

# The Corporation of the Town of Tecumseh

## By-Law Number 2022-098

Being a by-law to authorize the execution of a Fencing Agreement between The Corporation of the Town of Tecumseh and VIA Rail Canada

**Whereas** The Corporation of the Town of Tecumseh (Town) has applied to VIA Rail Canada (VIA) for permission to construct, use and maintain a fence to reduce trespassing activities at the intersection of Lesperance Road and Tecumseh Road East near the railway line owned by VIA located in the Town;

**And Whereas** the Town is desirous of entering into an Agreement with VIA for the fencing improvements to the intersection of Lesperance Road and Tecumseh Road East;

**And Whereas** under Section 5 of the *Municipal Act 2001*, S.O. 2001 c.M.25, the powers of a municipality shall be exercised by its Council by by-law.

**Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:**

1. **That** the Mayor and the Clerk be and they are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh, to execute an Fencing Agreement between The Corporation of the Town of Tecumseh and VIA Rail Canada, dated the 13<sup>th</sup> day of December, 2022, a copy of which Agreement is attached hereto and forms part of the by-law and to do such further and other acts which may be necessary to implement the said Agreement.
2. **That** this by-law shall come into force and take effect upon on the date of the third and final reading thereof.

**Read** a first, second, third time and finally passed this 13th day of December, 2022.

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Gary McNamara, Mayor

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Jennifer Alexander, Acting Clerk



## FENCING AGREEMENT

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

## FENCING AGREEMENT

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

(Hereinafter “VIA”)

**AND:** [INSERT THE APPLICANT'S NAME]  
[INSERT THE APPLICANT'S COMPLETE ADDRESS]

(Hereinafter the “Applicant”)

**WHEREAS** the Applicant hereby applies to VIA for permission to construct, use and maintain a fence to reduce trespassing activities at the intersection of Lesperance Rd and Tecumseh Rd East (hereinafter the “Works”) near the railway line owned by VIA located in the municipality of Tecumseh, Province of Ontario, as shown on the plan (hereinafter the “Plan”), attached as Appendix “A”.

NOW THEREFORE, the parties agree as follows:

### 1. DEFINITIONS

1.1. In this Agreement, unless the context requires otherwise, the following terms and expressions have the meaning mentioned below:

1.1.1. “Applicant and its Representatives” The term “Applicant and its Representatives” shall include, collectively and individually, the Applicant, its directors, officers, shareholders, employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom the Applicant is in law responsible.

1.1.2. “Attorney Fees” The term “Attorney Fees” shall include, without limitation, attorneys’ costs and fees, of whatever nature, reasonably incurred in the context of:

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

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- 1.1.3. “Claims” The term “Claims” shall, in particular, include all claims, costs, charges, losses, liabilities, damages, demands, legal actions, Attorney Fees and expenses of whatever nature, source and kind in any manner.
- 1.1.4. “Extrinsic Elements” The term “Extrinsic Elements” shall include any document or information, whether written or oral, communicated between the parties or not, expressly or tacitly, regardless of the nature of the medium, with the exception of information and documents specifically mentioned in this Agreement. For example, the term Extrinsic Elements shall include any discussion, talk, negotiation, offer, proposal, electronic recording, electronic mail, correspondence, letter, memorandum, statement, promise, commitment, understanding, agreement, preliminary document, letter of intent, draft contract, preliminary contract, invitation to tender, tender and other contract previously entered into by the parties with regard to the subject matter of this Agreement.
- 1.1.5. “VIA and its Representatives” The term “VIA and its Representatives” shall include, collectively and individually, VIA, its directors, officers, shareholders, employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom VIA is in law responsible.

## 2. PREAMBLE AND APPENDICES

- 2.1. The preamble to this Agreement and all its Appendices shall form an integral part hereof.

## 3. PERMISSION TO CONSTRUCT, USE AND MAINTAIN

- 3.1. VIA grants the Applicant permission to construct, use and maintain the Works across the railway line owned by VIA located at [INSERT THE ADDRESS] (hereinafter the “Premises”) for the duration of this Agreement.

## 4. TERM

- 4.1. This Agreement shall become effective on [INSERT THE START DATE FOR THE CONTRACT] and shall continue for a period of forty-nine (49) years (hereinafter the “Initial Term”). Upon mutual agreement of the parties prior to the expiration of the Initial Term, this Agreement may be renewed for an additional period of forty-nine (49) years. The Contract may be terminated at any time by either party, for a serious reason as determined by such party, acting reasonably, on the provision of a one (1) year written notice in writing to the other party. In the event of any failure by either party to comply with any provisions of this Agreement, and upon such party being notified in writing by defaulting party alleging such failure and failing to remedy the failure within ninety (90) days of receiving such notice, the Contract may be forthwith terminated upon the non-defaulting party providing written notice of termination to the defaulting party.
- 4.2. The Works shall not start prior to the commencement of this Agreement.

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**5. COMPLIANCE WITH LAWS**

- 5.1. The Works shall be constructed and at all times maintained at the Applicant's sole cost and expense in accordance with the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.) and all rules, requirements, regulations, directives, orders or plans adopted or approved by the Canadian Transportation Agency, Transport Canada, or any predecessor or successor governmental agency or body whose rules, requirements, regulations, directives or plans may have effect on the Works. The Applicant agrees to observe and perform all the terms and conditions of the said rules, requirements, regulations, directives, orders or plans with respect to construction and maintenance of the Works.

**6. PLAN AND SAFE RAILWAY OPERATIONS**

- 6.1. The Applicant shall carry out the Works as shown on the Plan, and in accordance with VIA's requirements respecting safe railway operations. No Works shall proceed until this Agreement has been signed and Plan has been approved by VIA.

**7. PRESENCE OF VIA'S AGENT**

- 7.1. In no case shall the Applicant and its Representatives perform Works on VIA's property or any work that could affect VIA's property without an agent of VIA present, at the expense of the Applicant.

**8. ARRANGEMENTS WITH UTILITY COMPANIES**

- 8.1. The Applicant shall be fully responsible, at its sole expense, for making arrangements with, locating, taking necessary precaution, and notifying utility companies, including fiber optics companies, affected by the planned Works.

**9. MAINTENANCE OR WORK ON VIA'S PROPERTY**

- 9.1. No maintenance work on VIA's property or any work that could affect VIA's property shall be done without first notifying VIA and obtaining VIA's prior written consent.

**10. SAFETY AND CAUTION NEAR TRACKS**

- 10.1. The Applicant and its Representatives shall exercise caution at all times when performing work near railway tracks and shall remain alert to the approach of trains, engines or cars from either direction at any time.
- 10.2. The Applicant and its Representatives shall not place any material or equipment on railway tracks.
- 10.3. The Applicant and its Representatives shall not, at any time and in any way, obstruct or impede the operation, the maintenance or the enjoyment of VIA's property by VIA and its Representatives or foul the track with equipment and shall act with care and diligence at

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all times. If VIA deems, without restriction, that the Works being undertaken or the method used to undertake the Works will impede VIA in any way, VIA may order the Works stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that VIA may deem necessary under the circumstances. The Applicant shall comply with the requirement of this Section, at its risk and expense and without recourse against VIA.

- 10.4. The Applicant and its Representatives shall take all necessary measures with respect to safety and fire protection.
- 10.5. The Applicant and its Representatives shall, prior to the commencement of the Works, ensure that all employees and subcontractors who will be performing the Works participate in a compulsory safety briefing and information session, and shall complete VIA Online Safety Test ([www.erailsafe.com/canada](http://www.erailsafe.com/canada)). VIA shall have the right to verify compliance to the safety rules.

## **11. PERFORMANCE AND MAINTENANCE OF THE WORK**

- 11.1. The Applicant shall assign duly qualified personnel to perform the Works and shall cooperate with VIA or any other legislative authority to ensure that all work is performed in accordance with all applicable regulations and by-laws and that all permits and authorizations are obtained by the Applicant. The Applicant shall be responsible to pay for all charges imposed by such regulations and by-laws.
- 11.2. The Applicant shall be solely responsible for the maintenance of the Works, at its own cost. If the Applicant requests VIA to perform the Works' maintenance, VIA's services will be invoiced to the Applicant. In any event, VIA shall invoice the Applicant for flagging costs.
- 11.3. The Works will be subject to annual inspections by VIA. In addition, in the event of an intrusion or other event that could alter the Works, a special inspection will be held by VIA. All costs associated with the inspections incurred by VIA, whether annual or special, shall be paid by the Applicant and will be charged by VIA to the Applicant. The costs are determined in accordance with the Canadian Transportation Agency.
- 11.4. The Applicant is solely responsible for maintaining the vegetation and general cleanliness in the surroundings of the Works of both the Applicant's property and the property owned by VIA. However, maintenance of the surroundings of the Works on VIA property will be done by VIA and its Representatives, but at the sole Applicant's expense.

## **12. IMPROVEMENT OF THE RAILWAY LINE**

- 12.1. Should it become necessary or expedient for the purpose of repair or improvement of the railway line that the Works be removed, relocated or modified, the Applicant shall, at its risk and expense, comply with the request of VIA, provided that VIA shall use good faith efforts to minimize any impact on the Works or interruption in the Applicant's provisioning

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of its services using the Works in connection with planning and executing any such repair or improvement of the railway line. VIA shall only request such removal where it is the only practical option available to VIA. If the Applicant fails to comply with the request of VIA to remove, relocate or modify the Works within a reasonable period of time, VIA shall have the right to execute or have executed, at the risk and expense of the Applicant, any work required to remove, relocate or modify the said Works.

### 13. ENVIRONMENTAL OBLIGATIONS

- 13.1. The Applicant shall, upon written notice from VIA, carry out all measures which VIA, without restriction, considers necessary to keep the Works free and clear of all environmental contaminants or residue (hereinafter referred to as "**Environmental Contamination**") resulting from the Applicant's occupation or use of the Premises, such condition to be confirmed (at the option of VIA and at the sole expense of the Applicant) by a post-termination environmental inspection/audit of the Premises to be carried out by VIA. The Applicant shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on the Premises, or which occurs on other lands as a result of the Applicant's occupation or use of the Premises, and will complete such work in a timely fashion and in all cases in accordance with applicable laws and regulations.
- 13.2. Notwithstanding the foregoing, in the event that VIA, at any time, suspects that a potential source of Environmental Contamination may be either present on the Premises or at risk of escaping from or onto the Premises as a result of the Works of the Applicant, VIA shall have the right to enter upon the Premises, at all reasonable times and from time to time, in order to inspect the Premises and conduct or require the Applicant to conduct, at the Applicant's expense, such tests as may be required to verify the condition of the Premises. The Applicant shall, at its expense, take any and all action as shall be required to prevent such Environmental Contamination, which is attributable to the Works of the Applicant, from occurring or escaping from or onto the Premises.
- 13.3. The Applicant shall notify VIA in a reasonably prompt manner of all Environmental Contamination that the Applicant suspects is occurring on or escaping onto the Premises from adjacent lands or resulting from third party occupation to the extent such Environmental Contamination is caused by or related to the Applicant's Works.
- 13.4. If the Applicant fails to correct any Environmental Contamination caused by its Works within a reasonable timeframe to the satisfaction of VIA and of any public authority having jurisdiction, VIA and its Representatives may execute or have executed such work. VIA may charge the Applicant for all the costs incurred by VIA in correcting such Environmental Contamination, including, without limitation, judicial and extrajudicial fees and costs, plus fifteen per cent (15%) for overhead. The Applicant shall pay VIA's invoice or invoices for such costs within thirty (30) days of receipt of each invoice. In the event

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such remedial work is carried out by any public authority, the cost of such work shall be borne by the Applicant.

- 13.5. The Applicant shall comply with the provisions of any federal, provincial or municipal laws applicable to the Applicant's Works on the Premises with respect to maintaining a clean environment. If any public authority having jurisdiction with respect to environmental protection or fire protection requires the installation of equipment or apparatus on the Premises as a result of the Applicant's Works to improve the environment or to improve fire protection facilities, then the Applicant shall promptly install such equipment or apparatus or take such measures as may be required by such public authority. The Applicant shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority where such requirements are imposed as a result of the Applicant's Works.
- 13.6. Upon expiration or termination of this Agreement, the Applicant shall leave the Premises in a clean and tidy condition, free of any Environmental Contamination resulting from the Applicant's occupation or use of the Premises. If the Applicant has installed any facility on or under the Premises, the Applicant shall remove such facility, subject to the provisions of Section 21. The Applicant shall have the burden of proving that any Environmental Contamination which could reasonably have been caused by the Applicant's Works or use of the Premises has not resulted from or occurred during its occupation or use of the Premises.
- 13.7. The responsibility of the Applicant and its Representatives to VIA and its Representatives with respect to the environmental obligations contained herein shall continue to be enforceable by VIA notwithstanding the termination of this Agreement.

#### **14. ACKNOWLEDGEMENT OF VIA'S PROPERTY RIGHTS**

- 14.1. In addition to any other amounts payable by the Applicant pursuant to this Agreement and as an acknowledgement of the property rights of VIA in the lands of the railway line occupied by the Works, the Applicant shall immediately pay to VIA a fee of one thousand five hundred(\$1,500.00) plus applicable taxes (G.S.T., H.S.T and/or Q.S.T.). All sums payable to VIA shall be payable to the order of VIA, care of its authorized representative, at the address specified in Section 20 of this Agreement. The Applicant shall also pay all taxes, rates and assessments of any other nature that may be levied from time to time during the course of this Agreement against VIA's property as a result of the Works constructed by the Applicant. VIA's G.S.T. / H.S.T. Registration Number is 105521785 RT0001 and VIA's Q.S.T. Registration Number is 1001106674 TQ0001. Subject to Section 12, where Works is performed at the request of VIA, VIA will not charge the Applicant fees usually associated with Works of the Applicant.

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## 15. APPLICANT'S AND OTHER'S PROPERTY

- 15.1. The Applicant's property, and any other person's property, shall, while located on the Premises to fulfill any obligation covered by the present Contract, be deemed to be there at the risk of the Applicant as to damages, loss or theft attributable to any cause whatsoever except to the extent caused by VIA's negligence or willful conduct or breach of the terms of this Agreement.

## 16. CONTRACTUAL LIABILITY AND INDEMNITY

- 16.1. The Applicant and its Representatives shall fully indemnify and save harmless VIA and its Representatives and shall furthermore act as warrantor and take up VIA and its Representatives' defence to answer for all financial consequences for all Claims, including those for bodily injuries, death and any Claims of third parties, from whatever source, nature and kind in any manner, howsoever arising with respect to the Applicant and its Representatives' obligations under the Contract provided that the Applicant may assert any valid defense against a third party Claim and the Applicant is not a warrantor with respect to the negligent acts or omissions of VIA and its Representatives where the Applicant has duly performed its obligations under the Contract.
- 16.2. Applicant and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by VIA and its Representatives, the imposition of any liability on VIA and its Representatives without VIA's prior and express written consent. VIA and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by the Applicant and its Representatives, the imposition of any liability on the Applicant and its Representatives without the Applicant's prior and express written consent.
- 16.3. The Applicant and its Representatives are liable for any material loss resulting from their actions, omissions, fault and negligence.
- 16.4. The Applicant and its Representatives shall waive all Claims they may have against VIA and its Representatives arising out of an accident or otherwise, resulting from VIA and its Representatives' operations, ownership, use or possession of any property, or any person under VIA and its Representatives' control, provided the claim does not arise from VIA and its Representatives' wilfully reckless act or act of gross negligence. Prior to the commencement of the construction, the Applicant and its Representatives shall sign VIA's standard release form attached as Appendix "B" ("**Permission to Access VIA's Property and Release of Liability**"), as it pertains to the Works.

## 17. INSURANCE

- 17.1. Upon the signing of this Agreement and without restricting the generality of Section 16 "Contractual Liability and Indemnity" of this Agreement, the Applicant and its

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Representatives shall obtain and maintain for the term of this Agreement the following insurance policy:

- 17.1.1. a **Commercial General Liability Insurance**, preferably an “occurrence” form, covering the liability of the Applicant for bodily injury, including death and property damage for a minimum amount of five million dollars (\$5,000,000.00) per occurrence. The insurance policy wording shall contain no exclusion related to services or work in proximity of railway tracks or any such exclusion shall be removed by endorsement. Such insurance shall include VIA as “additional insured” but only with respect to the Applicant work under this Agreement, and shall contain cross, contractual and non-owned automobile liability coverage.
- 17.2. The policies mentioned in Section 17 “Insurance” must include a rider specifying an obligation to serve VIA sixty (60) day written notice of any important modification or any resiliation of coverage. The automobile insurance shall have a standard thirty (30) day written notice.
- 17.3. Prior to the commencement of this Agreement, the Applicant shall provide VIA with insurance certificate issued with VIA as an additional insured, dated and signed by an authorized representative of the Applicant’s insurers and evidencing all insurance requirements mentioned above including, if applicable, that services or work near tracks ARE NOT excluded under the commercial liability policy. Notwithstanding the above, VIA reserves the right to ask for a certified copy of the insurance policy mentioned under Section 17 “Insurance” and the Applicant hereby agree to provide such copy within thirty (30) days of VIA’s request.
- 17.4. New insurance certificate evidencing renewal of the required insurance policy shall be submitted to VIA within thirty (30) days after renewal.
- 17.5. If the Contractor fails to obtain or maintain in force the insurance policy provided for under Section 17 “Insurance”, VIA has the right to obtain such policies of its own initiative and provide proof to the Applicant, who shall then pay the associate cost upon VIA’s request.
- 17.6. The parties agree that VIA’s silence following:
- (a) the Applicant’s failure to comply with Section 17 “Insurance” or any of its subsections, whether or not VIA is aware of such failure; or
  - (b) the Applicant’s issuance of an insurance certificate or a policy that fails to comply with the requirements contained in this Agreement,
- does not exonerate the Applicant from these failures, nor does it constitute a waiver of the Applicant’s obligations by VIA.

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- 17.7. The acquisition and maintenance of the above insurance by the Applicant and its Representatives shall in no manner be construed as to restrict or waive the liabilities, responsibilities or obligations of the Applicant and its Representatives under this Agreement.
- 17.8. With regard to this Agreement, any failure by the Applicant to comply with the obligations provided for under Section 17 “Insurance”, or any of its subsections, shall be deemed to be a material and substantial breach of this Agreement. In such circumstances, VIA may withhold all sums and payments owed to the Applicant, in addition to all rights stipulated by law or by this Agreement, until such failure has been corrected by the Applicant.

## 18. CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING

- 18.1. The Applicant and its Representatives shall maintain confidential all information pertaining to VIA and its Representatives and this Agreement acquired before, during and after the term of this Agreement, and all reports, specifications, drawings and other documentation produced hereunder, and shall not disclose or use same for any purposes other than for the performance of the obligations of this Agreement.
- 18.2. The Applicant agrees to comply with all applicable federal and provincial laws relative to the protection of personal information with respect to this Agreement.
- 18.3. This Agreement and the information contained herein are confidential, subject to the provisions of the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-2
- 18.4. The provisions of Sections 18.1, 18.2 and 18.3 of this Agreement shall survive the expiration or any termination of this Agreement.

## 19. NO ASSIGNMENT

- 19.1. This Agreement is binding upon VIA and its Representatives and upon the Applicant and its Representatives. However, neither this Agreement, in whole or in part, nor any right, interest or privilege granted hereunder may be assigned or sublicensed without the prior written consent of VIA (unless it is to a parent subsidiary or affiliate of the Applicant as defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 in which case no consent is required). Said consent may not be unreasonably withheld.

## 20. NOTICES

- 20.1. Unless otherwise specified, all notices, accounts, statements, reports, documents or instructions to be given by any party under the terms of this Agreement must be given in writing at the following address:

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

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Contract No.: [INSERT VIA'S CONTRACT NUMBER]  
Attention: [INSERT VIA'S CONTRACT ADMINISTRATOR'S  
 NAME],  
 [INSERT HIS / HER TITLE]  
 [INSERT HIS / HER FACSIMILE NUMBER]

**Applicant:** [INSERT THE APPLICANT'S NAME]  
 [INSERT THE APPLICANT'S ADDRESS]  
 Contract No.: [INSERT VIA'S CONTRACT NUMBER]  
Attention: [INSERT THE APPLICANT'S CONTRACT  
 ADMINISTRATOR'S NAME],  
 [INSERT HIS / HER TITLE]

With a second copy to:  
 Attention: Jennifer Alexander, Acting Clerk

20.2. Notice shall be sufficiently given if delivered by courier or facsimile, or if mailed by prepaid registered mail to the above address or to such other place as may be specified in writing. Any notice or other document, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender, and if mailed, on the third business day following the date on which it was mailed. In the event of an actual or imminent disruption of postal service in Canada, the notice shall be delivered by courier.

**21. REMOVAL OF WORKS**

21.1. Prior to the expiry of this Agreement or, in the event of cancellation of this Agreement, the Applicant shall, within a period of six (6) months, at its risk and expense, remove from VIA's property all Works constructed under this Agreement. Should the Applicant fail to comply with the requirements of this Section, VIA reserves its right, without restriction, to do the work that the Applicant should have done in accordance with this Section, or to have the work done, at the risk and expense of the Applicant. Under such circumstances, all the material located on VIA's property shall become the property of VIA, without compensation to the Applicant and without prejudice to VIA's right to recourse against the Applicant for compensation for any costs or damages incurred by VIA as a result of VIA's default.

21.2. In the event that the Works must be removed and changed to another type of work, such as a sound barrier, such removal, change and mitigation action to avoid trespassing will be at the sole Applicant's expense.

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**22. TITLE OF THE PREMISES**

- 22.1. The Applicant agrees not to register this Agreement or to file or to register any caveat or other encumbrance based on this Agreement against the title of the Premises without first obtaining VIA's written consent.

**23. APPLICABLE LAWS**

- 23.1. This Agreement shall be governed by and constructed in accordance with the laws of the province where the Works are executed and the laws of Canada applicable therein, without giving effect to any choice or conflict of law, rules and other provisions (whether in this province or in any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of this province.

**24. FULL AND ENTIRE CONTRACT**

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

**25. AMENDMENT**

- 25.1. In no case shall this Agreement be amended without the written consent of the parties.

**26. SURVIVAL OF THE OBLIGATIONS**

- 26.1. All obligations and liabilities that, by their nature, shall survive the termination or expiration of this Agreement shall remain in full force and effect.

**27. ACKNOWLEDGMENT**

- 27.1. The parties acknowledge that:

27.1.1. this Agreement is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Agreement. If needed, the parties

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received adequate explanations on the nature and scope of the clauses in this Agreement from an advisor of their choice; and

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

**28. COUNTERPARTS**

Each counterpart of this Agreement may be provided in electronic format and shall be deemed to be an original when duly signed by the parties, it being understood, however, that all of these counterparts shall constitute one and same agreement.

**29. LANGUAGE**

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

We have understood, consented and signed this Agreement.

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

VIA	Applicant
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**APPENDIX "A"**  
**PLAN OF THE WORKS**

*See attached document*

VIA	Applicant
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## APPENDIX “B”

### PERMISSION TO ACCESS VIA’S PROPERTY AND RELEASE OF LIABILITY

In consideration of VIA permitting the Applicant and its Representatives to enter upon the Premises for the purposes of [INSERT THE PURPOSE OF THIS PERMISSION] (hereinafter the “**Permission**”) at Mile [INSERT THE MILEAGE] on the [INSERT THE NAME OF THE SUBDIVISION] Subdivision.

The Applicant and its Representatives shall fully indemnify and save harmless VIA and its Representatives and shall furthermore act as warrantor and take up VIA and its Representatives’ defence to answer for all financial consequences for all Claims including those for bodily injuries, death and any Claims of third parties, from whatever source, nature and kind in any manner, howsoever arising with respect to the Applicant and its Representatives’ obligations under the Contract provided that the Applicant may assert any valid defense against a third party Claim and the Applicant is not a warrantor with respect to the negligent acts or omissions of VIA and its Representatives where the Applicant has duly performed its obligations under the Contract.

The Applicant and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by VIA and its Representatives, the imposition of any liability on VIA and its Representatives without VIA’s prior and express written consent. VIA and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by the Applicant and its Representatives, the imposition of any liability on the Applicant and its Representatives without the Applicant’s prior and express written consent.

The Applicant and its Representatives are liable for any material loss resulting from their actions, omissions, fault and negligence.

The Applicant and its Representatives shall waive all Claims it may have against VIA and its Representatives, including but not limited to, Claims arising out of an accident, Claims for the damage or the loss of machinery or of equipment brought on the Premises, or otherwise resulting from VIA and its Representatives’ operations, ownership, use or possession of any property, or any person under VIA and its Representatives’ control, provided the claim does not arise from VIA and its Representatives’ wilfully reckless act or act of gross negligence.

Claims referred to herein shall include any awards made against VIA and its Representatives under any statute for the protection of workmen.

The Applicant and its Representatives shall not, at any time and in any way, obstruct or impede the operation, the maintenance or the enjoyment of VIA’s property by VIA and its Representatives or foul the track with equipment and shall act with care and diligence at all times. If VIA deems, without restriction, that the Works being undertaken or the method used to undertake the Works

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will impede VIA in any way, VIA may order the Works stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that VIA may deem necessary under the circumstances. The Applicant shall comply with the requirement of this Section, at its risk and expense and without recourse against VIA.

The Applicant and its Representatives shall comply with and conform to all VIA's rules and regulations regarding security and behavior on the Premises and railway right of way including all orders, rules and regulations of the Department of Transport and of the Canadian Transportation Agency or other authority having jurisdiction respecting the Premises, the goods and property placed and stored therein, the activities pursued thereon and the use of such Premises by the Applicant.

In no case shall the Applicant and its Representatives perform work on VIA's property or any work that could affect VIA's property without an agent of VIA present, at the expense of the Applicant.

Under no circumstances may equipment be used within ten (10) meters of the nearest track without flagging protection provided by VIA at the expense of the Applicant. For greater certainty, whether the Applicant request VIA to provide flagging protection or not, the costs of this protection shall be assumed exclusively by the Applicant. If the Applicant specifically requests VIA to provide flagging protection, VIA's services will be invoiced to the Applicant. The minimum distance of ten (10) meters may be increased/decreased by VIA, dependent on the type of work to be done. Said protection must be arranged at least ten (10) working days in advance of the beginning of the work.

VIA	Applicant
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