

SCHEDULE 18

AUTHORIZED REQUESTER

ELECTRONIC DATA TRANSFER AGREEMENT

THIS AGREEMENT made as of the 6th day of April, 1999.

B E T W E E N:

**THE CROWN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION**

(the "**Ministry**")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "**Requester**")

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

ARTICLE 1.0 INTERPRETATION

1.0 Definitions

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

"Agreement" means this electronic data transfer requester agreement, including, for the avoidance of doubt, all schedules referred to herein.

"Base Fee" means the annual fee set out in Schedule C for access to Information Products as adjusted from time to time to take into account increases in CPI as set out in Section 5.6.

"Call-ups" means electronic requests by the Requester for Information Products.

"Completed Highway 407" means Highway 407 when it is Commissioned and Opened from the Queen Elizabeth Way in the City of Burlington to Highway 7 east of Brock Road in the Town of Pickering.

"Concession Agreement" means the Highway 407 Concession and Ground Lease Agreement made as of the date hereof between the Requester and the Crown in Right of Ontario as Represented by the Minister Without Portfolio with Responsibility for Privatization.

"Cost Recovery Fee" means the annual fee to be charged for providing the Information Products as determined pursuant to Section 5.7 which shall be equal to reasonable additional costs incurred by the Ministry annually in providing the Information Products to the Requester pursuant to this Agreement on a full cost recovery basis as adjusted from time to time to take into account increases in CPI as set out in section 5.7.

"Cost Recovery Index Ratio" means, with respect to any particular calendar year, the ratio of (i) the highest value of the CPI for the most recent month in which there has been an election to charge the Cost Recovery fee or a re-negotiation or re-determination of the Cost Recovery Fee as set out in Section 5.7, and the months of September in each calendar year from and including the calendar year which includes the most recent election, re-negotiation or re-determination of the Cost Recovery Fee, to but excluding such particular calendar year, to (ii) the value of the CPI for the most recent month in which there has been a election, re-negotiation or re-determination of the Cost Recovery Fee as set out in Section 5.7.

"CPI" means the All-Items Consumer Price Index for the City of Toronto published by Statistics Canada (or by a successor or other Governmental Authority), or, if the Consumer Price Index is no longer published or is not published for the relevant period or time, an index published in substitution for the Consumer Price Index or for such relevant period or time, or any comparable replacement index designated by the Ministry acting reasonably. If a substitution or replacement is required, the Ministry, acting reasonably, will make the necessary conversions. If the base year for the Consumer Price Index, (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other Governmental Authority), the Ministry will make the necessary conversion. If any calculation required to be made under this Agreement based on the Consumer Price Index as at a particular date or for a particular period and the Consumer Price Index for such date or period is not available as at the time the calculation is required to be made, the Ministry, acting reasonably, shall be entitled to estimate the Consumer Price Index for the purposes of such calculation, subject to adjustment following the Consumer Price Index for the relevant date or period becoming available.

"EDT" means, from time to time, the computer hardware and software that allows remote access to Information Products.

"Index Base Month" means the calendar month three (3) months prior to the calendar month which includes the Effective Date.

"Index Ratio" means, with respect to the calendar year which includes the Effective Date, 1.000 and, with respect to any subsequent calendar year, the ratio of (i) the highest value of the CPI for the Index Base Month and the months of September in each calendar

year from and including the calendar year which includes the Effective Date to but excluding such subsequent calendar year, to (ii) the value of the CPI for the Index Base Month.

“Information Products” means names and addresses of users of Highway 407 who owe tolls, fees or other charges and any other personal information prescribed by regulation pursuant to the Highway 407 Act, 1998, contained in the Ministry computer database used by the Province and includes a response that there is no information in the database relating to a particular license plate number, but excludes any information that the Requester has obtained from a source other than the Ministry.

“Mailbox” means the electronic services used to send and to receive electronic documents.

“Ministry Default” has the meaning ascribed thereto in Section 7.3

“Personal Information” has the meaning ascribed thereto in Subsection 2(1) of the *Freedom of Information and Protection of Privacy Act*.

“Requester Default” has the meaning ascribed thereto in Section 7.1

“Security Statement” means a security statement of an employee or agent in substantially the form set out in Schedule A.

“Senior Operating Officer” means the person designated by notice from time to time by the Requester for the purposes of Schedule D.

“Senior Responsible Official” means the person designated by notice from time to time by the Ministry for the purposes of Schedule D.

“Transaction Log” means the record of all Call-ups, including the date of each Call-up and the license plate number for which the Information Product was requested and exchanged between the Ministry and the Requester via EDT.

“User ID” means the user identification number of each of the Requester’s employees, representatives or agents.

1.1 Other Definitions

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Concession Agreement.

1.2 Number and Gender

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

1.3 Headings

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

1.4 References to this Agreement

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

1.5 References to any Agreement

A reference in this Agreement to any agreement or document (including, for avoidance of doubt, this Agreement) refers to that agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

1.6 Meaning of Including

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

1.7 Statutes

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

1.8 Currency

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

1.9 Generally Accepted Accounting Principles

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

1.10 Calculation of Time

For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern standard

time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern standard time or Eastern Daylight Time, whichever is applicable) on the next Business Day.

1.11 Performance on Holidays

Except as otherwise set out in this Agreement, if any action is required by this Agreement to be taken on or by a day which is not a Business Day, such action shall be valid if taken on or by the next succeeding Business Day.

1.12 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

1.13 Amendment

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

1.14 Waiver of Rights

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

1.15 Invalidity

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent, (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Schedule D.

1.16 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Schedule D, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder or related hereto.

1.17 Schedules

The following schedules form part of this Agreement:

Schedule A	Employer/Employee/Agent Security Statement
Schedule B	Access Schedule
Schedule C	Fees
Schedule D	Dispute Resolution

ARTICLE 2.0 GRANT OF LICENCE

2.1 Grant

The Ministry grants the Requester a non-exclusive, non-assignable and non-transferable licence to access and use the Information Products, subject to the terms of this Agreement.

2.2 Title

The Requester acknowledges that the Ministry owns all right, title and interest in the Information Products including intellectual property, copyright and other proprietary rights. This licence shall not constitute a sale of any of the Ministry's right, title or interest of any kind whatsoever in the Information Products.

2.3 Authorized Use

The Requester shall hold the Information Products and the information contained therein in strict confidence for the exclusive use of the Requester. The Requester shall not collect, use or disclose the Information Products for any purposes except for those which have been approved by the Ministry, as follows:

- (a) to assist the Requester in the collection and enforcement of tolls, fees and other charges owing with respect to Highway 407;
- (b) to assist the Requester in traffic planning and revenue management with respect to Highway 407;
- (c) to assist the Requester in communicating with users of Highway 407 for the purpose of promoting the use of Highway 407 and;

- (d) to assist the government of a province of Canada or a state of the United States of America with whom the Requester has an agreement relating to the collection and enforcement of tolls.

2.4 Database Maintenance

Except for the purposes authorized by this Agreement the Requester shall not develop, derive or maintain a database containing Information Products obtained pursuant to this Agreement.

2.5 Individuals not to be Contacted

The Requester shall not contact any individual to whom the Information Products relates, directly or indirectly, other than as authorized by this Agreement.

2.6 Use of Information Product

The Requester may use any Information Product received from the Ministry for the purposes set out in this Agreement.

2.7 Survival

For the avoidance of doubt, the Requester covenants that the restriction on the use of Information Products set out in Section 2.6 shall be binding upon its successors and assigns. This Section shall survive the expiry or termination of this Agreement.

2.8 Document Destruction

The Requester shall retain all originals or copies of electronic files or records of Information Products received from the Ministry for at least sixty-five (65) days from the date of the receipt of such Information Products. For the avoidance of doubt, the foregoing obligation does not apply to the Transaction Logs required to be maintained by Article 6.

2.9 Ministry Obligation

Subject to the provisions of this Agreement, the Ministry shall provide the Requester with the Information Products requested by the Requester as set out in Schedule B and, subject to Section 5.8, in a form accessible by the Requester.

2.10 Cooperation re Agreements

The Ministry and the Requester shall reasonably cooperate in the negotiation of agreements involving the exchange of information to assist in the collection and

enforcement of tolls with a government of a province of Canada or a state of the United States of America.

ARTICLE 3.0 TERM

3.1 Term

The term of this Agreement shall be for a term of ninety-nine (99) years commencing on the Effective Date. Unless earlier terminated in accordance with the provisions hereof, this Agreement shall terminate upon the earlier of the Concession Termination Date or the date upon which the Concession Agreement is terminated.

3.2 Early Termination by Requester

Despite Section 3.1, this Agreement may be terminated by the Requester giving to the Ministry sixty (60) days written notice of termination.

3.3 Early Termination by Ministry

Despite Section 3.1, if an alternative method of obtaining Information Products, which may be used by the Requester is as reliable, for all purposes under this Agreement, is no more onerous and is no more expensive than obtaining Information Products pursuant to this Agreement, and is available to the Requestor, this Agreement may be terminated by the Ministry giving to the Requester a written notice of termination. Upon receipt of the notice of termination, the Requester shall have sixty (60) days to object to or accept the proposed alternative method, failing which, the agreement shall terminate after the expiry of the sixty (60) days. If the parties fail to reach an agreement on the alternative method, they shall resort to the dispute resolutions mechanism of Schedule D, it being understood that the Ministry shall not terminate this Agreement before receipt of a decision by the Arbitrator allowing it to do so.

ARTICLE 4.0 ELECTRONIC DATA TRANSFER

4.1 Electronic Call-Ups

Subject to Section 5.8, the Ministry shall allow the Requester to access the Ministry's vehicle database through a Mailbox accessed electronically through a telecommunications link to be established between the Requester's computer and EDT.

4.2 Effect of Electronic Call-Ups

The Ministry shall accept Call-ups and shall respond with Information Products in accordance with Schedule B.

4.3 EDT and Mailbox

The Requester shall obtain, install, test, maintain, repair and replace at its own expense all of the Requester's computer equipment, supporting equipment software and services, including communications and Mailbox services that it shall require in order to send and to receive electronic documents as contemplated by this Agreement through EDT.

4.4 Receipt and Acknowledgment

The Ministry is hereby deemed to have received a Call-up when the Call-up is accessible to the Ministry at its Mailbox. The Ministry shall provide the Requester with acknowledgments of receipt of all Call-ups and the Ministry shall use reasonable efforts to assist the Requester when failed communication is detected.

4.5 Data Processing

The Requester agrees that all requests for Information Products shall be made from offices of the Requester located in the Province of Ontario. All activities related to the authorized use set out in Section 2.3 hereof, shall also be performed from the aforesaid offices of the Requester. The Requester shall retain and process in the Province of Ontario any Information Products obtained from the Ministry.

4.6 EDT Support

The Ministry and the Requester shall each:

- (a) designate a service coordinator who shall be responsible for all issues and communications with the other related to EDT;
- (b) designate a technical advisor who shall be the primary contact for technical communications with the other related to EDT;
- (c) inform the other of the names of their service coordinator and technical advisor before any Call-ups of Information Products; and
- (d) promptly inform the other when another individual is assigned to either of these positions.

Additional support personnel may be designated by mutual agreement.

ARTICLE 5.0 PAYMENT, FEES AND SEARCHES

5.1 Fee Schedule and Payment

The Ministry shall charge the Requester and the Requester shall pay the fees set out in Schedule C.

5.2 Designated Banking Information

The Requester shall establish an account with the Ministry to be used for payment of amounts owing under this Agreement.

5.3 Fees Due

The Base Fee is due and payable on a quarterly basis in advance on the first business day of January, April, July and October unless the Ministry has elected to pay the Cost Recovery Fee in which case the Cost Recovery Fee is due and payable on a quarterly basis in advance on the first business day of January, April, July and October. The Ministry shall have no obligation to process and provide Information Products if the payments are not made to the account established pursuant to Section 5.2 as set out in this Section.

5.4 Costs

The Requester shall pay all fees associated with use of EDT for electronic access to Information Products as prescribed in Schedule C.

5.5 Modifications to Schedule B

Notwithstanding Section 1.13, the Ministry may modify Schedule B at any time when it is reasonable and necessary to do so based upon the then existing technology provided that, subject to Section 5.8, the Ministry shall at all times provide the Requester with the Information Products requested by the Requester in a form accessible by the Requester and at least as frequently as set out in Schedule B, as it exists at the date of this Agreement. The Ministry shall give the Requester at least ninety (90) days notice prior to modifying Schedule B.

5.6 Annual Adjustments to the Base Fee

Subject to Section 5.7, after the first (1st) anniversary of the Effective Date, the Base Fee shall be adjusted on an annual, calendar year, basis to take into account increases in the CPI. On or before November 30 of each year following the first

(1st) anniversary of the Commissioning and Opening of the Completed Highway 407 the Ministry shall notify the Requester of the Base Fee to be applicable to the following calendar year. The Base Fee for any year shall be calculated by multiplying the Base Fee set out in Schedule C by the Index Ratio.

5.7 Election to Charge Cost Recovery Fee

On the second (2nd) anniversary of Commissioning and Opening of the Completed Highway 407, and every five (5) years thereafter, the Ministry shall have the right to elect to charge the Requester the Cost Recovery Fee in lieu of charging the Base Fee. The Ministry shall provide notice of such election to the Requester within thirty (30) days after the applicable anniversary of the Commissioning and Opening of the Completed Highway 407. The Cost Recovery Fee shall be determined after such election by agreement between the Requester and the Ministry or, failing agreement, using the dispute resolution process set out in Schedule D. Once the Ministry has elected to charge the Cost Recovery Fee it shall no longer have the option of charging the Base Fee for the remainder of the term of this Agreement. If the Ministry has not made an election to charge the Cost Recovery Fee and provided notice thereof to the Requester within the time period set out above, the Ministry shall charge the Base Fee for the following five (5) year period. Every fifth (5th) year after the Ministry elects to charge the Cost Recovery Fee, the Cost Recovery Fee shall be re-negotiated by agreement between the Requester and the Ministry or, failing agreement, the Cost Recovery Fee shall be re-determined by the dispute resolution process set out in Schedule D. The Cost Recovery Fee shall come into effect on the first day of the calendar year following the applicable anniversary of the Commissioning and Opening of the Completed Highway 407. If the Ministry has elected to charge the Cost Recovery Fee, the Cost Recovery Fee shall be adjusted on an annual, calendar year, basis to take into account increases in the CPI. On or before November 30 of each year after the election to charge the Cost Recovery Fee, or each year after a re-negotiation or re-determination of the Cost Recovery Fee, the Ministry shall notify the Requester of the Cost Recovery Fee to be applicable to the following calendar year. The Cost Recovery Fee to be charged for any year shall be calculated by multiplying the Cost Recovery Fee most recently negotiated or determined pursuant to this Section by the Cost Recovery Index Ratio.

5.8 Search Prior to Plate Denial

Prior to giving the Registrar of Motor Vehicles notice pursuant to Section 22 of the *Highway 407 Act, 1998*, the Requester shall confirm identity of the plate holder through one confirmatory Call-up for Information Product to the Ministry.

5.9 Cost of Changes to Ministry's System

The Requester shall pay the costs of any changes to the hardware or software including maintenance directly related thereto, used by the Ministry to provide Information Products, where such changes have been reasonably requested by the

Requester and Approved by the Ministry, provided that such changes are directly related to the requirements of the Requester.

ARTICLE 6.0 SECURITY, RECORDS AND AUDIT

6.1 Transaction Log

Each party shall maintain a Transaction Log and shall designate one or more individuals with appropriate authority as the persons responsible for the systems and procedures relating to the compilation and custody of the Transaction Log. Any such authorized person shall be competent to certify the accuracy and completeness of the Transaction Log.

6.2 Records of Requests

The Requester shall maintain in its office in the Province of Ontario Transaction Logs of all requests with respect to searches of individuals' names and addresses from the Ministry's data base. The Transaction Logs shall contain the date of each requests, and the license plate numbers for which the information was requested. The Ministry shall have the right to examine the Transaction Logs at the discretion of the Ministry on one (1) Business Day's notice as prescribed by Section 6.3 of this Agreement. The Requestor shall maintain each Transaction Log for a period of three (3) years from the date of the last request recorded in such Transaction Log. A Transaction Log shall not include Information Products.

If there is any discrepancy relating to Call-ups of Information Products and the response of the Ministry, the Requester shall advise the Ministry within two (2) Business Days of becoming aware of such discrepancy. If the parties cannot otherwise agree, the Ministry shall provide the Requester with copies of excerpts of the Transaction Logs relating to discrepancy as soon as possible after notification of the discrepancy by the Requester.

6.3 Audit

The Ministry or its designee may conduct electronic or manual audits of the Requester at the discretion of the Ministry and on one (1) Business Day's notice. The Ministry or its designee may perform on-site audits at the Requester's offices during regular business hours for the strict purpose of ensuring compliance with the terms and conditions of this Agreement. The Ministry will use reasonable efforts to ensure such audit is done in a manner so as not to interfere with the Requester's normal business activities. All records created by or as a result of this Agreement shall be subject to inspection and audit by the Ministry for a period of three (3) years from the date they are created.

6.4 Surrender of Information Products

Upon termination of this Agreement, the Requester shall, at the request of the Ministry, surrender to the Ministry all Information Products and any copies or portions thereof in its possession together with all records retained in respect thereof (including Transaction Logs), except any copies required to fulfil the Requester's obligations set out in Section 8.7. The Requester shall comply with the Ministry's request not later than the end of the third Business Day after the date of suspension, revocation, closure, cancellation, expiry or termination as the case may be. The Requester shall continue to remain bound by the non-disclosure provisions of this Agreement which shall survive the termination of this Agreement. Notwithstanding the foregoing, if this Agreement is terminated but the Concession Agreement is not terminated, then the Requester shall be entitled to retain any Information Products necessary for the purposes of enforcing payment of any unpaid tolls, fees and other charges. Such Information Products shall be surrendered on the earlier of (i) the date that such tolls, fees and other charges have been paid or (ii) the date that the dispute resolution process with respect to the payment of such tolls, fees and other charges has been concluded.

6.5 Authorization

Each party shall establish such systems or methods of controlling the transmission of its documents as it considers appropriate, and warrants that each document of which it is the sender is duly authorized and binding upon it.

6.7 Incomplete, Inaccurate or Corrupted Electronic Call-Ups

If the Ministry reasonably believes that a Call-up is incomplete, inaccurate, corrupted in transmission, or not intended for it, the Ministry shall, within one (1) Business Day, notify the Requester of same and the Ministry shall not process such Call-up, pending further clarification by the Requester. The Requester shall promptly re-transmit such Call-ups or take such other corrective actions as may reasonably be required in the circumstance. All communications initiated pursuant to this Section are at the expense of the Requester.

6.8 Notices and Communications

It is in the discretion of each of the Ministry and the Requester whether to use the electronic service for notices and communications given pursuant to this Article.

6.9 Security

- a) The Requester shall maintain the security and integrity of the information and Information Products which it receives, and shall comply with such reasonable security requirements as are from time-to-time specified by the

Ministry, including keeping any Information Product in a physically secure location to which access is restricted.

- b) The Requester is responsible for the selection, implementation, and maintenance of appropriate security products, tools, and procedures sufficient to meet Ministry requirements for protecting Ministry programs and data from improper access or from loss, alteration, or destruction. The Requester is responsible for implementing any necessary tests to establish and monitor its own security products, tools, and procedures and to assess their adequacy.
- c) The Requester shall ensure that each employee, representative, or agent has a User ID and a security code to make Call-ups and receive Information Products under this Agreement. Call-ups which contain a User ID and a security code shall be legally sufficient to verify the identity of the Requester and the authenticity of the Call-ups. The Requester shall maintain security procedures to prevent unauthorized use or disclosure of any User ID.
- d) Any residence address information obtained by the Requester pursuant to this Agreement shall be secured so that the information cannot be viewed by the public and non-authorized persons.
- e) The Requester shall restrict access by its employees or agents to the information it receives pursuant to this Agreement by requiring all employees or agents who shall have access to such information to enter into and comply with Security Statements. Security Statements shall bind the Requester and all employees and agents to the terms and conditions set out therein. The Requester shall be solely responsible for any failure on its part to bind an employee or agent and to ensure his or her compliance with a Security Statement and the Requester shall indemnify the Ministry for any Losses which occur as a result of its failure to bind an employee or agent or to ensure his or her compliance with a Security Statement. The Requester shall maintain a copy of all Security Statements that it has entered into for a period of three (3) years from the date when the employee or agent ceases to be an employee or agent of the Requester.

ARTICLE 7.0 DEFAULT

7.1 Requester Default

The occurrence of any one or more of the following events shall constitute a Requester Default under this Agreement

- (i) If the Requester fails to make any payment of any amount due to the Ministry under this Agreement and such default continues unremedied for a period of ninety (90) days following notice thereof from the Ministry to the Requester.
- (ii) If the Requester fails to perform or observe any of its material obligations or covenants under this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Ministry to the Requester or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Requester has demonstrated to the satisfaction of the Ministry, acting reasonably, that
 - (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure;
 - (B) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Ministry, acting reasonably, and
 - (C) if such failure is in fact cured within such period of time then such failure shall not be a Requester Default.
- (iii) If the Requester fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule D and such default continues unremedied for a period of ninety (90) days following notice thereof from the Ministry to the Requester.
- (iv) If there is a Concessionaire Default under the Concession Agreement and the Grantor is entitled to exercise any of its remedies set out in Section 20.2 of the Concession Agreement.

7.2 Remedies of the Ministry

Upon the occurrence of a Requester Default, the Ministry may by notice to the Requester declare the Requester to be in default and may, subject to the dispute resolutions provisions of Schedule D, do any or all of the following as the Ministry, in its sole and absolute discretion, shall determine

- (i) The Ministry may terminate this Agreement by giving sixty (60) days' prior notice to the Requester.
- (ii) If the Requester is in default under this Agreement by reason of the failure to pay any monies, the Ministry may (without obligation to do so) make payment on behalf of the Requester of such monies. Any amount so paid by the Ministry shall be payable by the Requester to the Ministry on demand, without any days of grace.

- (iii) The Ministry may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Requester Default.
- (iv) The Ministry shall be entitled to recover damages and costs, including legal fees on a solicitor and client basis.

Notwithstanding the foregoing, the Ministry may not exercise its rights under 7.2(i) above unless its other remedies are inadequate in the circumstances of the Requester Default. In order to exercise its rights under 7.2(i) the Ministry must, in the notice provided for in Subsection 7.1(i), set out the reasons why the Ministry's other remedies are inadequate in the circumstances of the Requester's Default.

7.3 Ministry Default

The occurrence of any one or more of the following events shall constitute a Ministry Default under this Agreement

- (a) If the Ministry defaults in the payment of any amount due to the Requester under this Agreement and such default continues unremedied for a period of ninety (90) days following notice thereof from the Requester to the Ministry.
- (b) If the Ministry fails to perform or observe any of its material obligations or covenants under this Agreement and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Requester to the Ministry or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Ministry has demonstrated to the satisfaction of the Requester, acting reasonably, that
 - (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, and
 - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Requester, acting reasonably,

and if such failure is in fact cured within the period of time acceptable to the Requester, acting reasonably, then such failure shall not be a Ministry Default.

- (c) If the Ministry fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule D and such default continues unremedied for ninety (90) days following notice thereof from the Requester to the Ministry.

7.4 Remedies of the Requester

Upon the occurrence of a Ministry Default by the Ministry under this Agreement, the Requester may do any or all of the following as the Requester, in its sole and absolute discretion, shall determine:

- (a) The Requester may terminate this Agreement by giving sixty (60) days' prior notice to the Ministry.
- (b) The Requester may seek such equitable remedies as are available to it.
- (c) The Requester shall be entitled to recover damages and costs, including legal fees on a solicitor and client basis.

7.5 Rights of Leasehold Mortgagee

Article 22 of the Concession Agreement applies to this Agreement with necessary modifications.

7.6 Notification of Breach

Each of the Requester and the Ministry shall notify the other immediately upon becoming aware that any of the provisions set out in this Agreement have been breached.

ARTICLE 8.0 GENERAL

8.1 Communications

The Requester and the Ministry shall each deal with their own technical issues and problems relating to EDT. All communications with the Ministry relating to EDT shall be through personnel identified in Section 4.6. In cases when the Requester is unable to answer a question and that question must be answered by Ministry personnel, the Requester shall obtain the answer from the Ministry and relay the answer to the user of the EDT.

8.2 Independent Contractor

The Requester and its officers, agents and employees shall act on behalf of the Requester and not as officers, agents or employees of the Ministry.

8.3 Limitation of Liability

The Ministry makes no warranty, express or implied, with respect to the Information Products or the accuracy or completeness of information contained

therein, and in no event shall the Ministry be liable for Losses arising out of the Requester's use of, or inability to use the Information Products. This Section shall survive the expiry or termination of this Agreement. For the avoidance of doubt this Section shall not restrict the Requester from exercising any of the rights which are available to it pursuant to Section 7.4.

8.4 Force Majeure

Neither party shall be liable for delay or failure in performance resulting from Force Majeure.

8.5 EDT Failure

If Call-ups or Information Products cannot be sent by EDT because of any failure, both parties agree to use all commercially reasonable efforts to continue normal communications by alternate means and to restore the EDT transmissions promptly. The Ministry shall not be liable for any damages, loss of profits or other consequential or indirect damages incurred by the Requester as a result of any such failure, provided that the Ministry shall use its commercially reasonable efforts, where it is within the Ministry's control, to restore EDT transmissions as soon as is reasonably possible after such failure.

8.6 Advertising

Any promotional or informational material referring to Information Products from the Ministry or referring to access to the Ministry data base shall be accurate, shall be consistent with the terms and provisions of this Agreement and shall contain only factual statements relating to the purpose and conditions of access as set forth in this Agreement. The Ministry name and logo shall not be used without the prior written consent of the Ministry.

8.7 Evidence

Any computer printout made pursuant to this Agreement shall be considered to be an "original" when maintained in the normal course of business and shall be acceptable by both parties to the same extent and under the same conditions as other business records maintained in documentary form. Each party agrees that any Transaction Logs and records, whether kept by either party in a regular course of business or kept by EDT, shall be admissible in any legal, administrative or other proceedings as prima facie evidence of the accuracy and completeness of their contents in the same manner as an original document in writing. The parties hereby waive any right to object to the introduction of a duly certified permanent copy of such records in evidence.

8.8 Non-Assignability

This Agreement may not be assigned or otherwise disposed of by the Ministry or the Requester, either in whole or in part, without prior written consent of the other party, which consent may not be unreasonably withheld. A Leasehold Mortgagee shall be a permitted assignee for the purposes of this Section 8.8. No consent shall be required if this Agreement is assigned or otherwise disposed of in conjunction with a permitted Transfer under the Concession Agreement and in such case the provisions of Article 21 of the Concession Agreement shall apply with necessary modifications.

8.9 Notice

All notices and other communications required or permitted by this Agreement shall be in writing and shall be delivered, sent by telecopier or by registered mail (return receipt requested) as follows:

To the Ministry:

Licensing Administration Office
 Ministry of Transportation
 2680 Keele Street
 Downsview, Ontario
 M3M 1J8

Attention:

Co-ordinator,
 Business Information Services

Tel: (416) 235-4832
 Fax: (416) 235-4414

To the Requester:

200 King Street West
 20th Floor
 Toronto, Ontario
 M5H 3T5

Attention: President
 Fax: (416) 326-6460

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received (i) on the day it is delivered or on the day on which transmission is confirmed by the sender's telecopier records, if telecopied, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be

deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by registered mail.

8.10 Time of the Essence

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

8.11 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party shall at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

8.12 Interest

Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus three percent (3%), from the date such payment is due until payment and both before and after judgement.

8.13 Costs

Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

8.14 Enurement and Binding Effect

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

8.15 No Partnership

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Ministry and the Requester.

8.16 Cumulative Remedies

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.17 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

8.18 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

8.19- Certificates

On fifteen (15) days' notice, each party shall promptly, whenever reasonably requested by the other, execute and deliver to the other, a certificate signed by a responsible officer or director or employee, in respect of the status of this Agreement including confirmation:

- (a) that this Agreement is in full force and effect, unamended and, if not, reasonable details thereof; and
- (b) as to the existence or non-existence of any defaults under this Agreement and, to the extent applicable, reasonable details thereof.

8.20 Dispute Resolution

All disputes between the Ministry and the Requester relating to this Agreement shall be resolved using the dispute resolution process contained in Schedule D.

ARTICLE 9.0 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the Ministry

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

- (a) The Ministry has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Ministry, and constitutes a legal, valid and binding obligation of the Ministry, enforceable against it in accordance with its terms (subject, however, to limitations with respect to the enforcement of remedies and other laws relating to or affecting creditors' rights generally and to the availability of equitable remedies such as specific performance and injunction and to limitations of general application respecting the enforcement of claims against Her Majesty the Queen in Right of the Province of Ontario).

9.2 Representations and Warranties of the Requester

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

- (a) the Requester is a corporation duly incorporated and organized and is validly subsisting under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, and has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Requester and constitutes a legal, valid and binding obligation of the Requester enforceable against it in accordance with its terms (subject, however, to limitations with respect to the enforcement of remedies, to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction).

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement.

**THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF
TRANSPORTATION**

Per: _____
Title: Minister of Transportation

407 ETR CONCESSION COMPANY LIMITED

Per: _____ c/s
Name:
Title:

SCHEDULE A

ARTICLE 2 EMPLOYER/EMPLOYEE/AGENT SECURITY STATEMENT

Employee/Agent's Name:
Division:
Position #:

Ontario Transportation Capital Corporation ("the Requester") is licensed to receive confidential and personal information from databases administered by the Ontario Ministry of Transportation. The Requester and the Ministry of Transportation are committed to protect this information from unauthorized access, use or disclosure. The following policies have been adopted to address employees' and agents' responsibilities for handling and protecting this information.

1. As an employee or agent of the Requester, you may access information only when necessary to perform your duties in the course of your employment. You must not access or use the information from any Ministry file or database for personal reasons. (Examples of inappropriate access or misuse of information include, but are not limited to: making inquiries for personal use or processing transactions on your own records or those of your friends or relatives; accessing information about another person, including locating their residence address, for any reason for which it is not related to your work responsibilities or authorized by your supervisor.)
2. You may disclose information from a Ministry database or file only to individuals who have been authorized to receive it through appropriate procedures which have been authorized by the Ministry of Transportation. (Examples of unauthorized disclosures include but are not limited to: looking up someone's address for a friend).
3. You must take reasonable precautions to maintain the secrecy of any password you use to access information on the automated database. Reasonable precautions include not telling others your password or knowingly allowing them to observe while you enter it at the terminal. It also includes changing your password frequently, and, if you suspect your password has been used by someone else, changing it immediately and notifying your supervisor. In addition, you should select random passwords that are not easy for others to guess.
4. You must take reasonable precautions to protect data entry terminals and equipment from unauthorized access. Reasonable precautions include, without limitation: not leaving your terminals unattended while you are logged onto the system; exiting the database when you leave your workstation; securing your terminal with a locking device if one has been provided; storing user documentation to sensitive programs in a secure place; and reporting any

suspicious circumstances or unauthorized individuals you have observed in the work area to your supervisor.

I have read and I understand the security policies stated above, and shall comply with them and any other security policies issued in the future by the Ministry or the Requester. I understand that failure to comply with these policies may result in disciplinary action and civil or criminal prosecution in accordance with applicable statutes.

Signature of Employee/Agent

Date

Witnessed By

SCHEDULE B

ACCESS SCHEDULE

EDT – Over Night Batch:

All requests for Information Products shall be processed by overnight batching: i.e. all requests for Product Information for a single day will be processed at one time and such requests will be processed and transmitted to the Requester the Business Day following receipt of such requests. The Ministry may establish a time by which such requests must be received for processing by the next Business Day. As at the Effective Date, requests must be received by 11:00 p.m. (Eastern standard time or Eastern Daylight Time, whichever is applicable) in order to be processed and transmitted to the Requester on the next Business Day. Requests may be made on any day of the year.

The Requester's Technical Contact is

Please print or type name

Area Code and telephone number

SCHEDULE C

FEES

Connectivity Fees

The connectivity fees will include a one time set-up fee of \$250.00 for a personal computer connection or \$1,100.00 for a mainframe connection.

Information Product Fee

Base Fee for access to Information Products: \$ 5,000,000

SCHEDULE D

DISPUTE RESOLUTION

1.1 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Ministry and the Requester under or relating in any way to this Agreement, including a dispute with respect to the obligations of the Requester or the Ministry hereunder or the occurrence of a default hereunder, such dispute shall, in the first instance, by notice from either party to the other requiring the dispute to be resolved, be referred to the Senior Responsible Official of the Ministry and the Senior Operating Officer of the Requester for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within fifteen (15) Business Days (or such longer period as the parties may agree) following such notice, the dispute shall, by notice from either party to the other requiring the dispute to be resolved at a higher level, be referred to the then chief executive officer of the Requester and the then responsible Deputy Minister of the Ministry or such Deputy Minister's designee. If the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following such latter notice, either party may by notice to the other require that the dispute be resolved by mediation as set out below.

1.2 Mediation

The mediation shall be held within thirty (30) Business Days following the end of the thirty (30)-Business Day negotiation period.

Within seven (7) Business Days following the end of such thirty (30)-Business Day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be resolved in writing, shall be signed by the parties and shall be final and binding on them. If the parties fail to agree on a mediator within seven (7) Business Days or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

1.3 Initiation of Arbitration Proceedings

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request an arbitration. Within fifteen (15) Business Days following receipt of the Initiating Notice by the Responding Party,

the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party, either party shall be entitled to make application under the *Arbitration Act*, 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator, and the provisions of the *Arbitration Act*, 1991 (Ontario) shall govern such appointment.

1.4 Qualified to Act

The Single Arbitrator or panel of arbitrators appointed to act hereunder (the "Arbitrator") shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

1.5 Submission of Written Statements

(a) Within thirty (30) Business Days following the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send to the Responding Party and the Arbitrator a statement of claim (the "Statement of Claim") stating in sufficient detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims.

(b) Within thirty (30) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim (collectively, the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.

(c) Within fifteen (15) Business Days following receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the Arbitrator a statement of reply (and, if applicable, defence to counterclaim collectively, the "Statement of Reply").

(d) Within fifteen (15) Business Days following receipt of the Statement of Reply, the Responding Party may send to the Initiating Party a statement of reply to counterclaim (the "Statement of Reply to Counterclaim").

(e) Every Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the party concerned relies.

(f) After submission of the Statement of Claim, the Statement of Defence, the Statement of Reply and the Statement of Reply to Counterclaim, if any, the Arbitrator shall forthwith meet with and give directions to the parties for the further conduct of the arbitration.

(g) There shall be no oral discovery unless ordered by the Arbitrator.

1.6 Meetings and Hearings

(a) Meetings and hearings of the Arbitrator shall take place in the City of Toronto or in such other place as the parties agree upon and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties adequate notice thereof. Subject to any adjournments which the Arbitrator allows, the arbitration hearing shall be continued on successive Business Days until it is concluded.

(b) All meetings and hearings shall be in private unless the parties otherwise agree.

(c) Each party may be represented at any meetings or hearings by legal counsel.

(d) Each party may examine and re-examine its witnesses and cross-examine those of the other parties at the arbitration.

1.7 The Decision

(h) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days following the conclusion of all hearings referred to in Section 1.6 of this Schedule D unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reasons for the decision.

(i) If the Arbitrator is a panel, the decision of the majority of the panel shall be deemed to be the decision of the Arbitrator.

(j) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), and with the exception of monetary claims in excess of ten million dollars (\$10,000,000) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice.

(k) If the decision results in an award in excess of ten million dollars (\$10,000,000) the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

1.8 Jurisdiction and Powers of the Arbitrator

(a) The object of an arbitration hereunder shall be to ensure the just, expeditious, economical and final determination of any dispute.

(b) Without limiting the jurisdiction of the Arbitrator at law, a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to

- (i) determine any question of law arising in the arbitration,
- (ii) determine any question as to the Arbitrator's jurisdiction,
- (iii) determine any question of good faith or dishonesty arising in the dispute,
- (iv) order any party to furnish further details of its case, in fact or in law to the other parties,
- (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so,
- (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law,
- (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection

and retention of Toll Revenues pending the final resolution of any dispute hereunder,

- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of parties hereto,
- (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant,
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties,
- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
- (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

(c) The jurisdiction and powers referred to in Subsection 1.8(b) of this Schedule D shall be exercised at the discretion of the Arbitrator subject to only to Laws and Regulations and the provisions of this Agreement.

1.9 *Arbitration Act, 1991 (Ontario)*

The *Arbitration Act, 1991 (Ontario)* shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Schedule D or by agreement of the parties.

1.10 *Provisional Remedies*

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

1.11 *Continuing Performance*

(a) At all times, notwithstanding the existence of any dispute, the Ministry and the Requester shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.

For example, in the event of a dispute with respect to the reasonableness of any Approval by the Grantor, the Concessionaire shall comply with such decision but shall have the right to submit the question of reasonableness to the Arbitrator pursuant to this Article 25.

(b) Subject to the express provisions of this Agreement, where there is any dispute as to the amount of monies owing by any party to any other party hereunder, the portion of the amount owing that is not contested, disputed or challenged, if any shall be paid when due hereunder, but without prejudice to the rights of the parties to contest, dispute or challenge the disposition of the remaining portion of the monies claimed hereunder.

1.12 Costs of Arbitration

Pending determination by the Arbitrator, the parties shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator.

1.13 Leasehold Mortgagee to Participate in Arbitration

Provided that notice of the Leasehold Mortgage has been given to the Grantor pursuant to Subsection 22.1(iv), the Leasehold Mortgagee shall be entitled to notice of and, at the request of the Concessionaire, to participate in any arbitration conducted under this Article 25 in the place and stead of the Concessionaire, provided that, subject to Section 25.8, the Leasehold Mortgagee agrees to be bound by the decision of the arbitrator hereunder.

