.

2.6.4 The Contractor shall promptly replace and re-execute its own Work in accordance with the Contract Documents.

2.6.5 If in the opinion of the Project Manager, the Contractor is not expedient to correct defective work or work not performed in conformity with the Contract Documents and with standard business practices and rules of art, VIA may deduct from the monies otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents, the amount of which will be determined in the first instance by the Project Manager.

## 3. TERM

3.1 The Contract shall start upon the last signature of the parties and shall end upon the Total Performance of the Work. The Work shall not start prior to signature of the Contract by all

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parties.

- 3.2 Notwithstanding the foregoing, the Work shall be completed by no later than [INSERT THE DATE], unless otherwise adjusted through a Change Order in accordance with Section 2.3.1 of this Contract.

Description Line Item	Price
TOTAL	

**4. CONTRACT PRICE**

- 4.1 The Contract Price is [INSERT THE AMOUNT IN LETTERS] dollars (\$[INSERT THE AMOUNT IN DIGIT NUMBERS]). VIA shall pay the Contract Price, in conformity with the terms of Section 5 of the Contract and upon verification, for the cost of all Work reasonably and properly performed by the Contractor described in Section 2 of the Contract.
- 4.2 The Contract Price shall be subject to adjustments as may be required in accordance with the provisions of the Contract.
- 4.3 The amount of the Contract Price shall exclude, in conformity with Section 6 of the Contract, the required taxes and the Contractor agrees to pay all those required taxes and/or obtain all tax exemptions.
- 4.4 The amount of the Contract Price shall exclude all royalties and patent license fees required for the performance of the Contract in accordance with the provision of the Contract Documents.
- 4.5 The Contract Price shall include cash allowances and contingency allowance, in accordance with the Contract Documents. The Contract Price, and not the cash allowances, shall include the Contractor's overhead and profit in connection with such allowances. The Contract Price shall be adjusted by written order to provide for any excess or deficit to each cash allowance and/or any excess or deficit in the contingency allowance.

**5. PAYMENT**

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- 5.1 Subject to a holdback of ten percent (10%) and to the satisfactory performance of the Work and in accordance with the terms and conditions of the Contract, VIA shall make interim payments to the Contractor on account of the Contract Price. The amounts of such payments shall be as certified by VIA's representative and guided by the component costs identified in the Contractor's Tender.
- 5.2 Upon Total Performance of the Work as certified by VIA's representative, VIA shall pay to the Contractor the above-mentioned holdback, in the manner set forth in the General Terms and Conditions.
- 5.3 Applications for release of holdback monies following Substantial Performance of the Work and the application for final payments shall be made at the time and in the manner set forth in the General Terms and Conditions.
- 5.4 All invoices rendered under the terms of the Contract must be sent to the following address and clearly identify this Contract number and details in support of the application for payment:

VIA: **VIA Rail Canada Inc.**  
 [INSERT VIA'S ADDRESS]  
 [INSERT VIA'S TELEPHONE NUMBER]  
 Contract No.: [INSERT VIA'S CONTRACT NUMBER]  
Attention: [INSERT VIA'S CONTRACT ADMINISTRATOR'S  
 NAME],  
 [INSERT HIS / HER TITLE]

## **6. TAXES AND DUTIES**

- 6.1 The Contractor shall pay all actual and future taxes as follows: federal and provincial sales taxes (notably the Goods and Services Tax (GST), the Provincial Sales Tax (PST) and the Harmonized Sales Tax (HST)) and municipal sales and excise taxes and custom duties assessed in connection with the Work. Any increase or decrease in costs to the Contract due to changes in such taxes and duties, after the closing date for tenders, shall increase or decrease the Contract price accordingly.
- 6.2 Depending on whether federal and provincial government laws or instructions shall prescribe, certain sales or excise taxes which should be paid upon the purchase of goods become repayable owing to the fact that such goods are used for purposes which make them free of taxes. Such tax reimbursements by the concerned governments belong legally to VIA. The Contractor together with Subcontractors cannot benefit therefrom. The Contractor shall obtain from the relevant authority reimbursements or tax exemptions which VIA can be entitled to and the Contractor shall immediately remit those amounts to VIA upon receipt.
- 6.3 The Project Manager shall clearly identify, in the tender, parts of the Project considered as production material and as such, subject to the sales tax payment exemption. In such case, the Contractor shall obtain goods and services necessary for the performance of the Work without paying taxes otherwise required. In the event that nothing has been specified to that

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effect in the tender, the Contractor shall pay the required taxes and provide the detailed breakdown of the amounts paid. Such breakdown shall be provided in a manner specified by VIA that would allow VIA to claim sales taxes. In order that VIA shall benefit from these tax reimbursements, if any, the Contractor and its subcontractors shall provide all necessary vouchers to establish the reimbursement. With respect to imported goods, a certified copy of the certificate of clearance and a source certificate or any equivalent form shall also be given as voucher. The Contractor shall agree to sign a proxy appointing VIA as its representative for the purposes of recovering sales tax and for all tax claims prepared by VIA and any reimbursement that could be issued in the joint names of the Contractor and of VIA. Alternatively, VIA may ask the Contractor to make the claim for sales tax. In such case, the amounts collected as reimbursement shall be credited against the contractual amount.

## 7. **INTELLECTUAL PROPERTY**

### 7.1 Protection of Intellectual Property Rights

7.1.1 The Contractor acknowledges that VIA's intellectual property including trademarks and copyrighted work are valuable assets of VIA.

### 7.2 Originals, copies, blueprints, and other reproductions

7.2.1 All originals and all copies, blueprints and other reproductions of plans, drawings, designs, models, specifications, reports and other information in tangible form relating to the Work provided by the Project Manager or VIA are:

7.2.1.1. the exclusive property of VIA;

7.2.1.2. to be used by the Contractor and persons in employ or acting under the direction of the Contractor for the performance of the Work and not otherwise; and

7.2.1.3. not to be copied or revised in any manner without the prior written authorization of VIA.

7.2.2 Models furnished by the Contractor at VIA's expense are the property of VIA.

7.2.3 All such originals, copies, blueprints, and other reproductions of plans, drawings, designs, models, specifications, reports and other documentation in tangible form relating to the Work are to be delivered to the Project Manager or disposed of as directed by the Project Manager as soon as they respectively are no longer needed by the Contractor, or persons in they employ or acting under the instructions of the Contractor for the performance of the Work; provided that the Contractor shall be entitled to retain for its own use a set of specifications relating to the Work and copies produced in the course of the Work or other information in tangible form (not however including models) relating to the Work.

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7.2.4 In addition, the Contractor shall assign to VIA all rights, titles and interests it holds with respect to all created material as they are being progressively produced or developed. At VIA's request, the Contractor shall sign all necessary documents to protect VIA's rights in cases such as copyright assignment, copyright registration applications or renunciation to all moral rights.

### 7.3 Patent Fees

7.3.1 The Contractor shall pay the royalties and patent license fees required for the performance of the Contract.

### 7.4 Intellectual Property Indemnity

7.4.1 The Contractor and its Representatives shall fully indemnify and save harmless VIA and its Representatives and shall furthermore act as warrantors, take up VIA and its Representatives' defence and answer for all financial consequences including all Claims based upon or arising out of the Contractor and its Representatives' performance of the Contract which are attributable to an infringement or an alleged infringement of a patent or invention by the Contractor or anyone for whose acts the Contractor may be liable.

7.4.2 VIA shall save harmless the Contractor against Claims arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention in the performance of the Contract, the model, plan or design of which was supplied to the Contractor as part of the Contract Documents.

## **8. CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING**

8.1 The Contractor and its Representatives shall maintain confidential all information pertaining to VIA and the Contract acquired before, during and after the term of the Contract, and all reports, specifications, drawings and other documentation produced hereunder, and shall not disclose or use same for any purposes other than for the performance of the obligations of the Contract.

8.2 The Contractor shall not transfer VIA's proprietary information to any third party without the prior written approval from VIA.

8.3 The Contractor agrees to comply with all applicable federal and provincial laws relative to the protection of personal information with respect to the Contract. VIA reserves its right to visit the Contractor to evaluate and verify the Contractor's compliance with any applicable federal and provincial law relative to the protection of personal information.

8.4 The Contract and the information contained herein are confidential, subject to the provisions of the *Access to Information Act*, R.C.S. 1985, c. A-1 and the *Privacy Act*, R.C.S. 1985, c. P-21.

8.5 The provisions of Sections 8.1, 8.2, 8.3, and 8.4 shall survive the expiration or any or resiliation of the Contract.

## **9. RELATIONSHIP BETWEEN THE PARTIES**

9.1 The Contract shall not be construed to empower the Contractor with any authority of any nature whatsoever to engage VIA's liability, create any obligation of any kind or undertake any contractual ties on behalf of VIA, with another person or entity, except if VIA has expressly authorized in writing and in advance any such specific transaction.

9.2 The Contract shall bind the Contractor and VIA only. It shall not, in any case, be interpreted to constitute an employment contract between VIA and the Contractor.

9.3 The Contractor shall make all necessary arrangements and make all required source deductions, including but not limited to, income tax, Québec/Canada pension plan, employment insurance, hospital and medical insurance and workers' compensation insurance. The Contractor shall also make all necessary arrangements for the fringe benefits of its directors, officers, employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom the Contractor is in law responsible. The Contractor shall at VIA's request provide all supporting documentation demonstrating its compliance with its obligations.

## **10. LIABILITY AND INDEMNIFICATION**

10.1 The Contractor and its Representatives shall fully indemnify and save harmless VIA and its Representatives and the Project Manager and its mandataries and employees and shall furthermore act as warrantors and take up VIA and its Representatives' defence to answer for all financial consequences for all Claims, including those of third parties, of whatever source, nature and kind in any manner, howsoever arising, including injury and death, with respect to the performance or non-performance of the Contract's obligations, the performance of the Work or provision of services by the Contractor and its Representatives.

10.2 The Contractor and its Representatives shall waive any Claims they may have against VIA and its Representatives arising out of an accident or otherwise, resulting from VIA and its Representatives' operations, ownership, use or possession of any property, or any person under VIA and its Representative' control. The Contractor agrees to obtain a waiver of liability from its Representatives. Such waiver and indemnity shall apply notwithstanding the failure by the Contractor to obtain any written waivers.

10.3 Notwithstanding stipulations and terms of Section 13 of the Contract, in case of conflict, this Section 10 shall apply.

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## 11. INSURANCE AND WARRANTY

### 11.1 Insurance

By VIA

11.1.1 Without restricting the generality of Section 10 of the Contract, VIA shall obtain and keep in force during the term of the Contract, the following insurance coverage:

11.1.1.1. ***A Combined Commercial General Liability insurance ( Wrap-up)***, on an “Occurrence” form, covering the liability of VIA, the Contractor, subcontractors and their Representatives, as their interest may appear, for bodily injury, including death, and property damage for an amount of twenty five million dollars (\$25,000,000.00) combined limit per occurrence with a global policy aggregate of fifty million dollars (\$50,000,000.00). The retention is one hundred thousand twenty five million dollars (\$125,000\$) per occurrence. The insurance shall provide for:

11.1.1.1.1. cross liability;

11.1.1.1.2. contract liability; and

11.1.1.1.3. liability for products and work completed for a duration of twenty four months (24) months from the date of acceptance of the work by VIA.

11.1.1.2. ***All Risk property Insurance on a “construction all risks form”*** covering VIA, the Contractor and subcontractors, with a twenty five thousand dollars (\$25,000.00) retention. The policy will be provided from the date of commencement of Work until the end of Work.

By the Contractor

11.1.1.3. ***All Risk Contractors' Equipment Insurance*** covering construction machinery and equipment used by the Contractor and its Representatives for the performance of the Work. This policy shall include a clause or endorsement in which the insurer waives all rights of subrogation against VIA and its Representatives.

11.1.1.4. ***Automobile Liability Insurance*** covering the liability of the Contractor and its Representatives for bodily injury, including death, and property damage caused by or attributable to the use or operation of vehicles owned or leased by the Contractor and

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its Representatives, for a minimum limit of five million dollars (\$5,000,000.00) per occurrence.

- 11.1.1.5. **General Liability Insurance** including Tenants legal Liability for a limit of no less than five million dollars (\$5,000,000.00).
- 11.1.2 Each Contractor and sub-contractor remain fully responsible for the payment of the deductible on each policy resulting from their negligence.
- 11.1.3 Prior to the commencement of the Contract, and in respect of clauses 11.1.1.3 to 11.1.1.5, the Contractor shall provide VIA certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Contractor's insurers and evidencing all insurance requirements mentioned above including, if applicable, that work on the tracks or near tracks IS NOT excluded under the commercial liability policy. Notwithstanding the above, VIA reserves the right to ask for a certified copy of one or more insurance policy mentioned under Section 11.1 and the Contractor hereby agree to provide such copy within thirty (30) days of VIA's request.
- 11.1.4 The insurance policies provided by the contractor and mentioned in Section 11.1 shall include endorsements whereby VIA shall be provided with a sixty (60) days advance written notice in case of important change or cancellation of the insurance policy.
- 11.1.5 New insurance certificates evidencing renewal of the required insurance policies shall be submitted to VIA within thirty (30) days after renewal.
- 11.1.6 If the Contractor fails to obtain or maintain in force the insurance policies provided for under this Contract, VIA has the right to obtain such policies of its own initiative and provide proof to the Contractor, who shall then pay the associate cost upon VIA's request, or agree to let VIA deduct these cost from any amount owing.
- 11.1.7 The parties agree that VIA's silence following:
- (a) the Contractor's failure to comply with Section 11.1 "Insurance" or any of its subsections, whether or not VIA is aware of such failure; or
  - (b) the Contractor's issuance of an insurance certificate or a policy that fails to comply with the requirements contained in this Contract,
- does not exonerate the Contractor from these failures, nor does it constitute a waiver of the Contractor's obligations by VIA.

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11.1.8 The acquisition and maintenance in force of the above insurance provided for in Section 11.1 of the Contract by the Contractor and its Representatives shall in no manner be construed as to restrict or waive the liabilities, responsibilities or obligations of the Contractor and its Representatives under the Contract.

11.1.9 With regard to this Contract, any failure by the Contractor to comply with the obligations provided for under Section 11.1 “Insurance”, or any of its subsections, shall be deemed to be a material and substantial breach of this Contract. In such circumstances, VIA may withhold all sums and payments owed to the Contractor, in addition to all rights stipulated by law or by this Contract, until such failure has been corrected by the Contractor.

## 11.2 Warranty

11.2.1 The Contractor shall be responsible for the proper performance of the Work only to the extent that the design and specifications permit such performance.

11.2.2 If, within twelve (12) months from the date of the Total Performance of the Work certificate the Work or any part thereof including Material supplied by VIA becomes broken or defective or fails due to any default by the Contractor in fulfilling the requirements of the Contract including improper material, workmanship, manufacture, fabrication, packaging, shipment or delivery and construction, then the Contractor upon notification in writing by VIA shall forthwith make good every such breakage, defect or failure without cost (including without limitation, transportation cost) to VIA. Furthermore, the warranty shall be subject to the following provisions:

11.2.2.1. VIA reserves the right to have such repair or replacement work done as determined by VIA.

11.2.2.2. Any part of the Work made good by the Contractor under this Section 11.2 shall be subject to the provisions of this Section 11.2, including twelve (12) months warranty which shall extend from the date when the same was made good, however, such renewal of warranty on any part or parts of the Work shall not have the effect of reducing the original warranty period of Section 11.2.1.

11.2.2.3. Should the Contractor fail to commence the necessary work to repair or replace within fifteen (15) working days after receiving notice of work to be done and to use its best efforts to complete the same within the shortest possible time, then VIA may proceed to do so and to place the Work in good operating condition in conformity with the Contract, and the Contractor shall be liable for all costs, charges and expenses incurred by VIA in connection therewith and shall pay to VIA an amount equal to such costs, charges and expenses upon receipt of invoices from VIA.

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- 11.2.3 The above warranties are not intended as a limitation but are in addition to all other express warranties set forth in the Contract and such other warranties under the law, custom and usage of trade.

## 12. PROTECTION OF WORK AND PROPERTY

- 12.1 The Contractor shall protect the Work and VIA's property and property adjacent to the Place of the Work from damage. In accordance with Contract Documents, the Contractor shall be responsible for damage which may arise as the result of its operations under the Contract except damage which occurs as the result of:

12.1.1 errors in the Contract Documents;

12.1.2 intentional or gross fault of VIA.

- 12.2 Should the Contractor in the performance of the Contract damage the Work, VIA's property or property adjacent to the Place of the Work, the Contractor shall be responsible for the making good of such damage at its expense.

- 12.3 Should damage occur to the Work or VIA's property for which the Contractor is not responsible, as provided in Section 12.1 of the Contract, the Contractor shall make good such damage to the work and if VIA so directs to VIA's property and the Contract Price and Contract Time shall be adjusted in conformity with Section 2.3.1 of the Contract, and the value of the changes shall be determined in conformity with Section 2.3.2 of the Contract.

- 12.4 The Contractor shall provide the services in such a manner as it will not occasion any injury, loss or damage to any person or property whatsoever, including that of VIA, or cause any interference with building users, railway operations or facilities in or about VIA's premises. In particular, the Contractor shall take all necessary measures with respect to safety, fire protection and environment.

- 12.5 In the event of an accidental spill or discharge of any substance that is infectious, toxic or harmful to the environment (hereafter the "**Contamination**"), caused by the Contractor and its Representatives while providing services under the Contract, the Contractor shall immediately advise VIA and commence as soon as possible any necessary cleanup, decontamination, removal, disposal and/or remedial action, and must comply with, where applicable, any directives contained in environmental laws issued with respect to the Contamination, entirely at its own expense and to VIA's satisfaction. In addition, the Contractor shall assume the costs of any emergency procedure required and any environmental audit report requested by VIA before and/or after the decontamination.

## 13. BONDS

- 13.1 The Contractor shall promptly provide and pay for:

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- 13.1.1 a **performance bond** in the amount of fifty percent (50 %) of the initial Contract Price covering the performance of the Contract including the requirements of Section 11.2 of the Contract, and
- 13.1.2 a **labor and material payment bond** in the amount of a fifty percent (50 %) of the initial Contract Price.
- 13.2 If VIA requires augmentation of the Contract Price, VIA shall consequently consider augmentation of the above bonds amounts of this Section 13.1 of the Contract provided however that such bonds amounts shall not be increased without the prior written consent of VIA. For greater certainty, if the bonds amounts are increased without the prior written consent of VIA, VIA shall not pay any costs related to such increase.

#### 14. **RESILIATION**

- 14.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency or if a receiver is appointed because of its insolvency, VIA may, without prejudice to any other right or remedy it may have, by giving the Contractor or receiver or trustee in bankruptcy written notice, resiliate the Contract.
- 14.2 If the Contractor should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree and if the Project Manager has given a written statement to VIA and the Contractor that sufficient and reasonable cause exists, VIA may notify the Contractor in writing that the Contractor is in default of its contractual obligations and instruct it to correct the default in the five (5) working days immediately following the receipt of such notice.
- 14.3 If the correction of the default cannot be completed in five (5) working days specified, the Contractor shall be in compliance with VIA's instructions if it:
- 14.3.1 commences the correction of the default within the specified time, and
- 14.3.2 provides VIA with an acceptable schedule for such correction, and
- 14.3.3 completes the correction in conformity with such schedule.
- 14.4 If the Contractor fails to correct the default in the time specified or subsequently agreed upon, VIA, without prejudice to any other right or action it may have, may:
- 14.4.1 correct such default and deduct the cost thereof from any payment then or thereafter due the Contractor provided the Project Manager has certified such cost to VIA and the Contractor; or
- 14.4.2 resiliate the Contractor's right to continue with the Work in whole or in part or resiliate the Contract.

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- 14.5 If VIA resiliates the Contractor's right to continue with the Work under the conditions set out in Section 14 of the Contract, VIA shall:
- 14.5.1 be entitled to take possession of the premises and products and utilize the construction machinery and equipment the whole subject to the rights of third parties, and finish the Work by whatever method the Contractor may consider expedient but without undue delay or expense; and
  - 14.5.2 withhold further payments to the Contractor until the Work is finished; and
  - 14.5.3 upon Total Performance of the Work, charge the Contractor the amount by which the full cost of finishing the Work as certified by the Project Manager including a reasonable allowance as determined by the Project Manager to cover the cost of corrections to work performed by the Contractor that may be required under Section 11.2 of the Contract, exceeds the unpaid balance of the Contract Price; however, if such costs are inferior as referred by the modalities hereunder, VIA shall pay the Contractor in the manner set forth:
    - 14.5.3.1. if finishing the Work is less than the unpaid balance of the Contract Price, it shall pay the Contractor the difference, and on expiry of the warranty period, charge the Contractor the amount by which the cost of corrections to its work under Section 11.2 of the Contract exceeds the allowance provided for such corrections; or
    - 14.5.3.2. if the cost of such corrections is less than the allowance, VIA shall pay the Contractor the difference.
- 14.6 If a performance bond has been provided by the Contractor the provisions of this Section 14 shall be exercised in conformity with the conditions of such performance bond.
- 14.7 The Contractor's obligation under the Contract as to quality, correction and warranty of the work performed by it up to the time of resiliation shall continue in force after such resiliation.
- 14.8 The Project Manager may, without restriction, by notice in writing to the Contractor, delay or suspend at any time the performance of all or any portion of the Work to be performed under the Contract. The Contractor shall comply with any and all requirements and instructions contained in such notice. The Contractor shall consequently comply with the following :
- 14.8.1 As full compensation, the Contractor will be reimbursed for all costs reasonably incurred, without duplication of an item, to the extent that such costs directly result from such suspension of work;
  - 14.8.2 VIA shall not be held liable for any damages or the loss of anticipated profits on account of suspension of Work as herein provided; and
  - 14.8.3 Upon receipt of notice to resume suspended Work the Contractor shall expeditiously resume Work on the suspended work to the extent required in the

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notice. Within ten (10) days after receipt of notice to resume Work, the Contractor shall submit for approval a revised CPM Network. No such delay or suspension thereof shall invalidate or void the Contract, or any part thereof, of any security or obligation for the performance thereof.

- 14.9 Notwithstanding anything contained in the Contract, VIA may, by giving notice to the Contractor, resiliate the Contract as regards all or any part or parts of the Work not completed by this time, without reason nor justification. Upon such notice being given, the Contractor shall cease work (including the processing of materials for the fulfillment of the Contract) in conformity with and to the extent specified in the notice, but shall proceed with all reasonable speed to complete such part or parts (if any) of the Work as are by terms of such notice to be completed. VIA may at any time or from time to time give one or more additional notices with respect to any or all parts of the Work which remain to be completed after the giving of any previous notice(s).
- 14.10 All Work completed by the Contractor under or pursuant to the provisions of the Contract, before or after the giving of any notice, subject to acceptance by VIA in conformity with the terms and conditions of the Contract, shall be paid for on the basis provided in the Contract and the Contractor shall be entitled to be reimbursed for the actual cost incurred to complete the Work under or pursuant to the provisions of the Contract and/or in any notice given pursuant thereto plus a fair and reasonable profit in respect of Work done thereon. For such reimbursement, the Contract shall comply with following:
- 14.10.1 In the procuring of Products required for the performance of the Contract and in the subletting of any work hereunder, the Contractor shall, so far as practicable, procure or sublet on terms that will enable the Contractor to resiliate any contract entered into by the Contractor upon the same conditions and terms as those provided in this Section in respect of the resiliation of the Contract by VIA and the giving of a notice or notices as aforesaid and upon the same conditions and terms in respect of reimbursement as those provided for in this Section. In the event of the resiliation of the Contract as herein provided, as regards all or any part of the Work the Contractor shall co-operate with VIA and do everything reasonable within its power at all times, to minimize and reduce the amount of VIA's obligations under the provisions of this Section.
- 14.10.2 Upon reimbursement being made to the Contractor as herein provided at Section 14.10 of the Contract, title to products and/or Work in progress, in respect of which such reimbursement is made shall pass to and rest in VIA (the Contractor hereby agreeing to execute and deliver all requisite instruments by way of further assurance) and such product and/or Work in progress shall be delivered to the order of VIA , but the material thus taken over will in no case be in excess of what would have been required for performance of the Contract in full if no further notice had been given under the provisions hereof.
- 14.11 VIA shall not be liable for any Claims, by reason of, or directly or indirectly arising out of any action taken or notice given by VIA pursuant to the provisions of this Section, except as, and to the extent in this Section expressly provided. The Contractor shall then produce a final

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report containing the said amount in details within [INSERT THE NUMBER OF DAYS IN LETTERS] ([INSERT THE NUMBER OF DAYS IN DIGIT NUMBERS]) days following the said date of resiliation. The final report is deemed to be an invoice as defined in Section 5.4 of the Contract.

- 14.12 The right of resiliation and of giving notice herein before provided for, shall be in addition to and not in substitution for any other right possessed by VIA.
- 14.13 The Contractor cannot resiliate the Contract prior to its expiry without a serious reason. In the event of resiliation of the Contract by the Contractor, the Contractor acknowledges and agrees that it is liable for any damage caused to VIA as a result of the resiliation and shall do all that is immediately necessary to prevent any loss.

## 15. **OTHER STIPULATIONS**

### 15.1 Rights and Actions

- 15.1.1 The duties and obligations imposed by the Contract Documents and the rights and actions available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and actions otherwise imposed or available by law.
- 15.1.2 A renunciation by either party to exercise any right or action of which the party can avail itself in case of any violation or failure to comply with any obligation of the Contract shall not be construed as, nor constitute, a renunciation to claim performance of said obligation or a renunciation to exercise any subsequent right or action in case for any other violation or of failure to comply with any other obligation of the Contract.
- 15.1.3 Should any disputes arise between the Contractor and its Representatives in connection with the Contract, they shall be settled directly between themselves, and the Contractor shall hold harmless and indemnify VIA from any Claim in this connection.

### 15.2 Successors and Permitted Assigns

The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assigns of VIA and the Contractor respectively.

### 15.3 Notices

- 15.3.1 The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction which are or become in force during the performance of the Work and which relate to the Work, to the preservation of the public health, and to construction safety.

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15.3.2 Any notices to be given with respect to the Contract shall be deemed to have been, if given by hand delivery, recognized courier company, registered or certified mail Notice sent by registered mail shall be deemed to have been received by the addressee four (4) days after the date of being mailed to the following address:

VIA: **VIA Rail Canada Inc.**  
 [INSERT VIA'S ADDRESS]  
 [INSERT VIA'S TELEPHONE NUMBER]  
 Contract No.: [INSERT VIA'S CONTRACT NUMBER]  
Attention: [INSERT VIA'S CONTRACT ADMINISTRATOR'S  
 NAME],  
 [INSERT HIS / HER TITLE]

Contractor: [INSERT THE COMPANY'S NAME]  
 [INSERT THE COMPANY'S ADDRESS]  
 [INSERT THE COMPANY'S TELEPHONE NUMBER]  
 Contract No.: [INSERT VIA'S COMPANY'S NUMBER]  
Attention: [INSERT THE CONTRACTOR'S COMPANY'S  
 ADMINISTRATOR'S NAME],  
 [INSERT HIS / HER TITLE]

#### 15.4 Conflict of Interest

15.4.1 The Contractor must disclose to VIA any actual or potential conflict of interest. If such a conflict of interest does exist, VIA may, without restriction, resiliate the Contract.

15.4.2 The Contractor must disclose and declare the exact nature of any financial interest of which it is aware of that may have any VIA employee in the Contract. If such an interest exists or arises, VIA may, without restriction, suspend any work being performed under any ensuing contract until the matter is resolved to VIA's satisfaction.

15.4.3 If, during the term of the Contract, a Subcontractor is retained by the Contractor, and this gives rise to an actual or potential conflict of interest, then the subcontractor must so inform the Contractor and VIA. Upon VIA's request, the Contractor must take such steps as are necessary to remove such conflict of interests.

15.4.4 If VIA discovers that there has, at any time, been a breach of the provisions of this Section, VIA reserves the right to terminate the Contract.

15.4.5 For the purposes of this Section, « conflicts of interest » will be governed by the same principles as the ones stated in VIA's policy regarding this matter. Without limiting the generality of the foregoing, all persons :

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- 15.4.5.1. shall manage their own affairs so as to avoid any conflict of interest. This includes activities that could :
- 15.4.5.1.1. deprive the corporation of the time and attention necessary to perform one's duties adequately; and
- 15.4.5.1.2. create an obligation or distraction likely to affect one's judgement or capacity to act only in the interest of VIA.
- 15.4.5.2. must not participate in any decision relating to contracts in which they or any members of their immediate family may have an interest, without first having disclosed such interest to VIA, and having obtained prior written authorization
- 15.4.5.3. must exercise their authority on financial transactions without benefiting from them.

#### 15.5 No Assignment

The Contractor shall not assign the Contract in whole or in part, nor shall the Contractor subcontract its obligations without prior written approval by VIA. The Contractor shall not mortgage, hypothecate, encumber or convey title to any of the Products or to the Work. If during the progress of the Work, the Contractor allows any indebtedness to accrue which has become or may give rise to a claim, privilege, mortgage, hypothec, encumbrance, lien or right of retention upon the Products or the Work or any property of VIA, then the Contractor shall immediately, upon request of the Project Manager, pay such indebtedness and cause the said claim, privilege, mortgage, hypothec, encumbrance, lien or right of retention to be unconditionally discharged and, if the Contractor fails to do so, then notwithstanding anything else contained in the Contract, VIA may withhold any payment due to the Contractor until such indebtedness, claim, privilege, mortgage, hypothec, encumbrance, lien or right of retention is fully paid or apply the money so withheld toward the discharge thereof.

#### 15.6 Applicable Laws and Election of Domicile

The Contract shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein, without giving effect to any choice or conflict of law, rules and other provisions (whether in the Province of Québec or in any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Province of Québec. The parties shall elect domicile under the jurisdiction of the courts in the District of Montréal, Québec.

#### 15.7 Full and Entire Contract

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The parties acknowledge that this Contract faithfully constitutes the expression of their will and their common intention and is, therefore, the complete and entire agreement between the parties. It is understood that any Extrinsic Element does not represent the expression of the will of the parties nor their common intention and will not be used for the interpretation or application of this Contract (or both). Accordingly, the parties expressly agree not to adduce any Extrinsic Element as evidence in any dispute or litigation between the parties arising from or related to, notably, the interpretation or the application of this Contract (or both).

#### 15.8 Information To Provide

15.8.1 The Contractor acknowledges that VIA has provided useful information with respect to the Work to be rendered prior to the signature of the Contract.

15.8.2 The Contractor upon discovery of any errors, omissions discrepancies or conflicts in the Contract Documents, shall immediately so inform the Project Manager in writing. The Project Manager will promptly clarify such matters and so inform the Contractor. Any work affected by such discoveries, which is performed by the Contractor prior to authorization by the Project Manager, shall be at the Contractor's risk. In addition, the Contractor shall be liable for any Claims which VIA may incur, suffer or be put to as a result of the Contractor's failure to obtain such clarification.

15.8.3 The Contractor shall review the Contract Documents and shall immediately inform the Project Manager in writing of any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall be to the best of its knowledge, information and belief and in making such review the Contractor does not assume any responsibility to VIA for the accuracy of the review. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the Contract Documents, which the Contractor did not discover. If the Contractor does discover any error, inconsistency or omission in the Contract Documents the Contractor shall not proceed with the work affected until the Contractor has received corrected or missing information from the Project Manager.

#### 15.9 Severability

Should any section, paragraph or provision (including any part thereof) of the Contract be declared null, without effect or deemed unwritten, it is agreed that only that section, paragraph or other provision of the Contract shall be affected, and not the remaining sections, paragraphs or provisions, except in the case of the Contract's clear intention to the contrary.

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#### 15.10 Conjunctive and Cumulative Rights

All obligations mentioned in the Contract are conjunctive and cumulative. The obligations are neither alternative nor facultative. The waiver to exercise any right or action under the Contract shall not be construed as a waiver of any other right or any other action.

#### 15.11 Formal Notice

If a party must perform an obligation under the Contract in a time allowed, the mere lapse of time for performing it shall have the effect of constituting that party in default.

#### 15.12 Counterparts

Each counterpart of the Contract shall be deemed to be an original when duly initialed and signed by all the parties, it being understood, however, that all of these counterparts shall constitute one and the same contract.

#### 15.13 Titles

The titles used in the Contract are only used for purposes of reference and convenience. The titles aim to facilitate consultation and will in no case modify the signification or the scope neither of provisions that the titles designate nor of the object of the Contract.

#### 15.14 Gender and number

As the context may require, the masculine or the singular shall be considered to include the feminine and the plural and vice versa and in such cases, the rest of the sentence or the sentences which it all is must be construed as if the required grammatical changes and terminology were consequently applied to them.

#### 15.15 Amendment

In no case shall this Contract be amended without the written content of the parties.

#### 15.16 Survival of the obligations

All obligations and liabilities that, by their nature, shall survive the resolution, resiliation or expiration of this Contract shall remain in full force and effect.

#### 15.17 Security Clearance

At VIA's request, the Contractor and its Representatives shall provide and cause all persons assigned to this Contract to provide personal data for security clearance purposes. Such security clearance may include finger printing.

#### 15.18 Acknowledgement

15.18.1 The parties acknowledge that:

15.18.1.1. the Contract is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood the Contract. If needed, the parties received adequate explanations on the nature and scope of the clauses in the Contract from an advisor of their choice; and

15.18.1.2. the parties negotiated the Contract jointly and the Contract shall be construed neither against nor in favour of either party, but rather so that each clause is given the meaning derived from the Contract as a whole.

15.19 Language of the Contract

It is upon the express wish and agreement of the parties that the Contract is written in the English language. *Ce contrat est rédigé dans la langue anglaise selon la volonté et l'entente expresses des parties.*

IN WITNESS WHEREOF the parties hereto have executed the Contract under their respective corporate seals and by the hand of their proper officers thereunto duly authorized.

*[The signatures are found on the following pages.]*

We have understood, consented to and signed two original copies.

<b>VIA RAIL CANADA INC.</b>		<b>[INSERT THE COMPANY'S NAME]</b>	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Location:		Location:	
Date:		Date:	

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**APPENDIX "A"**  
**INVITATION TO TENDER**

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**APPENDIX “B”**  
**CONTRACTOR’S TENDER**

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**APPENDIX "C"**

**SCOPE OF WORK AND SPECIAL PROVISION**

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## APPENDIX “D”

### GENERAL TERMS AND CONDITIONS

#### 1.0 DEFINITIONS

The following definitions shall apply to these General Terms and Conditions and to all Contract Documents. All definitions of the Contract shall also apply to these General Terms and Conditions.

**Consultants:** is, as identified in the Contract Documents, the architect, the engineer or entity licensed to practice in the province or territory of the Place of the Work.

**Contract Work Schedule:** means the detailed scheduling of all phases of the Work with the framework of the Project, as described in Section 13.0 of these General Terms and Conditions.

**Day:** means calendar day.

**Owner:** means VIA or its authorised mandatary or representative as designated to the Contractor in writing from time to time.

**Place of the Work:** is the designated site or location of the Project of which the Work may be the whole or a part.

**Project Schedule:** means the detailed scheduling of the framework of the Project.

**Schedule of Values:** means the schedule of values described in Section 8.3 of the General Terms and Conditions.

#### 2.0 DOCUMENTS

2.1 The Contract Documents shall be signed in duplicate by VIA and the Contractor.

2.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

2.3 The intent of the Contract Documents is to include the labour, products and services necessary for the performance of the Work in conformity with these documents.

2.4 References to the masculine or the singular shall be considered to include the feminine and the plural as the context requires.

2.5 The Contractor shall keep one copy of current Contract Documents and shop drawings at the Place of the Work, in good order and available to the Project Manager and its representa-

tives. This requirement shall not be considered to include the executed set of Contract Documents.

### **3.0 ADDITIONAL INSTRUCTIONS**

- 3.1 During the progress of the Work the Project Manager will furnish to the Contractor such additional instructions to supplement the Contract Documents as may be necessary for the performance of the Work. Such instructions shall be consistent with the intent of the Contract Documents.
- 3.2 Additional instructions may be in the form of specifications, drawings, samples, models or other written instructions.
- 3.3 Additional instructions will be issued by the Project Manager with reasonable promptness and in accordance with a schedule agreed upon for such instructions.

### **4.0 PROJECT MANAGER**

- 4.1 The Project Manager will provide administration of the Contract as described in the Contract Documents.
- 4.2 The Project Manager will be VIA's representative during construction and until completion of any correction of defects under the provisions of Section 11.2 of the Contract, or until the issuance of the certificate of Total Performance of the Work, whichever is later. VIA's instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of VIA only to the extent provided in the Contract Documents, unless otherwise modified by written agreement in conformity with Section 4.13 of these General Terms and Conditions.
- 4.3 The Project Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs required for the Work in conformity with the applicable construction safety legislation, other regulations or general construction practice. However, the Project Manager will review the Contractor's methods, techniques, procedures, and staff qualifications, to be utilised in executing the Contract. The Project Manager will not be responsible for or have control or charge over the acts or omissions of the Contractor, its Subcontractors or their agents, employees or other persons performing any of the Work.
- 4.4 The Project Manager will visit the site at intervals appropriate to the progress of construction to familiarise himself with the progress and quality of the Work and to determine in general if the Work is proceeding in conformity with the Contract Documents. However, the Project Manager will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
- 4.5 Based on the Project Manager observations and its evaluation of the Contractor's applications for payment, the Project Manager will determine the amounts owing to the

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- Contractor under the Contract and will issue certificates for payment in such amounts, as provided in Section 9.0 of these General Terms and Conditions.
- 4.6 The Project Manager will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance hereunder by both parties to the Contract. Interpretations and decisions of the Project Manager shall be consistent with the intent of the Contract Documents and in making its decisions the Contractor will not show partiality to either party.
- 4.7 Claims disputes and other matters in question relating to the performance of the Work or the interpretation of the Contract Documents shall be referred initially to the Project Manager in writing for decision which the Contractor will give in writing within a reasonable time.
- 4.8 The Project Manager will have authority to reject work which in its opinion does not conform to the requirements of the Contract Documents. Whenever the Contractor considers it necessary or advisable the Contractor will have authority to require special inspection or testing of work whether or not such work is then fabricated, installed or completed. However, neither the Project Manager's authority to act nor any decision made by it either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Project Manager to the Contractor, its Subcontractors, or their agents, employees or other persons performing any of the Work.
- 4.9 The Project Manager will review and take appropriate action upon the Contractor's submittal such as shop drawings, product data, and samples in conformity with the requirements of the Contract Documents.
- 4.10 The Project Manager will prepare change orders in conformity with the requirements of Section 2.3.1 of the Contract.
- 4.11 The Project Manager will conduct inspections to determine the dates of Substantial Performance of the Work and Total Performance of the Work in conformity with the requirements of Section 9.0 of these General Terms and Conditions. The Contractor will receive and review written warranties and related documents required by the Contract and provided by the Contractor and will forward such warranties and documents to VIA for its acceptance.
- 4.12 If VIA and the Project Manager agree, the Project Manager will provide at the site one or more project representatives to assist the Project Manager in carrying out its responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to the Contractor.
- 4.13 The duties, responsibilities and limitations of authority of the Project Manager as set forth in the Contract Documents will not be modified or extended without the prior written consent of VIA.

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- 4.14 In the event of the resiliation or resolution of the employment of the Project Manager, VIA shall immediately appoint a Project Manager whose status under the Contract shall be that of the former Project Manager.
- 4.15 Nothing contained in the Contract Documents shall create any contractual relationship between the Project Manager and the Contractor and its Representatives, its suppliers or other persons performing any of the Work.
- 4.16 The Project Manager has authority to stop the progress of the Work whenever in its opinion such stoppage may be essential to ensure its proper execution.
- 4.17 In any emergency affecting or threatening the safety of life, or of the structure, or of adjoining property, the Project Manager has authority to stop the Work and to take whatever measure it judges appropriate.

## 5.0 FORCE MAJEURE

- 5.1 Neither party shall be considered in default in the performance of its obligations under the Contract to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure.
- 5.2 If the Contractor claims that the Contractor has been or will be delayed in the progress of the Work by an event of force majeure, the Contractor may, within seven (7) days of the commencement of any such event make a written request to the Project Manager for an extension of time within which to complete the Work or any portion of it, stating the reason for the delay. The amount of additional time required shall be submitted within seven (7) days after the termination of such event. If the Project Manager considers the claim to be valid, the Contractor may grant whatever extension of time the Contractor considers reasonable, without thereby prejudicing VIA's rights or in any manner affecting the validity of the Contract. No extension of time will be granted unless the Contractor makes written request within seven (7) days of the commencement of the event. The Contractor shall not have any right of action against VIA for loss or damage suffered by reason of such delay.
- 5.3 Both the Project Manager and the Contractor shall be prompt and diligent to remove all causes of interruption or delay in the Work, insofar as each is able to do so.
- 5.4 If the Products necessary for the performance of the Contract perishes by force majeure, the party that furnished it bears the loss.
- 5.5 In case of loss of the Work by force majeure, the Contractor shall pay its Subcontractors the price of their contract.

## 6.0 OTHER CONTRACTORS

- 6.1 VIA reserves the right to let separate contracts in connection with the Project of which the Work is a part, or do certain work by its own forces.

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- 6.2 When separate contracts are awarded for different parts of the Project, or work is performed by VIA's own forces, VIA shall:
- 6.2.1 provide for the co-ordination of the work of its own forces and of each separate contract with the Work of the Contract; and
  - 6.2.2 ensure that insurance coverage is provided to the same requirements as are called for in Section 11.1 of the Contract. Such insurance shall be coordinated with the insurance coverage of the Contractor as it affects the Work of the Contract.
- 6.3 The Contractor shall co-ordinate the Work of the Contract with the work of Other Contractors as specified or shown in the Contract Documents. If there is a change in the scope of the work required for the planning and performance of this co-ordination and connection, the changes shall be authorised in conformity with Section 2.3.1 of the Contract, and the value of the changes shall be determined in conformity with Section 2.3.2 of the Contract.
- 6.4 The Contractor shall report to the Project Manager any apparent deficiencies in other Contractor's work which would affect the Work of the Contract immediately as they come to its attention and shall confirm such report in writing. Failure by the Contractor to so report shall invalidate any claims against VIA by reason of the deficiencies of Other Contractors' Work except as to latent defects not reasonably noticeable at the time of the commencement of the Contractor's work.
- 6.5 VIA shall take all reasonable precautions to avoid labour disputes or other disputes on the Project arising from the Work of Other Contractors.
- 6.6 The attachment of Work by Other Contractors to Work of the Contractor and the modifications of the Contractor's Work by Other Contractors for the purpose of attachment and connection of their Work shall not negate the warranty provisions of the Contract. VIA shall, on request, furnish to any Subcontractor, wherever practicable, evidence of the amount certified on his account.

## 7.0 SUBCONTRACTORS

- 7.1 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract and to:
- 7.1.1 enter into contracts or written agreements with its Subcontractors to require them to perform their work in conformity with and subject to the terms and conditions of the Contract Documents; and
  - 7.1.2 be as fully responsible to VIA for acts and omissions of its Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by it.

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The Contractor therefore agrees that the Contractor will incorporate the terms and conditions of the Contract Documents into all subcontract agreements the Contractor enters into with its Subcontractors.

- 7.2 The Contractor agrees to employ those Subcontractors proposed by VIA in writing and accepted by VIA at the signing of the Contract.
- 7.3 VIA may object to the use of a proposed Subcontractor and require the Contractor to employ one of the other subcontract bidders.
- 7.4 In the event that VIA requires a change from a proposed Subcontractor, the Contract Price shall be adjusted by the difference in cost and mark-up occasioned by such required change, if found necessary.
- 7.5 The Project Manager may, upon reasonably request without restriction, provide to a Subcontractor information as to the percentage or quantity of the Subcontractor's work which has been certified for payment.
- 7.6 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and VIA.

## **8.0 APPLICATION FOR PAYMENT**

- 8.1 Between the first day and the fifth day of each month the Contractor shall submit to VIA an application for payment for the Work performed in the previous month and, if required, a statutory declaration, receipts or other vouchers showing its payments for labour and for material, including material on the site but not then incorporated in the Work and payments to Subcontractors and for any liability for which the Contractor is responsible.
- 8.2 Applications for payment shall be dated the last day of the agreed payment period and the amount claimed shall be for the value, proportionate to the amount of the pay item in the Contract, of work performed and products delivered to the Place of the Work at that date.
- 8.3 For payments made on valuation of Work done, the Contractor shall, before the first application, submit to VIA, a Schedule of Values of the various parts of the Work, aggregating the total sum of the Contract, divided so as to facilitate payments to Subcontractors made out in such form, and, if required, supported by such evidence as to correctness, as VIA may require. This Schedule of Values when approved by VIA shall be used as a basis for certificates for payment unless this Schedule of Values is found to be in error. In applying for payments, the Contractor shall submit a statement based upon this Appendix and, if required, itemized in such form and supported by such evidence as VIA may require, showing its right to the payment claimed.

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- 8.4 When making applications for payment, the Contractor shall submit Contract Payment Request and Certificate of Payment based upon the schedule of prices submitted with its tender. Claims for products delivered to the Place of the Work but not yet incorporated into the Work shall be supported by such evidence as the Project Manager may reasonably require establishing the value and delivery of the products.

## 9.0 CERTIFICATES AND PAYMENTS

### 9.1 Substantial Performance of the Work

- 9.1.1 The Project Manager will, no later than ten (10) days after the receipt of an application for payment from the Contractor submitted in accordance with Section 8. of these General Terms and Conditions, issue a certificate for payment in the amount applied for or in such other amount as the Contractor determines to be properly due. VIA shall evaluate and substantiate the value of work completed and pay against the progress measured for each pay item as listed on the Contract Payment Request accompanied by Certificate of Payment. If the Project Manager amends the application, the Project Manager will promptly notify the Contractor in writing giving its reasons for the amendment.
- 9.1.2 VIA shall make payment to the Contractor no later than thirty (30) days after receipt of the Contractor's invoice and of the certificate for payment issued by the Project Manager.
- 9.1.3 The Project Manager will, no later than ten (10) days after the receipt of an application from the Contractor for a certificate of Substantial Performance of the Work, make an inspection and assessment of the Work to verify the validity of the application. The Project Manager will, no later than seven (7) days after its inspection, notify the Contractor in writing giving its approval or the reasons for its disapproval of the application. When the Project Manager finds that Substantial Performance of the Work has been reached the Project Manager will issue such a certificate. The date of Substantial Performance of the Work shall be as stated in this certificate.
- 9.1.4 Immediately following the issuance of the certificate of Substantial Performance of the Work the Project Manager will issue a certificate for payment of holdback monies. The holdback monies authorized by this certificate shall become due and payable on the day following the expiration of the statutory limitation period stipulated in the security legislation applicable to the Place of the Work or where such legislation does not exist or apply in accordance with such other legislation, industry practice or such other provisions which may be agreed to between the parties, providing that VIA may retain out of such holdback monies any sums required by law to satisfy any securities against the Work or other monetary claims against the Contractor and enforceable against VIA and VIA may require that the Contractor submits to VIA a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the Substantial

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Performance of the Work and for which VIA might in any way be held responsible have been paid in full.

## 9.2 Holdbacks for Subcontractors

9.2.1 Where legislation permits and where, upon application by the Contractor, the Project Manager has certified that the work of a Subcontractor has been totally performed to its satisfaction prior to the Substantial Performance of the Work, VIA shall pay the Contractor the holdback retained for such Subcontractor on the day following the expiration of the statutory limitation period for such Subcontractor stipulated in the security legislation applicable to the Place of the Work.

## 9.3 Total Performance of the Work

9.3.1 Notwithstanding the provisions of Section 9.1.4 of these General Terms and Conditions and notwithstanding the wording of such certificates the Contractor shall ensure that such work is protected pending the Total Performance of the Work and be responsible for the correction of defects in it regardless of whether or not they were apparent when such certificates were issued.

9.3.2 Immediately following the issuance of the certificate of Substantial Performance of the Work in the manner set forth in Section 9.1.3 of this General Terms and Conditions, the Project Manager in consultation with the Contractor, will establish a reasonable date for the Total Performance of the Work.

9.3.3 The Project Manager will, no later than ten (10) days after the receipt of an application from the Contractor for payment upon Total Performance of the Work, make an inspection and assessment of the Work to verify the validity of the application. The Project Manager will, no later than seven (7) days after its inspection, notify the Contractor of its approval or the reasons for its disapproval of the application.

9.3.3.1 When the Project Manager finds that Total Performance of the Work has been reached the Project Manager will issue a certificate of Total Performance of the Work and certify for payment the remaining monies due to the Contractor under the Contract less holdback monies which are required to be retained. The date of Total Performance of the Work shall be as stated in this certificate. Subject to the provisions of Section 11.0 of these General Terms and Conditions, VIA shall, no later than forty-five (45) days from the date of receipt of such certificate, make payment to the Contractor.

9.3.3.2 In case the Project Manager disapproves the application from the Contractor for payment upon Total Performance of the Work, the Contractor shall rectify and make good any defects or faults in the Work in conformity with the Contract Documents.

9.3.4 The release of the remaining holdback monies shall become due and payable on the day following the expiration of the statutory limitation period stipulated in the security legislation applicable to the Place of the Work, or where such legislation does not exist or apply in accordance with such other legislation, industry practice or such other provisions which may be agreed to between the parties. VIA may retain out of such holdback monies any sums required by law to satisfy any securities against the Work or other monetary claims against the Contractor and enforceable against VIA. VIA may require that the Contractor submits to VIA a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the Total Performance of the Work and for which VIA might in any way be held responsible have been paid in full.

#### 9.4 Completion Certificates and Correction after Completion

9.4.1 VIA shall issue a final certificate of completion on the day that:

9.4.1.1 the Work has been completed to the best of VIA's knowledge, information and belief, and

9.4.1.2 the Contractor has complied fully with the Contract Documents and all orders, rulings and directions made pursuant thereto, to the satisfaction of VIA

9.4.2 If VIA is satisfied that the Work is substantially completed (not necessarily synonymous with Substantial Performance of Work) and is acceptable for use by VIA, VIA may, at any time before issuance of a final certificate of completion, issue an interim certificate of completion, and shall describe therein the portions of the Work not completed to his satisfaction and all things which must be done by the Contractor before a final certificate of completion can be issued.

9.4.3 Without restricting any guarantee either made by the Contractor or implied or stipulated by law, the Contractor shall, at his own expense, promptly rectify and make good any defects or faults in the Work that are observed or discovered within a period of twelve (12) months or such extended time called for from the date of VIA's Interim Certificate of Completion, or, if an interim certificate of completion is not issued, within a period of twelve (12) months from the date of VIA's final certificate of completion, whether or not such defects or faults could have been observed or discovered during construction, and the Contractor shall promptly pay for any damage resulting from such defects or faults.

9.4.4 Should the Contractor fail to proceed with the rectification of such defects or faults within five (5) days from the date of notice from VIA to do so, VIA may, after giving an additional five (5) days notice to the Contractor, take all necessary steps to have the Work done by another Contractor, and the cost of an incidental to, the doing of the said Work, shall be paid by the Contractor, and VIA may,

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without restriction, deduct such costs from any holdback that it may have, or it may recover the same from the Contractor and its sureties as monies paid for the Contractor at its request. VIA shall decide the necessity and extent of the repairs and the nature thereof.

- 9.4.5 Notwithstanding expiration of the said twelve (12) month period or such extended time called for in the specifications, the Contractor shall not be relieved of correcting any defects or faults of which notice has been given to the Contractor prior to the expiration of the said twelve (12) month period.
- 9.4.6 The Contractor shall assemble and submit warranties of more than one-year duration, prior to the date of the final certificate of completion. In the case of Work for which such an extended warranty is specified, and where the performance of such warranty would involve a Subcontractor, the warranty shall be drawn in favour of VIA and shall be signed under seal by both the Contractor and his Subcontractor. Warranty periods shall recommence on remedial Work.
- 9.4.7 Notwithstanding the provision of this Section, if any applicable law, in accordance with Section 11.2 of the Contract, creates a more extended liability for faulty materials or workmanship, then the provisions of such applicable law shall apply.
- 9.5 Other Stipulations, Terms and Conditions for Certificates and Payments
- 9.5.1 If because of force majeure there are items of Work that cannot be performed, payment in full for work which has been performed as certified by the Project Manager shall not be withheld or delayed by VIA on account thereof, but VIA may withhold until the remaining work is finished only such monies as the Project Manager determines are sufficient and reasonable to cover the cost of performing such remaining work and to adequately protect VIA from Claims.
- 9.5.2 No payment made by VIA under the Contract or partial or entire use or occupancy of the Work by VIA shall constitute an acceptance of work or products which are not in accordance with the requirements of the Contract Documents.
- 9.5.3 All certificates issued by the Project Manager shall be to the best of its knowledge, information and belief. By issuing any certificate the Project Manager does not guarantee the correctness or completeness of the Work.

## 10.0 PERMITS, LICENSES AND FEES

- 10.1 The Contractor shall obtain the permits, licenses and certificates and pay the fees required for the performance of the Work which are in force at the date of tender closing, but this shall not include the obtaining of permanent easements or rights of servitude.

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## 11.0 WORKER'S COMPENSATION INSURANCE

- 11.1 Prior to commencing the Work and prior to receiving payment on Substantial Performance of the Work and Total Performance of the Work, the Contractor shall provide evidence of compliance with the requirements of the province or territory of the Place of the Work with respect to workers' compensation insurance including payments due hereunder.
- 11.2 At any time during the term of the Contract, when requested by VIA, the Contractor shall provide such evidence of compliance by itself and its Subcontractors.

## 12.0 TEMPORARY SUPPORTS, STRUCTURAL AND OTHER TEMPORARY FACILITIES

- 12.1 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use. The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform these functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 12.2 Notwithstanding any provisions to the contrary elsewhere in the Contract Documents, where such Contract Documents include designs for temporary structural and other temporary facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- 12.3 It shall be the responsibility of the Contractor's engineer to ensure the successful and safe completion of all aspects of the Work and to ensure the Work complies with all standards and regulations pertaining to Class V track and the opinion of VIA or VIA's Agent shall not relieve it of this responsibility in any way. Although VIA or the VIA's Agent will be responsible for determining, setting, issuing and controlling Temporary Slow Orders (TSOs) to facilitate train operations the need for, the duration and length of TSOs will be based on the successful completion of work undertaken by the Contractor.

## 13.0 CONTRACT WORK SCHEDULE

- 13.1 The Contractor shall prepare and update as required a construction schedule indicating the timing of the major activities of the Work. The schedule shall be designed to ensure conformity with the required Contract Time. The schedule shall be submitted to VIA for its information within a reasonable time from the date of Contract award. The Contractor



- shall monitor the progress of the Work relative to the schedule and advise the Project Manager of any revisions required as the result of delays as provided in Section 5.0 of these General Terms and Conditions indicating the results expected from the resultant change in schedule.
- 13.2 This detailed schedule will be the Contract Work Schedule and will become part of the project control system. If, at any time, the Contractor, in its opinion, is unable to meet the requirements of the Contract Work Schedule because of delays caused by VIA, engineer, Consultants, or any Other Contractor, or any employees, or mandataries of any of them, or by changes ordered in the Work, or by labour disputes, force majeure or by operation of any law, ordinance or regulation not breached by the Contractor or anyone for whom the Contractor is responsible, he shall request VIA, in writing, to revise the Contract Work Schedule, and Project Schedule, if necessary, to accommodate the aforementioned delays beyond its control. Such requests shall be made within seven (7) days of the commencement of the delay, provided, however, that in the case of continuing cause of delay; only one (1) notice shall be necessary. Failure on the part of the Contractor to give such written notice to VIA within the said seven (7) days, will constitute a waiver on the Contractor's part of any right to such extension of time. The revision established by VIA shall then become the new Contract Work Schedule.
- 13.3 If for any other reason the Contractor, at any time, is of the opinion that it cannot meet the requirements of its Contract Work Schedule, it will consult with VIA to determine if the Project Schedule and Contract Work Schedule can be changed without affecting the critical path of the Project Schedule. If, in the opinion of VIA, changes can be made to the Contract Work Schedule without affecting the critical path of the Project Schedule, these changes will be made to establish a new Contract Work Schedule.
- 13.4 If in the opinion of VIA, changes cannot be made without affecting the critical path of the Project Schedule, VIA may order the Contractor to employ additional labour and equipment or work overtime or employ any other necessary procedures at no expense to VIA to bring his work back on to schedule.
- 13.5 Should the Contractor fail to comply with such orders, VIA shall have the right to employ the required labour and equipment or employ any other necessary procedures and deduct the cost of such from any monies owing to the Contractor.
- 13.6 VIA may revise the Project Schedule from time to time.
- 13.7 On the request of VIA, the Contractor shall provide information regarding the progress of the Work or any part of it, or if required, copies, schedules and orders covering materials, components and services. The Contractor shall cooperate fully with VIA and shall ensure that all Subcontractors and suppliers engaged on the Project also cooperate and make available on request the same information. Such requests and/or direct contact by VIA with Subcontractors and suppliers shall not relieve the Contractor of its duties and responsibilities under the Contract Documents or for expediting the work of Subcontractors and suppliers as necessary to meet the requirements of the Contract Work Schedule.

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**14.0 SUPERINTENDENCE**

- 14.1 The Contractor shall employ a competent supervisor and necessary assistants who shall be in attendance at the Place of Work while work is being performed.
- 14.2 The supervisor shall be satisfactory to the Project Manager and shall not be changed except for good reason and only then after consultation with the Project Manager.
- 14.3 The supervisor shall represent the Contractor at the Place of the Work and instructions given to it by the Project Manager shall be held to have been given to the Contractor. Important instructions shall be confirmed to the Contractor in writing; other instructions shall be so confirmed if requested.

**15.0 LABOR AND PRODUCTS**

- 15.1 For the purpose of this Section 15.0, the term “**Products**” shall include: products, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the Work in conformity with the Contract.
- 15.2 Unless otherwise stipulated elsewhere in the Contract Documents, the Contractor shall provide and pay for labour and Products
- 15.3 Products provided shall be new unless otherwise specified in the Contract Documents. Products which are not specified shall be of a quality best suited to the purpose required and their use subject to the approval of the Project Manager.
- 15.4 The Contractor shall maintain good order and discipline among its employees engaged on the Work and shall not employ on the Work anyone who is not skilled in the task assigned to him. Being under the influence of, or in the possession or use of alcoholised beverages or drugs on the Work shall be sufficient reason to declare an employee as unfit.
- 15.5 The Contractor agrees that in the performance of the Contract it will employ labour under conditions satisfactory to VIA and further agrees that in the event of labour difficulties due to the employment of persons by the Contractor or by the presence of the Contractor on the Work, the Contractor will make such arrangements as may be necessary, in the opinion of VIA, to prevent delay to the Work and expense to VIA.
- 15.6 Should any disputes arise between the Contractor and its Representatives in connection with the Contract and the Contract Documents, they shall be settled directly between themselves, and the Contractor shall hold harmless and indemnify VIA from any Claim in this connection.

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**16.0 USE OF THE WORK**

- 16.1 The Contractor shall confine its apparatus, the storage of products, and the operations of its employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the premises of the Place of Work with its Products.
- 16.2 The Contractor shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the work. The Contractor shall enforce all regulations and requirements regarding signs, advertisements, fires and smoking.

**17.0 CLEANUP AND FINAL CLEANING OF THE WORK**

- 17.1 The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products, debris and rubbish, other than that caused by VIA, Other Contractors or their employees.
- 17.2 Upon attaining Substantial Performance of the Work, the Contractor shall remove its surplus products, tools, construction machinery and equipment not required for the performance of the remaining work. The Contractor shall also remove waste products and debris other than that caused by VIA, Other Contractors or their employees, and leave the Work clean and suitable for occupancy by VIA unless otherwise specified.
- 17.3 Total Performance of the Work shall not be attained until the Contractor has removed its surplus products, tools, construction machinery and equipment. The Contractor shall also have removed waste products and debris, other than that caused by VIA, Other Contractors or their employees.
- 17.4 In case of dispute, VIA may remove the rubbish and charge the cost to the Contractor, as VIA shall determine.

**18.0 CUTTING AND REMEDIAL WORK**

- 18.1 The Contractor shall do the cutting and remedial work required to make the several parts of the Work come together properly.
- 18.2 The Contractor shall co-ordinate the Work to ensure that this requirement is kept to a minimum.
- 18.3 Should VIA, Other Contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in Section 2.3.2 of the Contract. Any cost caused by ill-timed work shall be borne by the party responsible therefore.
- 18.4 Cutting and remedial work shall be performed by specialists familiar with the materials affected and shall be performed in a manner to neither damage nor endanger the Work.

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## 19.0 CASH ALLOWANCES

- 19.1 Cash allowances, unless otherwise specified, cover the net cost to the Contractor of services, products, construction machinery and equipment, freight, unloading, handling, storage, installation and other authorized expenses incurred in performing the work stipulated under the cash allowances.
- 19.2 Where costs under a cash allowance exceed the amount of the allowance, the Contractor shall be compensated for any excess incurred and substantiated plus an allowance for overhead and profit as set out in the Contract Documents.
- 19.3 Progress payments on account of work authorized under cash allowances shall be included in the Project Manager's monthly certificates for payment.
- 19.4 A schedule shall be prepared jointly by the Project Manager and Contractor to show when items called for under cash allowances must be authorized by the Project Manager for ordering purposes so that the progress of the Work will not be delayed.

## 20.0 CONTINGENCY ALLOWANCE

- 20.1 Expenditures under the contingency allowance shall be authorized in conformity with Section 2.3.1 of the Contract, and the value shall be determined in conformity with Section 2.3.2 of the Contract.

## 21.0 SECURITIES

- 21.1 The Contractor covenants that the Contractor will pay for all labour, materials and services required by it for the performance of the Work (except such, if any, items as VIA may supply free of charge pursuant to the Contract). The Project Manager shall have the right to demand evidence satisfactory to it that all Work done and labour, materials and services furnished are being paid for according to their terms of payments and are not subject to any mechanic's or other securities or claims or demands arising from unpaid accounts in connection therewith.
- 21.2 If during the progress of the Work, the Contractor shall allow any indebtedness to accrue which has become or may become a security upon the Work or become or be assessed as the subject of a security, claim or demand against property of VIA to secure payment thereof, then the Contractor shall immediately upon request of the Project Manager, pay such indebtedness or cause the said security or securities to be discharged. If the Contractor fails to do so, then notwithstanding anything else contained in the Contract VIA may withhold any payment due to the Contractor until such indebtedness security, claim or demand is paid or may apply the money so withheld toward the discharge thereof.

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**22.0 CALIBRATION OF MEASURING AND TESTING EQUIPMENT**

- 22.1 All measuring and testing equipment used by the Contractor shall be calibrated to recognized Canadian Standards on a regular schedule commensurate with its type and use and in conformity with the Contractor's written procedures approved by the Project Manager. The equipment thus calibrated will bear a sticker showing the reference, equipment number and date of the next calibration.
- 22.2 Calibration reports will be submitted to the Project Manager on regular basis.

**23.0 PUBLICITY**

- 23.1 The Contractor shall not erect or permit on the Place of the Work the erection of any sign or advertising on the property of VIA, without the prior written approval of the Project Manager.
- 23.2 During the course of the Work hereunder and for a period of five (5) years after the Completion of the Contract, the Contractor and its Representatives may, from time to time, desire to publish certain information of scientific, technical, or general interest, originating by reason of the Work in magazines, newspapers, or other written or graphic means of communication. Clearance in writing shall be secured from the Project Manager during construction or thereafter from VIA prior to any such publication. Such clearance shall not only set forth the conditions under which publication may be made but shall also provide where applicable for proper credit to be given for information to be released.
- 23.3 The Contractor shall not allow or permit any public ceremony in connection with the Work without the prior written permission of the Project Manager.

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**APPENDIX “E”****SUPPLEMENTARY CONDITIONS****DEFINITIONS**

The following definitions shall apply to these Supplementary Conditions and to all Contract Documents. All definitions of the Contract and the General Terms and Conditions shall also apply to these Supplementary Conditions.

<b>Drawings and Specification</b>	means drawing and specifications as described in Section 2 of these Supplementary Conditions.
<b>Form of Tender</b>	means the form of Tender, part of the Contract Documents.
<b>Professional Engineer</b>	means the professional engineer designated in the Contract Documents.
<b>Shop Drawings</b>	means the shop drawing described in Section 12 of these Supplementary Conditions.

**1 DETAIL DRAWINGS AND INSTRUCTIONS**

- 1.1 The Contractor shall furnish, as necessary for the execution of the Work, additional instructions by means of Drawings and Specifications or otherwise. All such additional instructions shall be consistent with the intent of the Contract Documents and the Work shall be executed in conformity therewith. In giving such additional instructions, VIA shall have authority to make minor Changes in the Work, not inconsistent with the intent of the Contractor.
- 1.2 The Contractor shall work only from Drawings and Specifications approved for construction. Where revised Drawings and Specifications have been issued, the Contractor shall be responsible, at its own expense, for the correction of any errors in the Work made as the result of working from obsolete Drawings and Specifications.

**2 COPIES FURNISHED**

- 2.1 The Contractor shall provide VIA with Drawings and Specifications approved by a Professional Engineer without charge as to reproduce as many copies of all Drawings and Specifications as are reasonably necessary for the proper execution of the Work.

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### **3 DRAWINGS AND SPECIFICATIONS ON THE WORK**

- 3.1 The Contractor shall maintain at the Place of the Work for VIA one (1) copy of all Drawings and Specifications, addenda, Shop Drawings, and other instructions in good order and marked to record all changes made during construction. These shall be made available to VIA or VIA's designated representative. The Drawings, marked to record all changes made during construction, shall be delivered to VIA upon completion of the Work. ALL DRAWINGS AND SPECIFICATIONS, ADDENDA, SHOP DRAWINGS, AND OTHER INSTRUCTIONS, INCLUDING ALL COPYRIGHTS THEREIN, ARE THE PROPERTY OF VIA. THE INFORMATION THEY CONTAIN IS CONFIDENTIAL AND IS THE PROPERTY OF VIA. ALL DRAWINGS AND SPECIFICATIONS, ADDENDA, SHOP DRAWINGS, AND OTHER INSTRUCTIONS SHALL NOT BE REPRODUCED, AND THE INFORMATION THEY CONTAIN SHALL NOT BE USED OR DISCLOSED, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT/PERMISSION OF VIA.

### **4 INTERPRETATION OF THE CONTRACT DOCUMENTS**

- 4.1 VIA is the interpreter of the Contract and the judge of its performance;

### **5 MATERIALS, APPLIANCES, EMPLOYEES**

- 5.1 All materials to be incorporated in the Work, whether supplied by VIA or the Contractor, shall be stored under suitable conditions to prevent damage, deterioration, contamination, etc. No materials to be incorporated in the Work shall be temporarily used or installed as a facility for construction purposes except with the prior written approval of VIA.

### **6 EMERGENCIES**

- 6.1 In emergencies affecting the safety or protection of persons or the Work or property at the place of the Work or adjacent thereto, the Contractor, without special instruction or authorization from VIA, is obligated to act to prevent threatened damage, injury or loss.
- 6.2 The Contractor shall prepare emergency procedures and evacuation plan for the Work to be carried out at the site prior to commencing work.
- 6.3 The Contractor shall post this plan in a conspicuous place and ensure that all persons having access to the job site are familiar with the plan prior to having access to the site.
- 6.4 The emergency procedure and evacuation plan shall include, but not be limited to, the following information:
- 6.4.1 Emergency phone numbers for police, fire, ambulance, hospital and utility companies.
- 6.4.2 Emergency phone number for VIA: 1-888-641-2177
- 6.4.3 Phone numbers of the Contractor's Project Manager/Superintendent, Site Supervisor/Foreperson and Safety Officer.
- 6.4.4 Phone numbers of VIA and/or his Site Representative.
- 6.4.5 Map showing the route and location of the nearest hospital.

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- 6.4.6 List of on site first aid attendants.
- 6.4.7 All material safety data sheets for materials used on site.
- 6.4.8 Phone number of Contractor's 24-hour emergency contact person.

## **7 CONTRACT TIME**

- 7.1 Time is of the essence and the Contractor acknowledges that it is aware that any delay in completing the work of the Contract will result in delays to other Contractors and VIA in carrying out other portions of the work of the Project and will extend the time for completion of the Project and will thereby reduce the value of the Work of the Contract to VIA. The Contractor represents to VIA that it is skilled and experienced in all relevant aspects of construction work and in coordinating the efforts of its construction forces and that it has carefully assessed all problems of supply and other matters to complete the Work of the Contract within the allotted time. The Contractor hereby undertakes to complete the Work of the Contract within the allotted Contract Time, i.e. without non-authorized delays, or any segment of it within the respective proportion of the Contract Time.
- 7.2 Notwithstanding provisions for adjustment of the Contract Time in certain circumstances as set out in the General Terms and Conditions, the Contractor shall not have, or make, any claim or demand, nor bring any action, suit or petition against VIA for any damages, costs, expenses, loss of profits, or otherwise, howsoever, which the Contractor may sustain by reason of any delay or delays, from whatever cause, arising in the progress of the Work.

## **8 PRICES TO BE ACCEPTED AS FULL COMPENSATION**

- 8.1 The quantities set out in the Form of Tender are approximate only. The Contractor shall make no claim against VIA on account of any excess or deficiencies absolute or relative with respect to the quantities set out.
- 8.2 The price or prices provided for in the Contract, whether stipulated sum or unit prices or both, shall be accepted by the Contractor as full compensation for everything furnished and done by the Contractor under the Contract, and also for all loss or damage arising out of the nature of the Work or the action of the weather, elements, or difficulty encountered in the prosecution of the Work, and for all risks of every description connected with the work, and for all expenses incurred by or in the consequence of any delay or suspension or discontinuance of the Work as herein specified, and for well and faithfully completing the Work as provided in the Contract.

## **9 MINIMUM STANDARDS**

- 9.1 In the absence of other standards being required by the Contract Documents, all Work, materials and equipment shall conform to, or exceed, the minimum standards of the Canadian General Standards Board, the Canadian Standards Association, the National Building Code of Canada (latest edition with all current Addenda), or the Provincial Building Code of the Place of the Work, whichever is applicable.

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9.2 Where the provisions of a building bylaw, having jurisdiction, are more stringent than the applicable building code, the provisions of such building bylaw shall govern.

## **10 WORKING CONDITIONS**

10.1 The Contractor shall ensure compliance on its part and on the part of all its Subcontractors with the applicable Workplace Safety and Insurance Board (WSIB) and Occupational Health and Safety legislation, and any regulations hereunder, in particular provisions of said legislation or regulations hereunder having to do with the prevention of accidents, the prevention of diseases and the provision of safe working conditions, including proper sanitation and ventilation.

10.2 In any case, where pursuant to the provisions of the Workplace Safety and Insurance Board or Occupational Health and Safety legislation, the appropriate board or authority orders the Contractor or one or more of its Subcontractors in respect of their operations under the Contract to cease operations because of failure to install or adopt safety devices or appliances directed by order of the said board or authority, or required under said legislation or regulations hereunder, or because said board or authority is of the opinion that conditions of immediate danger exist that would be likely to result in injury to any person, or because of lack of payment of any account due to the said board or authority, VIA on twenty four (24) hours written notice from VIA to the Contractor may terminate the Contract.

10.3 The Contractor shall provide to VIA, when requested, evidence of such compliance with the requirements of the applicable Workplace Safety and Insurance Board and Occupational Health and Safety legislation and any regulations or orders hereunder, including payments due for Workplace Safety and Insurance Board.

10.4 The Contractor shall comply with the VIA's safety procedures as detailed in "Safety Guidelines for Contractors" while on the VIA's premises

10.5 CSA approved hard hats and safety boots, safety glasses, and high visibility clothing (vests, harnesses or suspenders) must be worn at all times by the Contractor's employees and subcontractors while on VIA premises. High visibility clothing shall **not** be red in color.

10.6 The Contractor shall be responsible for the safety of all persons working on the Contractor's behalf while on VIA property.

10.7 In no case must the Contractor and its Representatives or equipment work closer than four (4) meters from the nearest rail without the prior consent of VIA, and only during such times as there is a block on rail traffic.

10.8 All men and equipment within ten (10) meters of the nearest rail must stop working on the approach of a train, and remain stopped until the train has passed.

## **11 PROTECTION OF THE WORK, PROPERTY AND PUBLIC**

11.1 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property to protect them from damage, injury or loss.

- 11.2 The Contractor shall provide and maintain in connection with the Work all necessary watchmen, barriers, fences, warning lights and signs and take all necessary precautions for the protection and safety of workmen and the public. All excavations or obstructions shall be clearly marked between sunset and sunrise with warning flares or lights, at the expense of the Contractor.
- 11.3 Should any of the Contractor's Work cause interference with any existing public or private road, the Contractor shall provide and maintain necessary detour roads, shall post such signs, warnings and protection as may be required for public convenience and safety, and shall make good any damage caused by such interference, all at the expense of the Contractor.
- 11.4 The Contractor will be responsible for ensuring that construction operations are carried out without interfering with the safe and continued movement of rail traffic.
- 11.5 The Contractor will ensure that all vehicles and pedestrians at public crossings are fully protected at all times during the Work either by the automatic warning devices or by personnel assigned to control the movements of vehicles and pedestrians over the crossing on the approach of a train.
- 11.6 The Contractor will keep the nuisance operation of the crossing warning devices at public crossings to as short a time as necessary during all phases of the Work.
- 11.7 The Contractor shall adhere to speed limits, stop signs and VIA safety signs while on VIA premises.

## **12 SHOP DRAWINGS AND SAMPLES**

- 12.1 The Contractor shall review, stamp with its approval and submit, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the Work of any Other Contractor, all Shop Drawings and samples required by the Contract Documents or requested by VIA. Shop Drawings and samples shall be properly identified as specified or as VIA may require. At the time of submission the Contractor shall inform VIA in writing of any deviation in Shop Drawings or samples from the requirements of the Contract Documents.
- 12.2 By approving and submitting Shop Drawings and samples, the Contractor thereby represents that it has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data, or will do so, and that it has checked and coordinated each Shop Drawing and sample with the requirements of the Work and of the Contract Documents.
- 12.3 VIA and the Contractor will review the Shop Drawings and samples with reasonable promptness, but only for conformance with the design concept of the project. VIA's review of a particular item shall not indicate approval of such item or of any assembly in which the item functions.
- 12.4 The Contractor shall make corrections required by VIA, and shall resubmit the required number of corrected copies of Shop Drawings or new samples. The Contractor shall direct specific attention in writing to revisions reflected in resubmitted Shop Drawings other than the corrections requested by VIA and/or Consultants on previous submissions.

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- 12.5 VIA's review of Shop Drawings or samples shall not relieve the Contractor of its responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed VIA in writing of such deviations at the time of submission and VIA has given written approval to this specific deviation; VIA's and Consultants' review shall not relieve the Contractor from his responsibility for errors or omissions in the Shop Drawings or samples.
- 12.6 No portion of the Work requiring a Shop Drawing or sample submission shall be commenced until VIA has reviewed the submission.

### **13 LAYOUT OF WORK**

- 13.1 Unless otherwise stipulated in the Contract Documents, all Work to be performed under the Contract is to be laid out by the Contractor.
- 13.2 The Contractor shall be responsible for the accuracy of the layout and preservation of benchmarks, reference points and stakes.

### **14 CONTRACTOR'S RESPONSIBILITIES**

- 14.1 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work using its best skill and attention. The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures, for safety precautions and programs and for coordinating all portions of the Work. At all times the onus shall be and remain on the Contractor to carry out and complete the Work in accordance with the Contract Documents and this onus shall not be discharged even though VIA may not observe any defects or deficiencies in the Work.
- 14.2 The Contractor shall designate a responsible member of its organization at the Place of the Work, whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise determined in writing by the Contractor to VIA.

### **15 DEDUCTIONS FOR UNCORRECTED WORK**

- 15.1 If, in the opinion of VIA, it is not expedient to correct defective Work or Work not done in accordance with the Contract Documents, VIA may deduct from the Contract Price, the difference in value between the Work as done and that called for by the Contract, the amount of which shall be determined by VIA. Any reduction of payment to the Contractor under this Section shall in no way relieve the Contractor from full liability under the Contract.
- 15.2 The Contractor shall advise the designated VIA contact upon entering and leaving VIA premises.
- 15.3 The Contractor shall notify VIA at least ten (10) days in advance as to the requirement for a flag person.

### **16 RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES**

- 16.1 Excavation in the vicinity of existing structures and utilities shall be carefully performed, and any utilities, which cross an excavation, must be properly supported or shored to

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prevent settlement or damage. Where trenching is to be done under existing utilities, such utilities shall be shored before excavation commences and shoring shall be left in place.

- 16.2 The existence, location and elevation of underground utilities are not guaranteed, and notwithstanding any other provision in the Contract Documents, the Contractor shall be responsible for determining the location and elevation of all sewer, water and gas mains, services or lines, electric light, power or telephone conduits, or other such structures or utilities, and shall pay for any service supplied by the gas, waterworks, sewer, electric light company or department. The Contractor shall be responsible for notifying the appropriate company, department, person or persons, of his intention to carry out operations in the vicinity of any such underground utility. The Contractor shall deposit with VIA a letter or letters, from the appropriate authority of the utility or utilities involved stating that the Contractor has made satisfactory arrangements with the utility organization for the location, protection and inspection of the utility involved.
- 16.3 The Contractor and its Representatives shall indemnify and save harmless VIA and its Representatives against damages for consequential loss and against any claim made against VIA and its Representatives of any such main, line, conduit or other such structure or utility for any loss or damage in respect of third party Claims or which may be suffered by any such owner because of damage to any such main, line, conduit or other such structure or utility, in any way caused by the operations of the Contractor and its Representatives in the performance of the Contract.

## **17 USE OF COMPLETED PORTIONS**

- 17.1 VIA shall have right to take possession of and use any completed portions of the Work, notwithstanding that the time for completing the entire Work may not have expired, but such taking possession of any use shall not be deemed an acceptance of any Work not in accordance with the Contract Document. If such prior use delays the Work, the Contractor shall be entitled to such extension of time as VIA may determine.

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**APPENDIX "F"**  
**CHANGE ORDER FORM**

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# VIA Rail Canada



## Formulaire d'ordre de modification Change Order Form

<b>Titre du projet :</b> Project Title:	
<b>Titre du contrat :</b> Contract Title:	<b>Contrat No. :</b> C20_____
<b>Consultant / Entrepreneur:</b> Consultant / Contractor:	<b>Date:</b>
	<b>Ordre de modification No. :</b> # _____
<b>Incidence sur le prix du contrat:</b> Effect on Contract Price:	
Montant de cette modification / Amount of this change order:	\$0
Montant initial du contrat / Original contract price:	\$0
Modifications préalablement approuvées / Adjustments for previous change orders:	\$0
Montant total révisé du contrat / Revised total contract amount :	\$0,00
<b>Incidence sur le calendrier du projet</b>	
<b>Effect on Project Schedule:</b> S/O - N/A <input type="checkbox"/>	Retard / Delay <input type="checkbox"/> Jours / Days
<b>Description de la modification :</b> Change Order Description:	
1	
2	
3	
4	
<p>À l'exception de ce qui précède, tous les autres modalités, termes et conditions du contrat C20__ demeureront intégralement et pleinement en vigueur.</p> <p>Except for the amendments contained herein, each and every other modality, term and condition of contract C20__ shall remain in full force and unchanged.</p>	
Accepté par: Approved by:	_____
<i>VIA Rail Canada Inc.</i>	Date
Accepté par: Approved by:	_____
<i>Entrepreneur / Contractor</i>	Date
Accepté par: Approved by:	_____
<i>Gestionnaire de construction / Construction Manager</i>	Date