

**SCHEDULE 22**

**TOLLING, CONGESTION  
RELIEF AND EXPANSION AGREEMENT**

**BETWEEN:**

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

**- and -**

**407 ETR CONCESSION COMPANY LIMITED**

# TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND INTERPRETATION.....	1
1.1 DEFINITIONS.....	1
1.2 OTHER DEFINITIONS.....	9
1.3 NUMBER AND GENDER.....	9
1.4 HEADINGS.....	9
1.5 REFERENCES TO THIS AGREEMENT.....	9
1.6 REFERENCES TO ANY AGREEMENT.....	9
1.7 MEANING OF INCLUDING.....	9
1.8 TRADE MEANINGS.....	10
1.9 STATUTES.....	10
1.10 CURRENCY.....	10
1.11 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.....	10
1.12 CALCULATION OF TIME.....	10
1.13 PERFORMANCE ON HOLIDAYS.....	10
1.14 ENTIRE AGREEMENT.....	10
1.15 AMENDMENT.....	11
1.16 WAIVER OF RIGHTS.....	11
1.17 INVALIDITY.....	11
1.18 GOVERNING LAW.....	11
1.19 SCHEDULES.....	11
1.20 TIME OF TRAVEL.....	12
1.21 ALTERNATIVE METHOD OF CALCULATING STANDARD VKT.....	12
1.22 PURPOSE OF AGREEMENT.....	12
ARTICLE 2 TOLLS.....	12
2.1 TERM.....	12
2.2 RIGHT TO ESTABLISH TOLLS AND ADMINISTRATION FEES.....	12
2.3 NOTICE OF TOLL CHANGES.....	13
2.4 ALLOCATION OF TOLLS, ADMINISTRATION FEES AND EQUIPMENT CHARGES.....	14
ARTICLE 3 CONGESTION RELIEF.....	15
3.1 CONGESTION.....	15
3.2 CONGESTION PAYMENTS.....	16
3.3 PURPOSE OF CONGESTION PAYMENTS.....	17
3.4 AUDIT REQUIREMENTS.....	18
3.5 CONCESSIONAIRE'S ELECTION.....	19
ARTICLE 4 EXPANSION.....	19
4.1 EXPANSION REQUIREMENTS.....	19
ARTICLE 5 DISPUTE RESOLUTION.....	20
5.1 AMICABLE NEGOTIATIONS.....	20
5.2 MEDIATION.....	20
5.3 INITIATION OF ARBITRATION PROCEEDINGS.....	21
5.4 QUALIFIED TO ACT.....	21
5.5 SUBMISSION OF WRITTEN STATEMENTS.....	21
5.6 MEETINGS AND HEARINGS.....	22
5.7 THE DECISION.....	22
5.8 JURISDICTION AND POWERS OF THE ARBITRATOR.....	23
5.9 ARBITRATION ACT, 1991 (ONTARIO).....	24
5.10 PROVISIONAL REMEDIES.....	24
5.11 CONTINUING PERFORMANCE.....	25
5.12 COSTS OF ARBITRATION.....	25
ARTICLE 6 MISCELLANEOUS.....	25
6.1 RESPECIFICATION.....	25

6.2	NOTICE .....	25
6.3	FURTHER ACTS .....	26
6.4	INTEREST .....	26
6.5	COSTS .....	27
6.6	ENUREMENT AND BINDING EFFECT .....	27
6.7	NO PARTNERSHIP .....	27
6.8	CUMULATIVE REMEDIES .....	27
6.9	COUNTERPARTS .....	27
6.10	FACSIMILE EXECUTION .....	27
6.11	LANGUAGE .....	27

TOLLING, CONGESTION RELIEF AND EXPANSION AGREEMENT

THIS TOLLING, CONGESTION RELIEF AND EXPANSION AGREEMENT is made as of the 6<sup>th</sup> day of April, 1999,

BETWEEN:

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

(the "Grantor")

- and -

407 ETR CONCESSION COMPANY LIMITED

(the "Concessionaire").

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

ARTICLE 1  
DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this tolling, congestion relief and expansion agreement, including, for the avoidance of doubt, all schedules referred to herein.

"Arbitrator" has the meaning ascribed thereto in Section 5.4.

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

"Audit" means, with respect to any matter or thing, the performance by or on behalf of the Grantor of such reviews, investigations, inspections, audits,

confirmations, certifications, tests, studies and determinations of or relating to such matter or thing as the Grantor may determine, in its sole and absolute discretion, to be advisable or desirable in the circumstances.

**"Average Segment Flow Rate"** means, (i) with respect to any Segment and any portion of a calendar year during which all Specific User Charges applicable to travel on such Segment during the Peak Period remain constant, the average of the Segment Flow Rate as calculated during Peak Hours during the sixty percent (60%) of Business Days in such portion of such calendar year for which the average Segment Flow Rate during Peak Hours is the highest (rounded upwards to the next whole Business Day), and (ii) with respect to any Segment and any calendar year, the weighted average of the Average Segment Flow Rate for each portion of such calendar year during which the Specific User Charges applicable to travel on such Segment during the Peak Period remain constant, with the weighting of each of the said portions determined as the ratio of the number of Business Days in the said portion to the number of Business Days in such calendar year.

**"Base Segment Flow Rate"** means, with respect to any Segment, ninety-five percent (95%) of the Average Segment Flow Rate on such Segment during the Base Year.

**"Base Year"** means (i) with respect to any Highway 407 Section, the first calendar year commencing on or after the Section Commencement Date for which (A) notice is given by the Concessionaire to the Grantor within the first thirty (30) days following the beginning of the said calendar year, designating the said calendar year as the "Base Year" and (B) the Standard Rate does not exceed one hundred and five percent (105%) of the Toll Threshold and (ii) with respect to any Segment or Link, the Base Year for the Highway 407 Section which contains such Segment or Link.

**"CPI"** means the index called the "All-items Consumer Price Index" for Canada, not seasonally adjusted, published by Statistics Canada in its monthly publication; provided that if the Government of Canada determines not to publish such index, then whatever substitute index is used to determine the Government of Canada's obligations under its Real Return Bonds if any Real Returns Bonds are then outstanding, or otherwise such substitute index as the parties agree upon.

**"Concession Agreement"** means the Highway 407 Concession and Ground Lease Agreement made as of the date hereof between the parties hereto.

**"Congestion"** has the meaning ascribed thereto in Section 3.1.

**"Construction Period"** has the meaning ascribed thereto in Section 3.5.

**“Corresponding Segment”** means, with respect to any Segment, the Segment which connects the same two (2) points as such Segment but in the opposite direction.

**“Current Lane-Kilometres”** means, with respect to any Link at any time, the product of the Link Length of the said Link multiplied by the number of core (non-auxiliary) lanes in operation on the said Link at such time.

**“Expandable Segment”** has the meaning ascribed thereto in Section 4.1.

**“Full Rate”** means, with respect to any User Charges, the rate which would apply to a Standard Vehicle to which no discounts (including discounts for volume of use, number of vehicles covered by a single account, election of an optional billing plan and promotional discounts) apply, other than a discount that applies to ninety percent (90%) or more of Standard Vehicles.

**“GTA”** means the geographic area of jurisdiction of the City of Toronto and the regional municipalities of Durham, Halton, Peel and York as constituted from time to time.

**“Heavy-Multiple Unit”** means a truck or tractor with one (1) or more trailers.

**“Heavy-Single Unit”** means a single unit truck, tractor, school bus, transit bus or inter-city bus having a registered gross vehicle weight of greater than five thousand (5,000) kilograms.

**“Highway Portion”** means any Highway 407 Section, Segment or Link.

**“Highway 407 Section”** means any section of Highway 407 as set forth in Schedule 1.

**“Hour”** means a sixty (60)-minute period starting on an hour or half hour.

**“Index Base Month”** means January, 1999.

**“Index Ratio”** means, with respect to the calendar year which includes the Effective Date, 1.000 and, with respect to any subsequent calendar year, the ratio of (i) the highest value of the CPI for the Index Base Month and the months of October in each calendar year from and including the calendar year which includes the Effective Date to but excluding such subsequent calendar year, to (ii) the value of the CPI for the Index Base Month.

**“Initial Toll Threshold”** means eleven cents (\$0.11) per kilometre.

**“Initiating Party”** has the meaning ascribed thereto in Section 5.3.

**“Initiation Notice”** has the meaning ascribed thereto in Section 5.3.

**"Intersection"** means a full or partial intersection or interchange of Highway 407 with a Municipal Highway, Provincial Highway or Private Highway at which a vehicle can enter or exit Highway 407. For purposes of this Agreement, a partial intersection or interchange shall be treated as if it were a full intersection or interchange.

**"King's Highway"** has the meaning ascribed thereto in the Concession Agreement.

**"Lane Flow Rate"** means, with respect to any Highway Portion and any Hour, Total VKT on the said Link for the said Hour divided by the Current Lane-Kilometres for the said Link in the said Hour.

**"Link"** means a length of Highway 407 in a single direction from an Intersection (the "Originating Intersection") to the immediately following Intersection (the "Terminating Intersection"), excluding any length of Highway 407 on which (i) no User Charges are charged, and (ii) either (a) no User Charges are charged for any travel on Highway 407 to the west of the said length of Highway 407 or (b) no User Charges are charged for any travel on Highway 407 to the east of the said length of Highway 407.

**"Link Length"** means, with respect to any Link, the distance in kilometres along Highway 407 from the centre line of the intersecting Municipal Highway, Provincial Highway or Private Highway at the Originating Intersection of the said Link to the centre line of the intersecting Municipal Highway, Provincial Highway or Private Highway at the Terminating Intersection of the said Link.

**"Municipal Highway"** means any Ontario highway or road owned by a municipality.

**"Notice of Dispute"** has the meaning ascribed thereto in Subsection 3.4(d).

**"Originating Intersection"** has the meaning ascribed thereto in the definition of Link in Section 1.1.

**"Peak Hour"** means (i) with respect to any Segment in the calendar year which contains the Effective Date, each of the two (2) Hours (not overlapping and not necessarily contiguous) for which the average of Total VKT in the period of time which comprises all Business Days from the Effective Date and ending on December 31 of the said calendar year was highest, (ii) with respect to any Segment in any calendar year after the calendar year containing the Effective Date that precedes or constitutes the Base Year for such Segment, each of the two (2) Hours (not overlapping and not necessarily contiguous) for which the average of Total VKT in the period of time which comprises all Business Days in the twelve (12)-month period ending on September 30 of the said calendar year was highest, and (iii) with respect to any Segment and any calendar year after the Base Year

for such Segment, each of the two (2) Hours (not overlapping and not necessarily contiguous) for which the average of Total VKT in the period of time which comprises all Business Days in the twelve (12)-month period ending on September 30 of the prior calendar year was highest.

“Peak Period” means, with respect to any Segment and any calendar year, the Peak Hours during Business Days for such Segment and such calendar year.

“Pending Toll Change” has the meaning ascribed thereto in Subsection 2.3(a).

“Private Highway” means any Ontario highway or road that is not owned by the Province or a municipality.

“Provincial Highway” means any Ontario highway owned by the Province.

“Qualifying Year” has the meaning ascribed thereto in Section 4.1.

“Responding Party” has the meaning ascribed thereto in Section 5.3.

“Section Commencement Date” means (i) with respect to any of Highway 407 Central, Highway 407 West and Highway 407 East Partial if there is no delay in Highway 407 East Partial being Commissioned and Opened as a result of the delay referred to in Paragraph 18.1(a)(ix) of the Concession and Ground Lease Agreement, the January 1 first following at least four (4) months following the date when all of such Highway 407 Sections are Commissioned and Opened along their full length, (ii) with respect to any of Highway 407 Central and Highway 407 West if there is a delay in Highway 407 East Partial being Commissioned and Opened as a result of the delay referred to in Paragraph 18.1(a)(ix) of the Concession and Ground Lease Agreement, the January 1 first following at least four (4) months following the date when both Highway 407 Central and Highway 407 West are Commissioned and Opened along their full length, (iii) with respect to Highway 407 East Partial if there is a delay in Highway 407 East Partial being Commissioned and Opened as a result of the delay referred to Paragraph 18.1(a)(ix) of the Concession and Ground Lease Agreement, the January 1 first following at least six (6) months following the date when Highway 407 East Partial is Commissioned and Opened along its full length, and (iv) with respect to any other Highway 407 Section, the January 1 first following at least six (6) months following the date when such Highway 407 Section becomes Commissioned and Opened along its full length.

“Segment” means any segment of Highway 407 as set forth in Schedule 1, in a particular direction.



**"Segment Flow Rate"** means, with respect to any Segment and any Hour, Total VKT on the said Segment for such Hour divided by the Segment Length of the said Segment.

**"Segment Length"** means, with respect to any Segment, the sum of the Link Lengths of all Links in such Segment.

**"Senior Operating Officer"** means the person designated by notice from time to time by the Concessionaire for the purposes of Article 5.

**"Senior Responsible Official"** means the person designated by notice from time to time by the Grantor for the purposes of Article 5.

**"Single Arbitrator"** has the meaning ascribed thereto in Section 5.3.

**"Specific User Charges"** means User Charges established on a basis as described in Subsection 2.4 (ii) or a component of User Charges established on a basis as described in Subsection 2.4(iv), which component is established on a basis as described in Subsection 2.4(ii).

**"Standard Rate"** means, with respect to any Segment and any period of time, the Standard Revenue for the said Segment and the said period of time divided by the Standard VKT for the said Segment during the Peak Period for the said Segment during the said period of time.

**"Standard Revenue"** means, with respect to any Segment and any period of time, User Charges for Standard Vehicles allocated to the said Segment and to Peak Hours for the said Segment during such period of time. For this purpose, allocations shall be effected in accordance with Section 2.4.

**"Standard Vehicle"** means any vehicle which is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407, and (iii) equipped with operating monitoring and collection technology prescribed and validated pursuant to the Highway 407 Act.

**"Standard VKT"** means, with respect to any Highway Portion and any period of time, the total number of kilometres travelled on all Links in such Highway Portion by Standard Vehicles entering Highway 407 during such period of time.

**"Statement of Claim"** has the meaning ascribed thereto in Subsection 5.5(a).

**"Statement of Defence"** has the meaning ascribed thereto in Subsection 5.5(b).

**"Statement of Reply"** has the meaning ascribed thereto in Subsection 5.5(c).

“Statement of Reply to Counterclaim” has the meaning ascribed thereto in Subsection 5.5(d).

“Terminating Intersection” has the meaning ascribed thereto in the definition of Link in Subsection 1.1.

“Toll Threshold” means, with respect to any calendar year, the product of (i) the Initial Toll Threshold, multiplied by (ii) a factor which equals 1.00 in the calendar year which includes the Effective Date and grows by adding 0.015 for the calendar year following the Effective Date and 0.02 for each calendar year thereafter to a maximum of 1.30, multiplied by (iii) the Index Ratio for such calendar year.

“Total VKT” means, with respect to any Highway Portion and any period of time, the total number of kilometres travelled on all Links in such Highway Portion by all vehicles during such period of time.

“Traffic Threshold” means, with respect to any Segment in any calendar year after the Base Year for the said Segment, the product of the Base Segment Flow Rate for the said Segment multiplied by the Traffic Threshold Growth Index for the said Segment and such calendar year, but in no event greater than the product of the Ultimate Number of Core Lanes of the said Segment multiplied by one thousand five hundred (1,500).

“Traffic Threshold Growth Index” means, with respect to any Segment in any calendar year during or after the Base Year for such Segment,

- (i) 1.00 if the said calendar year is the Base Year for the said Segment, or otherwise
- (ii) the Traffic Threshold Growth Index for the said Segment in the immediately prior calendar year, increased by
  - (A) three percent (3%) if the Traffic Threshold for the said Segment in the immediately prior calendar year is less than the product of nine hundred (900) multiplied by the Ultimate Number of Core Lanes for the said Segment, except, if the said Segment is a part of the Highway 407 East Partial Section and Highway 407 has not been Commissioned and Opened to the Whitby/Oshawa area, including a connection in such area to Highway 401, two percent (2%), or
  - (B) two percent (2%) if the Traffic Threshold for the said Segment in the immediately prior calendar year is equal to or greater than the product of nine hundred (900) multiplied by the Ultimate Number of Core Lanes for the said Segment and less than the product of one

thousand two hundred (1,200) multiplied by the Ultimate Number of Core Lanes for the said Segment, or

- (C) one percent (1%) if the Traffic Threshold for the said Segment in the immediately prior calendar year is equal to or greater than the product of one thousand two hundred (1,200) multiplied by the Ultimate Number of Core Lanes for the said Segment.

“Ultimate Lane Kilometres” means, (i) with respect to any Link, the product of the Link Length multiplied by the Ultimate Number of Core Lanes of the said Link, and (ii) with respect to any Highway Portion, the total of the Ultimate Lane-Kilometres of all Links in such Highway Portion.

“Ultimate Number of Core Lanes” has the meaning ascribed thereto in Schedule I.

“Unequipped Threshold” means, with respect to any calendar year, the product of

- (i) (A) in the case of the calendar year which includes the Effective Date, one dollar (\$1.00),
  - (B) in the case of the next calendar year, one dollar and fifty cents (\$1.50),
  - (C) in the case of the next calendar year, two dollars (\$2.00),
  - (D) in the case of the next calendar year, two dollars and fifty cents (\$2.50), and
  - (E) in the case of any calendar year thereafter, three dollars (\$3.00)

multiplied by

- (ii) the Index Ratio for such calendar year.

“Unequipped Vehicle” means any vehicle that is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407, and (iii) not a Standard Vehicle.

“User Charges” means tolls established pursuant to Paragraph 2.2(a)(i), administration fees established pursuant to Paragraph 2.2(a)(ii) and charges related to the registration and distribution of toll devices established pursuant to Paragraph 2.2(a)(v), other than

- (i) administration fees relating to the late payment of any amounts payable to the Concessionaire,

- (ii) administration fees relating to dispute proceedings,
- (iii) administration fees relating to the evasion, obstruction of or interference with the effective operation of the Toll System (which, for the avoidance of doubt, includes the operation of a Heavy-Multiple Unit or a Heavy-Single Unit which is not equipped with operating monitoring and collection technology prescribed and validated pursuant to the Highway 407 Act, and operation of an Unequipped Vehicle the relevant (currently rear) licence plate of which is not visible to or recognizable by the Toll System), and
- (iv) charges relating to the replacement of transponders.

## 1.2 Other Definitions

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

## 1.3 Number and Gender

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

## 1.4 Headings

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

## 1.5 References to this Agreement

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

## 1.6 References to any Agreement

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

## 1.7 Meaning of Including

In this Agreement the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation",

respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

#### 1.8 Trade Meanings

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

#### 1.9 Statutes

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

#### 1.10 Currency

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

#### 1.11 Generally Accepted Accounting Principles

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

#### 1.12 Calculation of Time

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

#### 1.13 Performance on Holidays

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

#### 1.14 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral,

or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

#### 1.15 Amendment

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

#### 1.16 Waiver of Rights

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

#### 1.17 Invalidity

If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent, (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be affected thereby, and (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Article 5. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### 1.18 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Article 5, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

#### 1.19 Schedules

The following schedule forms part of this Agreement

Schedule 1                      Highway 407 Sections and Segments

**1.20 Time of Travel**

For purposes of this Agreement, the time at which any vehicle is deemed to have travelled along Highway 407 or any Highway Portion on any particular trip shall be determined by the Concessionaire in a consistent and reasonable manner, with due regard to the capabilities of the Tolling System. For example, the time of travel of a vehicle on a trip on a particular Link may be deemed to be the time when such vehicle is first recognized as entering or having entered Highway 407 on such trip or the time when it is estimated to have entered such Link.

**1.21 Alternative Method of Calculating Standard VKT**

In the event that the Concessionaire is unable to determine Standard VKT as a result of the nature of the Toll System or the basis on which tolls are established, it shall calculate Standard VKT based on a method determined by the parties, acting reasonably.

**1.22 Purpose of Agreement**

The purpose of this Agreement is to establish a regime which offers the Concessionaire flexibility to manage the basis on which tolls will be established, the assurance of a minimum level of tolls, administration fees and charges which will be acceptable, regardless of traffic levels and the freedom to establish higher tolls if prescribed traffic levels are achieved, while offering to the Grantor the assurance that the Concessionaire will be financially motivated to provide congestion relief to other roads and highways by achieving prescribed traffic levels, providing open access to all vehicles permitted to travel on Comparable Controlled Access Highways, providing access on reasonable terms to trucks and expanding Highway 407 as required.

**ARTICLE 2  
TOLLS**

**2.1 Term**

This Agreement shall commence on the date hereof and shall terminate at the same time as the expiration or sooner termination of the term of the concession granted under the Concession Agreement.

**2.2 Right to Establish Tolls and Administration Fees**

(a) As of and with effect from the Effective Date, the Concessionaire shall have the right to

- (i) establish, collect and enforce payment of tolls with respect to the operation of any vehicle or class of vehicles on Highway 407,

- (ii) establish, collect and enforce administration fees based on such criteria as the Concessionaire considers appropriate, and fees to commence or appeal any dispute proceedings,
- (iii) establish interest rates to be charged on unpaid tolls and fees, and collect interest charged at such rates,
- (iv) exempt any vehicle or class of vehicles from the application of section 13 of the Highway 407 Act,
- (v) establish terms and conditions for the registration and distribution of toll devices,
- (vi) require security for the provision of any toll devices, and
- (vii) determine the methods of payment of tolls, fees and interest

at any time while this Agreement is in force in accordance with the provisions of this Agreement.

(b) The Concessionaire may establish tolls and administration fees for Unequipped Vehicles that are different from those established for Standard Vehicles and may establish such tolls and administration fees for Unequipped Vehicles on a different basis than that for Standard Vehicles.

(c) The Concessionaire shall not have the right to establish, collect or enforce payment of tolls, administration fees or other fees or charges in respect of vehicles used in fire fighting or law enforcement or bearing diplomatic licence plates or in respect of ambulances.

### 2.3 Notice of Toll Changes

(a) If the Concessionaire desires to change any toll or administration fee, it shall give notice of such change (the "Pending Toll Change") to the Grantor at least four (4) weeks prior to the implementation of such change.

(b) The Concessionaire shall make commercially reasonable efforts to inform the public of all tolls and administration fees for the use of Highway 407. After the giving of the notice referred to in Subsection 2.3(a), the Concessionaire shall include a description of the Pending Toll Change on or with all invoices or statements sent by the Concessionaire to users of Highway 407. The Concessionaire shall maintain a website on the internet that states all tolls, administration fees, temporary discounts and Pending Toll Changes. The Concessionaire shall make known to the public and maintain a telephone number to enable any person to request a printed description of all tolls, administration fees, temporary discounts and Pending Toll Changes. The Concessionaire may modify any of the aforesaid means of communication with the



public consistent with any developments in common practice relating to means of comparable communication. Upon the implementation or withdrawal of a Pending Toll Change, the obligations of the Concessionaire in this Subsection 2.3(b) in respect of such Pending Toll Change shall cease.

- (c) Notwithstanding Subsection 2.3(a), if the Concessionaire desires to establish or terminate a temporary discount in respect of any fee or charge, it shall give notice of the establishment or termination of the said temporary discount to the Grantor at least one (1) Business Day prior to the implementation or termination of the said temporary discount.

#### 2.4 Allocation of Tolls, Administration Fees and Equipment Charges

For purposes of this Agreement, User Charges billed in respect of Highway 407 shall be allocated to Segments and to time periods as set forth below.

- (i) The aggregate of allocations to all times and all Segments with respect to any User Charge in respect of Highway 407 shall equal one hundred percent (100%) of the amount of the User Charge billed.
- (ii) Where a User Charge relates to a particular trip and is established on a basis whereby total User Charges for any trip would equal the sum of User Charges for multiple trips which collectively traversed the same Highway Portions at the same time (for example, ten cents (\$0.10) per kilometre), such User Charge shall be allocated to the time of the trip as set forth in Section 1.20 and to each Segment in an amount equal to the User Charge which would have related to traversing at the same time the portion of the Segment (if any) which the particular trip traversed.
- (iii) Where a User Charge relates to a particular trip and is established as a flat dollar amount (for example, three dollars (\$3.00) per trip), then such User Charge shall be allocated to the time of the trip as set forth in Section 1.20. The Concessionaire may elect to allocate such User Charges on a consistent basis either to all Segments of Highway 407 in proportion to the Standard VKT in the calendar year of the trip of each Segment during Peak Hours with respect to such Segment in the calendar year of the trip or, if the trip entrance and exit points are known, to specific Segments used in proportion to the distance travelled on each Segment used.
- (iv) Where a User Charge relates to a particular trip and is a sum of two (2) or more components (for example, fifty cents (\$0.50) plus five cents (\$0.05) per kilometre), then such User Charge shall be allocated in the same manner as if each individual component was allocated for a separate trip.
- (v) Where a User Charge relates to a period of time during which multiple trips might be made (for example, three hundred dollars (\$300.00) per

month), then the said User Charge shall be allocated to all time periods and Segments for which it permits travel in direct proportion to the Standard VKT of each such Segment in each such time period during the period of time to which the said User Charge relates.

- (vi) Where a User Charge or a collection of User Charges is or are subject to a maximum and/or minimum amount and/or a discount (for example, ten cents (\$0.10) per kilometre to a maximum of five dollars (\$5.00) per trip or a maximum of three hundred dollars (\$300.00) per month), then such User Charge or User Charges shall be allocated to Segments and time periods in the same proportions as it or they would have been allocated if the maximum and/or minimum amount and/or discount had not applied.
- (vii) Where a User Charge relates to the registration and distribution of toll devices, such User Charge shall be allocated to the calendar year during which it is billed and to all Segments of Highway 407 and time periods within such calendar year in direct proportion to the Standard VKT on such Segments in such time periods.
- (viii) Where Subsections 2.4(i) to (vii), alone or in combination, are insufficient to establish the manner in which a User Charge shall be allocated, then the Concessionaire and the Grantor, acting reasonably and in accordance with the general principles of such clauses, shall determine the manner in which such User Charge shall be allocated.

### ARTICLE 3 CONGESTION RELIEF

#### 3.1 Congestion

The occurrence of any one of the following events with respect to Highway 407 shall constitute Congestion

- (i) if, with respect to any Segment in any calendar year prior to completion of the Base Year for such Segment, the Standard Rate is greater than the Toll Threshold,
- (ii) if, with respect to any Segment in any calendar year subsequent to the Base Year, the Standard Rate in the said calendar year is greater than the Toll Threshold and the Average Segment Flow Rate for the said calendar year is less than the Traffic Threshold,

- (iii) if, during a Construction Period on any Segment, Specific User Charges allocated to the said Segment with respect to any trip exceed the average level of Specific User Charges established for the use of the said Segment during Peak Hours within the twelve (12) month-period immediately prior to the commencement of such Construction Period,
- (iv) if, during any calendar year, the total of all User Charges allocated in respect of administration fees charged to Standard Vehicles exceeds the product of (A) the number of such Standard Vehicles, multiplied by (B) sixty dollars (\$60.00), multiplied by (C) the Index Ratio with respect to such calendar year,
- (v) if the total of all User Charges allocated to any calendar year in respect of Unequipped Vehicles exceeds the sum of (A) the total of all User Charges which would have been allocated to the said calendar year in respect of all Unequipped Vehicles if the said Unequipped Vehicles had all been Standard Vehicles and had all been billed at the Full Rate for Standard Vehicles at the same time of travel, plus (B) the product of the Unequipped Threshold with respect to the said calendar year, multiplied by the total number of trips of Unequipped Vehicles for the said calendar year,
- (vi) if, during any calendar year, the total User Charges allocated in respect of any Heavy-Single Unit exceed two (2) times the User Charges which would have been allocated to such calendar year in respect of such Heavy-Single Unit if it had been a Standard Vehicle and had been billed at the Full Rate for Standard Vehicles at the same time of travel.
- (vii) if, during any calendar year, the total User Charges allocated in respect of any Heavy-Multiple Unit exceed three (3) times the User Charges which would have been allocated to such calendar year in respect of such Heavy-Multiple Unit if it had been a Standard Vehicle and had been billed at the Full Rate for Standard Vehicles at the same time of travel, and
- (viii) if, during any calendar year, any tolls charged for the use of Highway 407 outside of Peak Hours (other than under an optional billing plan) exceed the tolls which would have been charged if the same use of Highway 407 had occurred during Peak Hours.

### **3.2 Congestion Payments**

In the event of the occurrence of Congestion, the Concessionaire shall pay the following amounts to the Grantor in accordance with Section 3.4

- (i) in the case of Congestion under Subsection 3.1(i), an amount equal to two (2) times the product of (A) all User Charges allocated to the applicable

Segment in the applicable calendar year, multiplied by (B) the Standard Rate minus the Toll Threshold, divided by such Toll Threshold,

- (ii) in the case of Congestion under Subsection 3.1 (ii), an amount equal to two (2) times the product of (A) all User Charges allocated to the use of the applicable Segment in the applicable calendar year multiplied by (B) the lesser of (a) the Traffic Threshold minus Average Segment Flow Rate, divided by the Traffic Threshold, and (b) the Standard Rate minus the Toll Threshold, divided by the Toll Threshold,
- (iii) in the case of Congestion under Subsection 3.1(iii), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(iii),
- (iv) in the case of Congestion under Subsection 3.1(iv), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(iv),
- (v) in the case of Congestion under Subsection 3.1(v), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(v),
- (vi) in the case of Congestion under Subsection 3.1(vi), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(vi),
- (vii) in the case of Congestion under Subsection 3.1(vii), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(vii), and
- (viii) in the case of Congestion under Subsection 3.1(viii), an amount equal to two (2) times the excess amount referred to in Subsection 3.1(viii).

### **3.3 Purpose of Congestion Payments**

The purposes for which the Highway 407 Act has been passed include reducing traffic congestion. In view of the difficulty and complexity in establishing the amount of all components of the costs and expenses which the Grantor could incur if Highway 407 does not provide the level of congestion relief contemplated in Section 3.2, the payments required under Sections 3.2 and 3.4 are intended to compensate the Grantor for the said costs and expenses. Notwithstanding that the said payments may not constitute a genuine pre-estimate of the said costs and expenses, the parties acknowledge that the said payments are a fair and reasonable means of compensating the Grantor for the said costs and expenses. The Concessionaire shall not assert the unenforceability of the obligation of the Concessionaire to pay any amount under Sections 3.2 and 3.4. In the event that the Concessionaire asserts the unenforceability of such obligation in any forum which has the authority to make such determination and does not withdraw such assertion within thirty (30) days following the date of receipt by the Concessionaire of a notice from the Grantor requiring the Concessionaire to do so, the Grantor shall have the right to enact and cause to come into force any law or regulation to provide for the same or substantially the same level of compensation to the Grantor as contemplated by

Sections 3.2 and 3.4 on the assumption that Sections 3.2 and 3.4 are enforceable in accordance with their terms.

### 3.4 Audit Requirements

(a) Within one hundred and twenty (120) days following the end of each calendar year, the Concessionaire shall prepare and deliver to the Grantor a report

- (i) on whether Congestion has occurred in such calendar year and which sets out the amounts, if any, required to be paid by the Concessionaire to the Grantor under Section 3.2, and
- (ii) which sets out the information required under Subsection 4.1(a). The Concessionaire shall at the same time make the designation, if any, required under Subsection 4.1(b) failing which the Grantor may make such designation.

The said report shall be accompanied by an opinion, expressed by the external auditors of the Concessionaire that the report is fairly presented in all material respects. If the Concessionaire does not have external auditors, an independent firm of chartered accountants shall be appointed by the Concessionaire to express the said opinion. For purposes of the said opinion and subject to the provisions of Subsection 3.4(b), materiality shall be plus or minus five percent (5%) at a confidence level of ninety-five percent (95%). The Concessionaire shall pay the amounts, if any, required to be paid by the Concessionaire to the Grantor under Section 3.2 at the same time as it delivers the said report to the Grantor.

(b) In preparing its report, the Concessionaire may employ such unbiased approximation techniques as may be reasonably required with due regard to the capabilities of the Tolling System and the capabilities that a tolling system might reasonably be expected to possess at such time.

(c) The Grantor shall, after receipt of said report, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Grantor may reasonably consider necessary.

(d) If the Grantor wishes to dispute any of the information in the said report, it shall give notice of dispute (the "Notice of Dispute") to the Concessionaire within thirty (30) days following the date of receipt of the said report stating the grounds for such dispute.

(e) If, within thirty (30) days following the date of receipt of the Notice of Dispute by the Concessionaire, the Notice of Dispute has not been withdrawn, the matter shall be submitted to dispute resolution in accordance with Article 5.

(f) Without limiting the rights of the Grantor under the Concession Agreement, the Grantor may, at all reasonable times, cause a Provincial Advisor designated by it to carry out an Audit for the purpose of ascertaining compliance with this Agreement.

### 3.5 Concessionaire's Election

"Construction Period" means, with respect to a Segment, a contiguous period of time during which there will be substantial core lane closures on such Segment due to major construction, such as the addition of an interchange, widening or substantial paving, and with respect to which period of time the Concessionaire at its sole option has, prior to the commencement of such period of time, given notice to the Grantor of the commencement date thereof. The Concessionaire shall give notice to the Grantor of the end date of the Construction Period on or prior thereto or promptly thereafter. Subsections 3.1(i) and (ii) shall not apply to the said Segment during the Construction Period.

## ARTICLE 4 EXPANSION

### 4.1 Expansion Requirements

(a) The Concessionaire shall determine during each Peak Hour the Lane Flow Rate for each Link in a Segment that has not been expanded to its Ultimate Number of Core Lanes in accordance with Schedule 1 and for which the Base Year has elapsed. The Concessionaire shall also determine for each calendar year after the Base Year the number of Hours during which the Lane Flow Rate on any such Link exceeds one thousand seven hundred (1,700) vehicles. A "Qualifying Year" means, with respect to any Link, a calendar year in which such number of Hours exceeds one hundred and twenty-five (125), unless such excess is the result of an external event which is not reasonably likely to recur as determined jointly by the Grantor and the Concessionaire, each acting reasonably. After a Qualifying Year with respect to any Link, the Segment which contains such Link shall be designated as an Expandable Segment and shall retain such designation until expanded in accordance with Subsection 4.1(b).

(b) In each calendar year, the Concessionaire shall designate for expansion the Expandable Segment, if any, which contains the Link with the highest average Lane Flow Rate during all Peak Hours in the prior calendar year by giving notice thereof to the Grantor. The Concessionaire shall thereupon proceed to widen such Expandable Segment and the Corresponding Segment, each by at least a single core lane and complete such widening within two (2) years following the date of receipt of such notice by the Grantor or, if such completion cannot reasonably be achieved within such two (2)-year-period of time due to a factor outside the control of the Concessionaire, then as soon as reasonably possible. The remaining Expandable Segments, if any, shall continue to be

subject to expansion in the same manner and on the same basis in the following year and thereafter together with any other Expandable Segments designated pursuant to this Section 4.1. If in any calendar year the Concessionaire designates two (2) Expandable Segments for expansion the Concessionaire shall not be obliged to designate an Expandable Segment for expansion in the following calendar year. In such event, the Concessionaire shall complete the widening of both the said Expandable Segments in accordance with the preceding provisions of this Subsection 4.1(b).

## ARTICLE 5 DISPUTE RESOLUTION

### 5.1 Amicable Negotiations

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

### 5.2 Mediation

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

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

the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

### **5.3 Initiation of Arbitration Proceedings**

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request an arbitration. Within fifteen (15) Business Days following receipt of the Initiating Notice by the Responding Party, the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such period of time ( or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party, either party shall be entitled to make application under the *Arbitration Act*, 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator, and the provisions of the *Arbitration Act*, 1991 (Ontario) shall govern such appointment.

### **5.4 Qualified to Act**

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

### **5.5 Submission of Written Statements**

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

(b) Within fifteen (15) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim (collectively, the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the



Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.

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

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

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

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

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

## 5.6 Meetings and Hearings

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

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

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

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

## 5.7 The Decision

(a) Subject to the provisions of the *Arbitration Act, 1991* (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days

following the conclusion of all hearings referred to in Section 5.6 unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reasons for the decision.

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

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

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

#### **5.8 Jurisdiction and Powers of the Arbitrator**

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

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

- (i) determine any question of law arising in the arbitration,
- (ii) determine any question as to the Arbitrator's jurisdiction,
- (iii) determine any question of good faith or dishonesty arising in the dispute,
- (iv) order any party to furnish further details of its case, in fact or in law to the other parties,
- (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so,

- (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law,
- (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues pending the final resolution of any dispute hereunder,
- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of parties hereto,
- (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant,
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties,
- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
- (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

(c) The jurisdiction and powers referred to in Subsection 5.8(b) shall be exercised at the discretion of the Arbitrator subject to only to Laws and Regulations and the provisions of this Agreement.

#### **5.9 Arbitration Act, 1991 (Ontario)**

The rules and procedures of the *Arbitration Act, 1991* (Ontario) shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Article 5 or by agreement of the parties.

#### **5.10 Provisional Remedies**

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

appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

#### 5.11 Continuing Performance

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

#### 5.12 Costs of Arbitration

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

### ARTICLE 6 MISCELLANEOUS

#### 6.1 Respecification

If, at any time following the fifth (5<sup>th</sup>) anniversary of the Effective Date, either party requests an amendment to this Agreement to more fully achieve the purpose of this Agreement and such party has not made any other request under this Section 6.1 within the five (5) years immediately prior to the date of receipt of such request for an amendment by the other party, the parties shall negotiate such amendment in good faith. Unless the parties agree to the contrary, such amendment shall not result in a material increase or decrease in the current or future earnings of the Concessionaire or the current or future attainment by the Grantor of its objectives relating to congestion relief, open access, truck access and expansion. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Article 5, provided that, unless the parties agree to the contrary, such determination shall not result in a material increase or decrease in the current or future earnings of the Concessionaire or the current or future attainment by the Grantor of its objectives relating to congestion relief, open access, truck access and expansion.

#### 6.2 Notice

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

in the case of the Grantor, at:

56 Wellesley Street West  
Suite-600  
Toronto, Ontario  
M7A 1C1

Attention: CEO, Privatization

Fax Number: (416) 325-4576

in the case of the Concessionaire, at:

200 King Street West  
20<sup>th</sup> Floor  
Toronto, Ontario  
M5H 3T5

Attention: President

Fax Number: (416) 326-6460

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

### 6.3 Further Acts

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

### 6.4 Interest

Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus

three percent (3%), from the date such payment is due until payment and both before and after judgment.

**6.5 Costs**

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

**6.6 Enurement and Binding Effect**

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

**6.7 No Partnership**

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

**6.8 Cumulative Remedies**

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

**6.9 Counterparts**

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

**6.10 Facsimile Execution**

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

**6.11 Language**

The parties hereto hereby confirm their request that this Agreement and all documents related directly or indirectly thereto be drafted in the English language. Les parties aux présentes reconnaissent avoir requis que la présente convention ainsi que tous

les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**407 ETR CONCESSION COMPANY LIMITED**

By: \_\_\_\_\_

Name: A. SCOTT CARSON

Title: DIRECTOR

**SCHEDULE 1  
HIGHWAY 407 SECTIONS AND SEGMENTS**

Highway 407 Section	Segment	Location	Ultimate Number of Core Lanes in each direction
Highway 407 West	W-1	QEW - Dundas Street (R.R. 5)	4
	W-2	Dundas St. (R.R. 5) - Neyagawa Boulevard (R.R.4)	4
	W-3	Neyagawa Boulevard (R.R. 4) - Highway 403	4
Highway 407 Central	C-1	Highway 403 - Highway 401	4
	C-2	Highway 401 - Highway 410	5
	C-3	Highway 410 - Highway 427	5
	C-4	Highway 427 - Highway 400	5
	C-5	Highway 400 - Yonge Street	5
	C-6	Yonge Street - Highway 404	5
	C-7	Highway 404 - McCowan Road	5
Highway 407 East Partial	E-1	McCowan Road - R.R. 30	5
	E-2	R.R. 30 - Highway 7 (near Brock Road)	5