

THIS CN-GO TRANSIT RAIL INFRASTRUCTURE CONSTRUCTION ADDENDUM made as of the \_\_\_\_ day of \_\_\_\_\_, 2004, with effect as of November 1, 2003

BETWEEN:

**GREATER TORONTO TRANSIT AUTHORITY**

(hereinafter "GO Transit")

- and -

**CANADIAN NATIONAL RAILWAY COMPANY**

(hereinafter "CN")

**RECITALS:**

- A. The parties hereto are parties to a master operating agreement dated and effective as of June 1, 2001 providing for the provision and operation of existing and future commuter services by CN on behalf of GO Transit on and over rights-of-way, tracks and premises of each party, as more particularly described therein.
- B. The parties hereto are also parties to a master construction agreement dated and effective as of August 1, 1998 (the "Master Construction Agreement") providing for construction work on CN's lands relating to the commuter services provided under the Master Operating Agreement, as more particularly described therein.
- C. GO Transit has negotiated the Canada-Ontario-GO Transit Agreement on GO Transit Rail Infrastructure Improvements (the "GTRII Agreement") with the Government of Canada and the Province of Ontario in connection with a program to improve and expand rail infrastructure across the Greater Toronto Area, including, without limitation, work associated with the design and construction of rail facilities required for a passenger railway service between Union Station and the Toronto Lester B. Pearson International Airport (collectively, the "GO Transit Rail Infrastructure Program"), the term of which is to take effect as of March 26, 2003 and which shall extend until the ultimate claim date of March 31, 2114, subject to any extension mutually agreeable to the parties thereto.
- D. The GTRII Agreement contemplates that GO Transit will enter into a rail infrastructure construction agreement with CN (this "Addendum") regarding the construction of major rail infrastructure improvements on various CN ROWs, in order to fulfill the intention of the GTRII Agreement.
- E. The parties have determined that the most effective mechanism to achieve this result is by means of this Addendum to the Master Construction Agreement, in order to take advantage of the processes established in the Master Construction Agreement.

**NOW THEREFORE, IN CONSIDERATION OF** the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, GO Transit and CN agree as follows:

## PART 1 – GENERAL

### 1. Definitions

- (a) In this Addendum, the following capitalized terms shall have the meaning ascribed as follows:
- (i) "Addendum" means this CN-GO Rail Infrastructure Construction Addendum to the Master Construction Agreement, as amended or supplemented from time to time and the expressions "Part", "Article", "Section", "Subsection", "Paragraph", and "Subparagraph" and followed by a number or letter mean and refer to the specified Part, Article, Section, Subsection, Paragraph or Subparagraph of this Addendum;
  - (ii) "Affiliate" of any Party hereto means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such Party. For the purposes of this definition, "control" when used with respect to any Party hereto means the power to direct the management and policies of such Party, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing;
  - (iii) "CN Program Management Team" means those persons assigned by CN to manage CN's participation in the Program;
  - (iv) "CN Program Team" means those persons assigned by CN to manage, implement or participate in the Program; CN Program Team shall include, without limitation, CN Program Management Team;
  - (v) "CN Project" means a Project (or the portion thereof) that is constructed on a CN ROW or impacts upon CN's operations on a CN ROW;
  - (vi) "CN ROW" means a right-of-way rail corridor owned by CN or any of its Affiliates;
  - (vii) "Contractor" means a person, firm or corporation having a contract to perform a part or parts of the work included in a Project, or to supply materials in connection therewith, and shall include a subcontractor hired by a Contractor to perform a part or parts of the work included in a Project, or to supply materials in connection therewith;
  - (viii) "Fiscal Year" means a twelve month period (all or part of which falls within the Term of this Addendum) beginning April 1<sup>st</sup> in any given calendar year and ending March 31<sup>st</sup> of the following calendar year, at the end of which GO Transit's books are balanced for auditing and/or taxation purposes;

- (ix) "Fixed Cost" means the costs of a Project as more particularly described in Paragraph 10(d) of this Addendum;
  - (x) "Event of Force Majeure" shall include civil commotion, warlike operations, governmental regulations or controls, acts of God, strikes and labour disruptions of third parties, or otherwise any event beyond the reasonable control of, and not occasioned by the fault of, the party prevented from performing its obligations hereunder but, with respect to any event beyond the reasonable control, only if said party took all necessary measures in a timely, diligent and continuous basis to prevent or reduce the consequences of same;
  - (xi) "GO Project" means any Project that is not a CN Project;
  - (xii) "GTRII Agreement" means the agreement described in Recital C;
  - (xiii) "Master Construction Agreement" means the agreement described in Recital B;
  - (xiv) "Master Operating Agreement" means the agreement described in Recital A;
  - (xv) "Program" means the overall GO Transit Rail Infrastructure Program; and
  - (xvi) "Project" means any specific project to be constructed within the scope of the Program.
- (b) Capitalized terms not defined herein shall have the meaning as set out in the Master Construction Agreement.

## 2. Application of the Master Construction Agreement

- (a) The term of the Master Construction Agreement is hereby renewed, with effect from November 1, 2003 until: (i) December 31, 2009 for all work performed outside the scope of the Program; and (ii) until the termination of the GTRII Agreement or the completion of the Projects, whichever comes first, for all work performed within the scope of the Program. In the event that the Master Construction Agreement is terminated for any reason with respect to work performed outside the scope of the Program, it shall nevertheless survive as aforesaid for all work performed within the scope of the Program and *vice versa*.
- (b) This Addendum incorporates by reference all of the provisions of the Master Construction Agreement. In the event that a new Master Construction Agreement replaces the Master Construction Agreement, this Addendum is deemed to be amended to refer to and incorporate the terms of the new Master Construction Agreement, with effect as of the effective date of the new Master Construction Agreement.
- (c) The parties shall interpret the provisions of the Master Construction Agreement in effect from time to time in a reasonable manner in order to give full effect to the terms of this Addendum, including issues relating to the transition from any existing Master Construction Agreement to any replacement Master Construction Agreement.

- (d) In the event there is a conflict between a provision of this Addendum and the Master Construction Agreement, the provisions of this Addendum shall have priority over the provisions of the Master Construction Agreement.

## PART 2 – IMPLEMENTATION OF THE PROGRAM

### 3. CN Roles and Responsibilities

Subject to any specific obligations set out in this Addendum, CN has the following basic roles and responsibilities with respect to the Program:

- (a) overall CN Project responsibility and accountability;
- (b) appointment and management of the CN Program Team;
- (c) ensuring overall construction and operational safety on a CN ROW, including but not limited to the provision of dispatching, flagging and protection of work blocks;
- (d) determining jointly with GO Transit whether an individual Project or components thereof should be classified as a CN Project or a GO Project under the Program;
- (e) coordinating the timing and sequencing of CN Projects so as to minimize the interference with all regular rail operations, including GO Transit commuter operations;
- (f) designing track and signal infrastructure located on or affecting any CN ROW;
- (g) designing, or, when prepared by others, reviewing and accepting designs for roadbeds, bridges and other structures located on or affecting any CN ROW;
- (h) management of the procurement process in respect of CN Projects;
- (i) in cooperation with GO Transit, communicating with the public and municipalities on CN Projects;
- (j) in consultation with GO Transit, communicating with federal regulatory agencies regarding rail safety and other issues on CN Projects;
- (k) planning and executing Construction Plans for CN Projects;
- (l) in consultation with GO Transit, preparing estimates and budgets for CN Projects;
- (m) administering and billing CN Projects in accordance with the agreed budgets, schedules and billing processes;
- (n) resolving issues relating to changes to Projects in a timely manner in accordance with the processes established by this Addendum;
- (o) providing security for field offices, storage compounds and construction sites for CN Projects;

- (p) reporting on the progress of CN Projects, which information shall be used by GO Transit to report to Canada and Ontario in accordance with GO Transit's obligations as outlined in Schedule A;
- (q) reviewing and approving environmental assessments in connection with CN Projects; and
- (r) in conjunction with GO Transit, developing timelines addressing work leveling requirements and appropriate workloads.

#### 4. **GO Transit Roles and Responsibilities**

Subject to any specific obligations set out in this Addendum, GO Transit has the following basic roles and responsibilities with respect to the Program:

- (a) overall Program responsibility and accountability;
- (b) appointment of a Program Manager;
- (c) determining and detailing the scope of work for each Project under the Program;
- (d) overall budget control;
- (e) management of the procurement process in respect of GO Projects;
- (f) determining public relations communications objectives relating to the Program;
- (g) implementing the public relations communication plan developed by the Program Manager;
- (h) communicating with the public and with municipalities affected by the Program, and in respect of CN Projects, cooperating with CN in such communications;
- (i) cooperating with CN in dealing with federal regulatory agencies regarding rail safety and other applicable issues;
- (j) developing federal and provincial environmental assessments and obtaining required environmental assessment approvals;
- (k) in conjunction with CN, developing timelines addressing work levelling requirements and appropriate workloads; and
- (l) overall Program management to meet agreed timelines.

#### 5. **Program Manager**

GO Transit shall appoint a Program Manager who has appropriate experience and skills to plan and manage the Program and its individual Projects. The Program Manager's duties shall include, but are not limited to:

- (a) the development of an overall safety plan for the Program for review and acceptance by

CN and GO Transit;

- (b) the management of the safety of all Contractors on GO Projects;
- (c) the provision of a Program team office;
- (d) the preparation of specifications for GO Projects; and
- (e) developing a public relations communications plan for the Program, including appropriate consultation with CN as it relates to CN Projects.

6. **CN Project Commencement**

The CN Project components of the Program shall be commenced upon finalization of GTRII Agreement and the delivery of a letter of authorization from GO Transit to CN, confirming that the financial arrangements required to give effect to this Addendum are in place.

7. **CN Program Management Team**

- (a) CN shall establish a CN Program Management Team to manage CN's involvement with the Program, including management of the CN Projects, reviewing and accepting those GO Projects impacting CN's corridors or CN's operations, and to be a conduit for all Program or Project work associated with CN ROWs. The CN Program Management Team shall be established on execution of this Addendum.
- (b) Certain CN Program Management Team members shall be based in the Program office established by the Program Manager.
- (c) At least seven (7) months prior to the commencement of each Fiscal Year, GO Transit and CN shall agree on a preliminary budget for the CN Program Management Team for such Fiscal Year. The parties shall review the preliminary budget, and a final budget shall be established at least four (4) months prior to the commencement of each Fiscal Year. This budget shall address issues relating to the temporary additional dedication of resources to address anticipated fluctuations in the Program. GO Transit shall pay the agreed fee established by the annual budget as full compensation for the CN Program Management Team for that Fiscal Year. The budget shall include an allowance for all office space, office supplies, motor vehicles, cell phones and telecommunications charges, and other related charges for equipment or services not otherwise provided by GO Transit or the Program Manager.

8. **CN Program Team Start-up and Wind-down**

- (a) At least seven (7) months prior to the commencement of each Fiscal Year, the parties shall agree on a preliminary plan setting out the appropriate number of CN staff to assign to the CN Program Team, which plan shall be confirmed four (4) months prior to the commencement of each Fiscal Year. GO Transit shall pay a fixed fee of \$ [REDACTED] for each full time equivalent position established for the CN Program Team in full compensation for any hiring, training, administration, termination, severance or relocation cost incurred by CN to establish and disband the CN Program Team.

- (b) If an individual member of the CN Program Team leaves his or her position on the CN Program Team, CN shall be responsible to replace such individual member as soon as practicable. The fixed fee shall not be charged for such replacement. The fixed fee shall only be charged for any increase in complement to the CN Program Team from the number as established on execution of this Addendum. Due to the size of the Program, GO Transit will make all efforts to increase the amount of work performed in 2004 in order to assist in ramping up resources for the Program. Thereafter, GO Transit will make all reasonable efforts to level out the amount of work to minimize the number of CN staff to be hired as set out under paragraph (a) above.

9. **CN Project Design**

- (a) CN reserves the right to perform all required design work for CN Projects or delegate such design to its representatives. The parties shall agree on a fixed fee for such design, whether such work is completed internally or by external consultants engaged by CN, in which case the overhead cost for external work as provided in Section 10 hereof shall apply. In certain situations, when deemed appropriate by both parties, GO Transit or the Program Manager may be given accountability and responsibility for this work.
- (b) CN shall review and agree with all design work in connection with work to be performed by GO Transit on a CN ROW prior to the commencement of any work. CN shall be entitled to review all plans and designs made by GO Transit for work on non-CN property where CN train crews operate. GO Transit shall provide any designs contemplated by this paragraph to CN at least forty-five (45) business days in advance of the commencement of any construction.

10. **CN Project Work**

- (a) CN may, in its sole discretion, perform all Signals, Communications, Track, Roadbed, Bridges, and Structures work planned on any CN ROW. To the extent that CN or its Contractor(s) performs such work, the parties shall negotiate a Fixed Cost for such work to be included in the budget for each CN Project. This negotiation shall be completed at such time as GO Transit has provided sufficient information about the scope of a Project to permit the parties to complete, for each phase of a Project, (i) a detailed scope of work for such phase, (ii) a detailed design, (iii) a budget estimate, (iv) a work schedule, and (v) a payment schedule.
- (b) For each Project, the parties shall consider and, where appropriate, implement a bonus provision for the early completion of a Project and a liquidated damages provision for a delay in completion of a Project, reasonably recognizing the benefits gained by GO Transit for early completion and the costs incurred by GO Transit for any delay.
- (c) In order to reduce the impact on both corridor train operations and CN unionized staffing levels, the parties will work together to enable CN, as much as practicable, to level out the work for its Signals and Communications, Track, and Bridges & Structures groups in order to properly manage the staffing levels, workloads, and resulting costs, provided that any such adjustments shall not be permitted to unreasonably affect the date of Total Completion of the work for a Project.

- (d) For the purposes of this Section 10, "Fixed Cost" means the established budget for a Project, including all charges contemplated by Article 6 of the Master Construction Agreement except to the extent that such charges have been included in the CN Program Team annual fee. Fixed Cost does not include flagging or the cost of the CN Program Team, both of which are charged separately and are not to be included in the determination of Fixed Cost.
- (e) For the purposes of this Addendum only, the parties agree that the overhead rates as set out below shall apply:
- (i) CN Program Management Team:
- (A) [REDACTED] CN labour
  - (B) [REDACTED] for CN Program Management Team vehicles
  - (C) [REDACTED] per month for ancillary expenses, cell phones and pager services
  - (D) For any CN Management Program Team office lease costs other than the facilities provided at 20 Bay Street, Toronto, at the actual cost thereof

Items (B) and (C) shall be adjusted annually by the amount of the Index as provided in the Master Operating Agreement.

- (ii) CN Program Work, including flagging and design:
- (A) [REDACTED] on CN labour
  - (B) [REDACTED] on Materials
  - (C) For other charges, the rates as provided in the Master Construction Agreement shall apply.

## 11. Change in the Work/Event of Force Majeure

When a change in the work in connection with a CN Project is proposed or required, GO Transit shall provide a notice describing the proposed change in the work to CN. Moreover, if performance of the work in connection with a CN Project is delayed or the cost thereof increased due to an Event of Force Majeure, CN shall notify GO Transit in writing promptly following the occurrence thereof. CN shall, in either circumstance, present, in a form acceptable to GO Transit, a revised Project budget and, as the case may be, a revised Project Schedule.

If GO Transit and CN agree on the revised Project budget and, as the case may be, a revised Project Schedule, such agreement shall be effective immediately and shall be recorded in a change order, signed by GO Transit and CN.

If GO Transit and CN do not agree on the revised Project budget and, as the case may be, the revised Project Schedule, the dispute shall be submitted to dispute resolution as contemplated under the Master Construction Agreement, or, if both parties agree, the Project can proceed on an actual cost basis. If the matter is referred to dispute resolution, GO Transit shall pay the undisputed value of the work in connection with a CN Project pending the final determination of the Project budget.

12. **Unknown or Concealed Conditions**

If GO Transit or CN discover conditions which are (i) subsurface or otherwise concealed conditions which existed before the commencement of the work which differ from those upon the basis of which the Project budget and the Project schedule were established; or (ii) conditions of a nature which differ from those ordinarily found to exist and generally recognized as inherent in construction activities of the character associated with the Project, then the observing party shall notify the other party in writing promptly after first observance of the conditions.

To the extent either party discover different conditions as aforesaid that would cause an increase or decrease in the cost or time to perform the work, CN shall present, in a form acceptable to GO Transit, a revised Project budget and, as the case may be, a revised Project schedule, the whole as provided for under Section 11 hereto.

13. **Pass-Through Costs**

GO Transit acknowledges and agrees that CN has no control over certain third-party costs and undertakes and agrees to adjust the Project budget if the third party having lawful authority to do so increases these costs after same have been budgeted by CN in any given Project budget. By way of example only, any increase in fees imposed for utility services shall result in a corresponding increase to the Project budget.

14. **Flagging**

CN will provide Flagmen protection to Contractors performing work for CN Projects or for those GO Projects on any CN ROW where flagging is required. At least seven (7) months prior to the commencement of a Fiscal Year, CN and GO Transit shall establish a preliminary flagging services plan, which levels out flagging staff, as set out in Section 8(b) hereto, so as to ensure that adequate flagging staff is available to meet the predicted workload for CN Projects and for those GO Projects where CN flagging services are reasonably required. The parties shall confirm the preliminary flagging services plan at least four (4) months prior to the commencement of each Fiscal Year. The annual flagging services plan shall include a fixed fee for the set number of full time permanent flagmen. Additional requirements for flagging staff will be dealt with on a case-by-case basis, based on availability, and will be charged by separate invoice.

15. **Payment Process**

- (a) CN shall submit separate invoice statements for each Project, based on the budget, schedule and the Fixed Cost established for each Project. CN shall send invoices to GO Transit at least fifteen (15) days prior to the payment date set out in the payment schedule established for each Project, based on the budgeted amount as set out in such schedule.
- (b) As it is the parties' intention that CN should not finance any of the costs it incurs in respect of the Program, GO Transit agrees that it shall, forthwith upon receipt of an invoice, but in no event later than the payment date provided for under the payment schedule. The parties shall, acting reasonably, establish such processes as may facilitate the timely issuance and payment of invoices in a manner intended to reduce the administrative burden on both parties.

- (c) CN shall provide GO Transit at the close of the construction season, and in any event no later than January 15 of the following year, with a formal certificate of completion for all CN Projects completed during that year, which certificate shall include a listing of all such CN Projects completed, their applicable project numbers and the completion date for each CN Project.

16. **Cost Recovery**

The parties acknowledge that the budgeting process is intended to establish appropriate processes to ensure that CN recovers all Fixed Costs incurred to participate in the Program. Except as contemplated under Sections 11, 12 and 13 hereto, no changes to the Fixed Cost shall be permitted.

17. **Public Relations**

GO Transit and the Program Manager shall develop all public and political presentations and activities. To the extent that any public or political presentation relates to a CN Project, such presentations and activities shall be developed jointly with CN.

18. **Maintenance Agreements**

CN shall perform or cause to be performed the operating and capital maintenance of bridges, structures and retaining walls constructed pursuant to this Agreement on any CN ROW. GO Transit shall perform the maintenance of bridges, structures and retaining walls constructed pursuant to this Agreement on property owned by GO Transit. The obligation to pay for such operating and capital maintenance is as follows:

- (a) GO Transit and CN shall pay their respective proportionate shares of the operating and capital maintenance of bridges, structures and retaining walls constructed pursuant to this Agreement on (i) the Halton Subdivision, (ii) the Oakville Subdivision between Burlington Junction and Bayview Junction, and (iii) the Southdown Road and Mississauga Road grade separations on the Oakville Subdivision, as provided in the Master Operating Agreement;
- (b) GO Transit shall pay for the operating and capital maintenance of all other bridges, structures and retaining walls constructed pursuant to this Agreement, including, without limitation, bridges, structures and retaining walls constructed (i) on the balance of the Oakville Subdivision, (ii) on the Kingston Subdivision, (iii) on the Weston Subdivision, (iv) at the West Toronto Diamond on the Weston/North Toronto Subdivisions, (v) at the Snider Junction on the York/Newmarket Subdivisions and (vi) at the Hagerman Junction on the York/Uxbridge Subdivisions. GO Transit is responsible for obtaining contribution from third parties to these maintenance obligations at its own risk and expense.

19. **Audit Rights**

CN shall, in connection with CN Projects, maintain all material environmental and operating documents and records required to comply with statutory and regulatory requirements, including permits, licences, orders, approvals, certificates, authorizations, registrations, and other such

material records relating to performance of its obligation in relation to CN Projects, which may be reviewed by GO Transit on reasonable advance notice.

20. **Insurance**

- (a) Except as hereinafter provided, GO Transit will, at all times, provide, maintain or cause to be provided and maintained, insurance with coverage and in amounts not less than those which are from time to time acceptable to a prudent owner and/or contractor, all at no expense to CN. Without limiting the generality of the foregoing, GO Transit shall provide and maintain for the following insurance, all at no expense to CN, in connection with work performed by GO Transit or CN under the authority of the Master Construction Agreement, as amended or supplemented hereunder:
- (i) Commercial General Liability Insurance;
  - (ii) Errors & Omissions Liability Insurance, if applicable;
  - (iii) Contractors Pollution Liability Insurance covering third party bodily injury, property damage or environmental damage caused by pollution conditions;
  - (iv) Automobile Liability Insurance covering all licensed motor vehicles owned, leased or used in the performance of the work for bodily injury, including death, and property damage (including loss of use);
  - (v) All Risks Course of Construction Insurance for improvements made by or on behalf of GO Transit in the performance of the work for which GO Transit is responsible to repair or maintain, or which is installed by or on behalf of GO Transit;
  - (vi) Contractors' Equipment "All Risks" Insurance covering construction machinery and equipment of every description owned or rented or for which the contractor is responsible and used in the performance of the work; and
  - (vii) Worker's Compensation Insurance covering all employees engaged in the performance of the work in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- (b) In the event GO Transit requires CN, or CN decides on its own initiative, to provide and maintain insurance in connection with CN Projects, it is understood and agreed that the cost thereof shall become a cost of such CN Projects and GO Transit shall pay for the cost of such insurance. To the extent that GO Transit provides the insurance coverage described above, CN shall not obtain similar insurance coverage that duplicates the coverage provided by GO Transit. If CN obtains duplicate insurance coverage, GO Transit shall not be responsible for the cost of such duplicate insurance coverage. CN shall ensure that any consultant or construction contract issued by it to a Contractor for CN Projects shall require the consultants and/or Contractors to provide pricing that is net of insurance costs, and to the extent that GO Transit provides the insurance coverage described above, GO Transit shall not pay for the cost of any duplicate insurance provided by any consultant or Contractor engaged by CN. For the purposes hereof, insurance shall not be considered duplicate if the amount of insurance coverages obtained

by GO Transit is less than those that are from time to time acceptable to a prudent owner and/or contractor.

- (c) All insurance required under this Section 20 will (i) be in a form and with an insurer reasonably acceptable and on terms and conditions satisfactory to CN and GO Transit, (ii) waive any right of subrogation against CN, GO Transit and those for whom they are responsible in law, and (iii) name CN and GO Transit as additional insureds as its interests may appear. All policies of such insurance will be primary and not call into contribution or be in excess of any other. GO Transit agrees to deliver to CN, on request, proof of the above required insurance in force at such date, such proof to be in the form of current certificates of insurance. GO Transit also agrees to deliver to CN an endorsement or endorsements describing the above-noted insurance, wherein the insurer agrees to give 30 days' prior written notice to CN of any material change in, cancellation of, or termination of such insurance.

21. **Liability and Claims**

Unless otherwise provided herein, all issues of liability and claims arising in respect of the Program shall be dealt with and managed in accordance with the provisions of Article 12 and Article 13 of the Master Operating Agreement.

22. **Contribution from Third Parties**

To the extent that CN recovers any costs relating to any Project under this Addendum from a third party, the costs of the Project charged to GO Transit shall be reduced by the amount of such recovery, and if the recovery is received after any final payment for a Project by GO Transit, CN shall pay such recovery to GO Transit.

23. **Regulatory Agreements**

All agreements with municipal or other government agencies concerning additions or modifications to level crossings and grade separations will be negotiated jointly with the road authority having jurisdiction for the crossing (the "Road Authority"), with all construction costs assumed by either GO Transit or the road authority. CN is to handle all Federal applications to the Agency or Transport Canada (Railway Safety Branch). Where it is mutually agreed or determined by a regulatory decision-making process that future maintenance should not be the responsibility of the Road Authority, then appropriate arrangements for maintenance shall be negotiated between CN and GO Transit as contemplated under Section 18 hereto.

24. **Early Termination**

Subject to Section 8 hereto, GO Transit acknowledges and agrees that CN shall be compensated for any cost, damages, expenses and penalties incurred by CN and arising directly or indirectly from the early termination of this Addendum, the Program, or any given Project, including without limitation and fees or penalties payable under any contract.

Nothing hereunder shall be construed to grant GO Transit the right to terminate this Addendum, the Program or any particular Project, unless that right is specifically provided in this Addendum

and the remedy contemplated herein is in addition to and not in substitution for any other remedy available at law or under contract.

IN WITNESS WHEREOF the parties hereto have executed this Addendum with effect as of the date written above.

**GREATER TORONTO TRANSIT AUTHORITY**

Per: G. McNeil

G. McNeil, Managing Director and Chief Executive Officer

Per: J.M. Norman

J.M. Norman, Secretary

APPROVED FOR EXECUTION
<i>[Signature]</i>
<i>[Signature]</i>

EXECUTION AUTHORIZED BY MEMBERS RESOLUTION

*[Faint handwritten text]*

**CANADIAN NATIONAL RAILWAY COMPANY**

Per: Keith E. Creel

Keith E. Creel, Senior Vice President, Eastern Region

## Schedule A to CN – GO Transit Rail Infrastructure Construction Addendum

### Extracts of GTRII Agreement Regarding Audit and Reporting Obligations

#### 5.3 Conditions of Payment

No payment shall be made during a Fiscal Year until the requests for reimbursement of Eligible Costs actually incurred and paid during the previous Fiscal Year have been audited and approved by the Committee, in accordance with the Audit Framework set out in Schedule F, and not until the Federal Co-chair of the Committee has received and approved an annual report on the previous Fiscal Year.

#### 6.1 Establishment

Within sixty (60) days of the coming into force of this Agreement, the Parties shall establish an agreement management committee to manage the implementation of this Agreement (the “Committee”). The Committee shall consist of at least four members; two senior government officials appointed by Canada and two senior officials appointed by the Province (including one from GO Transit). The Parties will notify each other of the appointments also within sixty (60) days of the coming into force of this Agreement. The Committee will exist until its activities, including the audits, reports and final adjustments, have been completed.

#### 6.6 Other Duties

GO Transit shall:

- a) establish a project office where the Agreement will be administered for the duration of the Agreement, and maintain it until the Committee’s activities have concluded;
- b) retain at the location, and make available to the Parties, all original documents relevant to the Agreement and the work of the Committee;
- c) ensure that the documents needed for the proper administration of the Agreement, including claims, approval documents, agendas and minutes of meetings of the Committee and its subcommittees, and contracts of service, are prepared and made available to the Committee;
- d) ensure that financial and technical audits required under Schedule F, and any audit requested by the Committee, are carried out; . . . .

#### **8.4 Agreements with Third Parties**

All Agreements with Third Parties entered into pursuant to subsection 8.1 will be consistent with and will incorporate the relevant provisions of this Agreement and (without limiting the foregoing) GO Transit will use reasonable efforts to include, in the agreements, provisions to ensure that:

- a) proper and accurate accounts and records are maintained with respect to the Program;
- b) Canada and Ontario are permitted, at all reasonable times, to inspect the terms of the contract and any records and accounts respecting the Program; and
- c) all applicable labour, environmental and human rights legislation is complied with.

GO Transit agrees that any agreement entered into with any Person shall guarantee Canada and Ontario, to the extent possible under the legislation applicable in the Province of Ontario, free access to the Project Component sites and to any documentation that is relevant for the purpose of audit and that a representative of Canada, Ontario or both may, if necessary, actually conduct such audit at its or their own expense, outside of the funding of this Program.

### ***SECTION 9. - ACCOUNTING RECORDS AND AUDIT***

#### **9.1 Accounts and Records Maintained**

GO Transit shall keep accurate accounts and records of the Project Components undertaken in accordance with this Agreement and shall ensure that any Person with which it contracts shall keep accurate accounts and records concerning the Project Components and that, in all cases, GO Transit and the Persons shall keep accurate invoices, statements, receipts and vouchers and shall, upon reasonable notice, make such accounts and records available to the Ministers for inspection and audit by the Ministers and by any person or persons authorized to act on behalf of the Ministers.

#### **9.2 Facilities and Information**

GO Transit shall provide all facilities required for inspection and audit, and shall make them available to the Ministers, the information that the Ministers may need for those purposes.

#### **9.3 Accounts and Records Retained**

GO Transit shall keep accounts and records relating to the administration of this Agreement for three years from the Program Completion Date.

#### **9.4 Audit**

Canada and Ontario may perform an audit as may be necessary to verify the amount of all claims for reimbursement relating to a Project Component carried out under this Agreement and the accounts and records relating to that Project Component.

### **D.3 Annual Report**

**D.3.1** As per Subsection 3.3, GO Transit will provide an annual report within one hundred and twenty (120) days of the end of each Fiscal Year. Such annual report shall include the following:

1. General Overview of Results: A general overview of the results accomplished under the Agreement during the Fiscal Year, including a description of the work completed, expenditures, environmental issues, any concerns affecting progress or completion of the Program, and any other issues that may affect completing the Program as per this Agreement.
2. Schedule "B.2" revisions: including changes made by either the Ministers or the Committee such as number and date of revisions, Project Components approved or modified, cash flow and budget changes.
3. Project Component updates, including but not limited to:
  - Description, map and status of the work completed on approved Project Component;
  - Contracts started/completed and estimated date of completion of contracts;
  - Major milestones including the opening of a section of a Proposed Component;
  - Maps and photographs of the contract locations showing work in progress and the work completed on approved Project Components;
  - Progress report on each Project Component;
  - Status of any ongoing or outstanding environmental issues;
  - Employment statistics from the work done on each Project Component;
  - Whether there has been an increase/decrease in the number of passengers/trains over/through a Project Component;
  - The cost of the Program to date and how much has been paid into the Program by all parties; and
  - Any public concerns regarding the Program.
4. Communications activities completed during the Fiscal Year;
5. A Fiscal Year-end summary table of all expenditures under the Agreement; and
6. A copy of the annual audit for the Program.

### ***SCHEDULE F - AUDIT FRAMEWORK***

#### **F.1 Purpose**

**F.1.1** The purpose of the audit framework is to provide independent and objective assurances that:

- Systems and procedures are in place to ensure that the management process has regard to the terms and conditions of the Agreement and ensure that the financial assistance is

granted for Project Components that met the eligibility criteria and the applicable obligations or requirements.

- Disbursements are supported by a rigorous process that has regard to risk management and verifies that the eligibility requirements are complied with and the costs incurred are allowable.

## **F.2 Audit objectives**

F.2.1 The objectives of audits conducted under this Agreement are as follows:

- to determine whether funds have been disbursed for the agreed purposes, by examining the payment approval process, including the nature and extent of the supporting documents, the accuracy of the information supplied in respect of claims for payment and the evidence of appropriate authorizations, and such other due diligence reviews as appropriate; and
- to ensure that prompt and timely corrective action is taken in response to audit findings and recommendations.

## **F.3 Roles and responsibilities**

F.3.1 The Committee shall approve the annual audit plans and the report of the audit findings, and shall ensure that prompt and timely corrective action is taken in response to the audit findings, including the recovery of funds, where applicable.

F.3.2 The Committee shall submit a copy of the audit plan, the audit report and, where applicable, the report on the remedial measures taken, if any, to the Ministers each year.

## **F.4 Audit plan**

F.4.1 The Committee shall ensure that an annual audit plan is drawn up and includes the following components:

- the audit objectives to be achieved for the year in question;
- the nature of the risks or issues to be addressed in the audit;
- the scope of the controls and governance processes associated with the activities subject to audit, including relevant systems, records personnel and physical properties;
- the report of audit findings;
- the timetable for audit reports;
- the audit methodology or work program to achieve the audit objectives; and
- the level of resources to achieve the audit objectives.

F.4.2 The Committee shall authorize the distribution of audit reports to ensure timely access by the public. In addition, pursuant to the Treasury Board of Canada's audit policy, the Federal Co-chair shall ensure that the results of any available audits are provided to the public on request.

Any audit conducted within the framework of this Agreement shall be done in accordance with accepted auditing standards such as the rules of the Canadian Institute of Chartered Accountants.