

**METROLINX**

**- AND -**

**TORONTO TRANSIT COMMISSION**

**FUNDING AND FINANCIAL REPORTING AGREEMENT**

---

**MADE PURSUANT TO THE MASTER E-FARE  
COLLECTION OUTSOURCING AGREEMENT  
DATED: NOVEMBER 28, 2012**

---

**DATED AS OF NOVEMBER 28, 2012**

# TABLE OF CONTENTS

Page

<b>ARTICLE 1 BACKGROUND &amp; INTERPRETATION</b> .....	<b>1</b>
1.1 Terms of Master Agreement.....	1
1.2 Definitions.....	2
1.3 Schedules & Attachments.....	2
1.4 Dollar Amounts.....	2
<b>ARTICLE 2 FUNDING</b> .....	<b>2</b>
2.1 Funding of Capital and Operating Expenditures .....	2
2.2 Fare Collection Services .....	3
2.3 E-Fare Revenue Sharing .....	3
2.4 Compensation for Lost Fare Revenue .....	6
2.5 Taxes and Duties .....	7
2.6 Payment Processing and Interchange Fees .....	8
2.7 No Other Fees or Charges .....	8
2.8 Surplus Fees and Surplus Fund.....	8
<b>ARTICLE 3 FINANCIAL REPORTING</b> .....	<b>9</b>
3.1 Record-keeping .....	9
3.2 Financial Reporting .....	10
3.3 Changes to Financial Reports .....	10
<b>ARTICLE 4 TERM AND TERMINATION</b> .....	<b>10</b>
4.1 Term .....	10
4.2 Survival.....	10
<b>ARTICLE 5 GENERAL PROVISIONS</b> .....	<b>10</b>
5.1 Invalidity.....	10
5.2 No Amendment .....	10
5.3 No Waiver.....	10
5.4 Counterparts.....	11

## **FUNDING AND FINANCIAL REPORTING AGREEMENT**

**THIS FUNDING AGREEMENT** is made as of the 28th day of November, 2012

**B E T W E E N:**

### **METROLINX**

an agency of the Government of Ontario under the *Metrolinx Act, 2006*  
 (“**Metrolinx**”)

– and –

### **TORONTO TRANSIT COMMISSION**

a corporation existing under the *City of Toronto Act, 2006*  
 (“**TTC**”).

IN consideration of the mutual covenants herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both Parties), the Parties hereby covenant and agree with each other as follows:

## **ARTICLE 1**

### **BACKGROUND & INTERPRETATION**

#### **1.1 Terms of Master Agreement.**

- (a) This Funding Agreement is ancillary to the Master Agreement. The terms of the Master Agreement, as amended from time to time, are incorporated herein by reference – including, for greater certainty, Sections 5.3 (Audits), Article 13 (Limitation of Liability), Article 16 (Force Majeure) and Article 17 (General Provisions) thereof.
- (b) Section 13.2 of the Master Agreement shall apply to claims made under this Funding Agreement. Any compensation paid pursuant to Section 2.4 hereunder shall be treated, without duplication of any claims made under the Master Agreement or any Ancillary Agreement, as direct damages and shall be subject to, and shall accrue to, the aggregate limit on the amount of Metrolinx’s liability set out in that Section 13.2.
- (c) Further to and as contemplated in the Master Agreement, this Funding Agreement sets out additional rights and obligations of the Parties with respect to funding the Managed Services and the collection of E-Fare Revenue, including obligations with respect to financial record keeping and financial reporting with respect thereto. Metrolinx and TTC acknowledge and agree that this Funding Agreement and the Master Agreement form a single agreement as they relate to the subject matter hereof and are to be read together.

**1.2 Definitions.** All capitalized terms used in this Funding Agreement, and not otherwise defined herein, have the meaning ascribed to such terms in the Master Agreement, unless the context otherwise requires. Terms that are defined for the purpose of this Funding Agreement are set out in the definitions schedule (Schedule 1.2 – Definitions for this Funding Agreement).

**1.3 Schedules & Attachments**

The following are the schedules and attachments attached to and forming part of this Funding Agreement:

<b><u>Schedule</u></b>	<b><u>Description of Schedule</u></b>
1.2	Definitions for this Funding Agreement
2.4(f)	Interim Compensation for Lost Fare Revenue
2.8	Surplus Fund Calculation

**1.4 Dollar Amounts**

References in this Funding Agreement or in the Master Agreement to dollars are to amounts in 2012 dollars.

**ARTICLE 2  
FUNDING**

**2.1 Funding of Capital and Operating Expenditures**

- (a) It is expressly understood and agreed that Metrolinx, as the provider of the Managed Services, shall be responsible for funding the capital and operating expenditures necessary to provide the Managed Services in accordance with the Master Agreement and the Ancillary Agreements (e.g., expenditures in connection with the PRESTO Equipment and Services); provided that Metrolinx shall not be responsible for any costs to be incurred by TTC in fulfilment of its roles and responsibilities in connection with the Managed Services as set out in the Master Agreement or any Ancillary Agreement. Metrolinx shall continue to be responsible for all operating costs associated or related to the Current PRESTO Deployment.
- (b) The Parties agree that (i) the new streetcar light rail vehicles (“**LRVs**”) require certain design changes to allow for the installation, operation and maintenance of the PRESTO NG system on light rail vehicles, and (ii) the free-wheeling turnstiles adjacent to collector booths in TTC subway stations are to be replaced in accordance with the Project Management Agreement and the TTC Business Requirements. Metrolinx shall fund the incremental expenditures associated with the redesign of such LRVs and installation of such replacement turnstiles (to the extent that TTC’s existing capital budget allocation for such replacement does not cover the replacements). Such incremental associated costs will be tracked by Metrolinx, and a report of such costs will be provided to TTC on a regular basis.

Once such expenditures are fully known, the Parties agree that Metrolinx may, in accordance with the Operational Services Agreement, elect to extend the Term in order to permit Metrolinx to recover the incremental associated costs with the retrofit of such light rail vehicles and replacement of such free-wheeling turnstiles.

- (c) The Parties acknowledge that the SRVMs (as that term is defined in the TTC Business Requirements) will be required to accept token fare media during the transition to PRESTO NG. The Parties will act reasonably to determine the operating cost associated with this change and implement such change in a cost-effective manner. TTC shall assume operating costs associated with the collection and sorting of TTC tokens from the SRVMs unless the Parties agree otherwise in writing. Metrolinx shall not be liable for any loss, cost (including reasonable legal costs), damage, injury, liability, claim, penalty, fine, interest or any cause of action whatsoever resulting howsoever from or in connection with the use or acceptance of fraudulent tokens at SRVM pursuant to this Section 2.1(c).

## **2.2 Fare Collection Services**

Pursuant to the Master Agreement, Operational Services Agreement, and Project Management Agreement, Metrolinx shall perform the Fare Collection Services, and shall be the exclusive provider of the Fare Collection Services. The TTC shall not enter into any alternative fare collection services (including e-fare arrangements) with any third party. Subject to Section 2.1(c), at no time shall Metrolinx be responsible for any TTC Fare Collection Responsibility.

## **2.3 E-Fare Revenue Sharing**

In consideration for the performance of the Managed Services by Metrolinx, TTC hereby authorizes Metrolinx to retain a portion of the E-Fare Revenue collected and deposited by Metrolinx as part of the Fare Collection Services in the following manner:

- (a) During the Term (including the renewal term, subject to any adjustment pursuant to Section 15.1 (Term) of the Master Agreement) Metrolinx shall retain an amount equal to 5.25% of the Gross Receipts (the “**Metrolinx Fee**”) and shall remit to TTC the remainder of the Gross Receipts, subject to Sections 2.3(b) and 2.3(f), (g), (h) and (i).
- (b) Notwithstanding Section 2.3(a), Metrolinx shall remit to TTC 100% of the revenue collected through any of the devices installed as part of the Current PRESTO Deployment in the manner and with the frequency specified herein until such time as those devices are replaced with e-fare devices under the Managed Services with Full PRESTO NG Functionality. Revenue from the Current PRESTO Deployment shall not be considered “E-Fare Revenue” or “Gross Receipts” for the purposes hereof.
- (c) Each Business Day, Metrolinx shall, to the fullest extent possible, arrange for the transfer of all Gross Receipts of the previous day (or, where the previous day is

not a Business Day, all Gross Receipts of the previous Business Day and the intervening non-Business Day(s)), net of the Metrolinx Fee amount, to an agreed upon TTC account at the TTC Bank of Record for the sole and exclusive benefit of TTC in accordance with TTC Business Requirements.

Any e-fare transactions that are not settled shall be reconciled as part of the monthly reconciliation provided for herein.

- (d) Other than deductions resulting from TTC employee fraud or malfeasance, Gross Receipts will not include any deduction for counterfeit currency, fraudulent, disputed or refused TTC customer transactions or any chargebacks (i.e., for debit and credit transactions) in connection therewith.
- (e) Within five (5) Business Days of the last Business Day of each calendar month, commencing in the month in which the first payment of the Metrolinx Fee is made, Metrolinx will provide Reconciliation Reports summarizing the reconciliation process activities for the month, including any amounts not settled during that month as set out in Section 2.3(c) above and for the verification of the amounts paid and payable to TTC hereunder. The Parties shall agree, pursuant to the Project Plan, on a date on which the Reconciliation Reports will first become available.
- (f) Commencing on the Stage One Deployment Date, and for each twelve month period up to the Stage Two Deployment Date, the total Metrolinx Fee retained by Metrolinx in accordance with Section 2.3(c) and in respect of that period shall not be less than \$5,000,000 (the “**Stage One Amount**”). If, at the end of each such twelve month period, the total Metrolinx Fee retained by Metrolinx in accordance with Section 2.3(c) and in respect of that period is less than the Stage One Amount, Metrolinx shall be entitled to be paid (or to retain as a set off from the Gross Receipts otherwise payable to TTC pursuant to Section 2.3(c)) an amount equal to the difference in such amounts (the “**Stage One Differential**”).
- (g) Commencing on the Stage Two Deployment Date, and for each twelve month period up to the Minimum Fee Start Date, the total Metrolinx Fee retained by Metrolinx in accordance with Section 2.3(c) and in respect of that period shall not be less than \$15,000,000 (the “**Stage Two Amount**”). If, at the end of each such twelve month period, the total Metrolinx Fee retained by Metrolinx in accordance with Section 2.3(c) and in respect of that period is less than the Stage Two Amount, Metrolinx shall be entitled to be paid (or to retain as a set off from the Gross Receipts otherwise payable to TTC pursuant to Section 2.3(c)) an amount equal to the difference in such amounts (the “**Stage Two Differential**”). If the Stage Two Deployment Date occurs part way through a twelve month period following the Stage One Deployment Date, then:
  - (i) for the purposes of calculating the Stage One Differential for such period, the Stage One Amount will be pro-rated based on the period between the Stage One Deployment Date and the Stage Two Deployment Date; and

- (ii) for the purpose of calculating the Stage Two Differential for such period, the Stage Two Amount will be calculated for the twelve month period following the Stage Two Deployment Date.
- (h) At all times after each of the Stage One Deployment Date and Stage Two Deployment Date, as applicable, at least 90% of the installed Reader Assemblies shall perform at the Service Levels set out in the SLA. Each day on which less than 90% of the Reader Assemblies met the Service Levels shall not be included in the period required for Metrolinx to be eligible for the Stage One Amount, Stage Two Amount, or Minimum Fee Amount, as applicable and:
  - (i) for the purposes of calculating the Stage One Differential, one day shall be added to the period between the Stage One Deployment Date and the Stage Two Deployment Date; or
  - (ii) for the purpose of calculating the Stage Two Differential, one day shall be added to the period between the Stage Two Deployment Date and the Minimum Fee Start Date.
- (i) If, at the end of any twelve month period following the Minimum Fee Start Date, the total Metrolinx Fee retained by Metrolinx in accordance with Section 2.3(c) and in respect of that period is less than \$25,000,000 (the “**Minimum Annual Fee Amount**”), Metrolinx shall be entitled to be paid (or to retain as a set off from the Gross Receipts otherwise payable to TTC pursuant to Section 2.3(c)) an amount equal to the difference in such amounts (the “**Minimum Fee Differential**”). If the Minimum Fee Start Date occurs part way through a twelve month period following the Stage Two Deployment Date, then:
  - (i) for the purposes of calculating the Stage Two Differential for such period, the Stage Two Amount will be pro-rated based on the period between the Stage Two Deployment Date and the Minimum Fee Start Date; and
  - (ii) for the purpose of calculating the Minimum Fee Differential for such period, the Minimum Fee Amount will be calculated for consecutive twelve month periods following the Minimum Fee Start Date.
- (j) If, with reference to the Project Plan, TTC fails to meet a TTC Dependency, and such failure causes Metrolinx to be delayed by more than 90 days in reaching the Stage One Deployment Date, Stage Two Deployment Date or the Minimum Fee Start Date, and such delay is not due to either Metrolinx’s acts or omissions or a Force Majeure, Metrolinx shall be entitled to deem the occurrence of the Stage One Deployment Date, Stage Two Deployment Date or the Minimum Fee Start Date (as applicable) upon written notice to the TTC, and the Parties shall treat that date as having occurred.
- (k) The TTC shall be required to make any payment (or permit any set off) contemplated by Sections 2.3(f), (g) and (h) or (i), if:

- (i) Metrolinx delivers written notice to the TTC of the Stage One Differential, Stage Two Differential or Minimum Fee Differential (as applicable), which notice sets out the calculation under Sections 2.3(f), (g) or (h) (as applicable), and a proposed schedule for the payment (or set off) of an amount (or amounts) totalling the amounts determined in accordance with Section 2.3(f), (g) or (h) (as applicable); and
- (ii) The TTC either:
  - (A) agrees with the proposed schedule for payment or set off, whereupon it shall make payments (and/or permit Metrolinx to set off amounts) in accordance with same; or
  - (B) does not agree with the proposed schedule for payment or set off, whereupon the Parties shall promptly settle a mutually agreeable schedule, acting reasonably.

## **2.4 Compensation for Lost Fare Revenue**

The Parties acknowledge and agree that a failure of Metrolinx to provide the Managed Services in compliance with the Service Levels and the Service Level Targets of the SLA may result in a material adverse impact on TTC's Gross Receipts.

- (a) In accordance with the Project Plan, the Parties will agree upon:
  - (i) subject to Section 2.4(e), a threshold for what constitutes a material adverse impact on Gross Receipts; and
  - (ii) a service level agreement to form part of the SLA whereby Metrolinx will be required to make an appropriate payment to the TTC if there has been such a failure by Metrolinx that has materially adversely impacted the Gross Receipts,

which will be developed and attached as Schedule 2.5 of the Operational Services Agreement. In developing such service level agreement, the Parties shall give effect to the following principles:

- (A) the intention is for Metrolinx to compensate TTC for lost e-fare revenue above the agreed upon materiality threshold that results from a failure of Metrolinx to provide the Managed Services in compliance with the Service Levels and the Service Level Targets of the SLA; and
  - (B) the Parties should work together to mitigate the risks of any such failure and the extent of the loss resulting from any such failure.
- (b) If Metrolinx determines that there has been such a failure of the Managed Services that could materially impact or has materially impacted the Gross



Receipts, Metrolinx shall promptly deliver written notice of such failure to TTC together with evidence to support its determination.

- (c) With reference to Schedule 2.5 of the Operational Services Agreement, if the TTC determines that there has been such a failure of the Managed Services that has exceeded the materiality threshold (including if the TTC receives the foregoing notice from Metrolinx), the TTC shall deliver a deficiency notice to Metrolinx together with evidence to support its determination.
- (d) Subject to Schedule 2.5 of the Operational Services Agreement and Section 2.8(c), as well as Section 13.2 of the Master Agreement, if Metrolinx agrees with such notice, the Parties agree to follow the agreed upon process to make any required payments. If Metrolinx rejects such notice, the matter shall be referred to dispute resolution in accordance with Article 14 of the Master Agreement.
- (e) Section 2.4(a), 2.4(b) and 2.4(c) shall not apply to the extent that the less than expected Gross Receipts were due to:
  - (i) a Force Majeure Event; or
  - (ii) the negligent or otherwise inappropriate acts or omissions of the TTC or any person for whom TTC is responsible at law including incomplete performance of one or more TTC Dependencies (as such term is defined in the Operational Services Agreement).
- (f) Until the Parties have agreed upon a threshold for what constitutes a material adverse impact on Gross Receipts pursuant to Subsection 2.4(a)(i) above and the related service level agreement pursuant to Subsection 2.4(a)(ii) above, the Parties will follow the compensation mechanism set out in Schedule 2.4(f) (Interim Compensation for Lost Fare Revenue) attached hereto.

## **2.5 Taxes and Duties**

- (a) The Metrolinx Fee will be deemed to be inclusive of all Taxes either in force or announced prior to the Effective Date.
- (b) If a change in the Taxes payable is announced subsequent to the Effective Date, any change in Taxes payable will be for the account of TTC. No additional costs for administration or overhead and profit will be allowed on such changes and Metrolinx will supply, at no cost to TTC, sufficient documentation to permit a determination of the resulting change.
- (c) Where an exemption or recovery of Taxes is applicable to this Funding Agreement, Metrolinx will provide TTC where required, with all necessary cost information including original invoices and assistance, at no cost, to facilitate such exemption or recovery of Taxes to the credit of Metrolinx.

## **2.6 Payment Processing and Interchange Fees**

- (a) Subject to subsection 2.6(b), the Metrolinx Fee shall include all payment processing and interchange fees in effect and at the rates in place at the Effective Date.
- (b) Metrolinx's agreement to include in the Metrolinx Fee payment processing and interchange fees payable in connection with the processing of unaggregated single ride open payments (for the use of credit or debit cards in lieu of the PRESTO card at Reader Assemblies) is conditional upon the total dollar value of fares paid using unaggregated single ride open payments not exceeding 10% of E-Fare Revenue and the payment processing and interchange rates (applicable to unaggregated single ride open payments) not exceeding an average of 2% per transaction. If the total annual dollar value of unaggregated single ride open payments exceeds 10% of E-Fare Revenue or the payment processing and interchange rates exceed an average of 2% per transaction, the Parties agree to discuss the allocation of such fees between the Parties. For greater clarity, the average of 2% per transaction is based on the total annual unaggregated single ride open payment transactions).

## **2.7 No Other Fees or Charges**

Except as expressly stated in this Funding Agreement, or as expressly agreed to by the Parties in writing, there will be no other fees or charges payable by TTC to Metrolinx in respect of the Managed Services.

## **2.8 Surplus Fees and Surplus Fund**

- (a) Metrolinx shall diligently track the Metrolinx Expenditures and the amounts received as the Metrolinx Fee. Metrolinx shall notionally apply the Metrolinx Fee collected to the repayment of the Metrolinx Expenditure, provided that once the Metrolinx Expenditure is considered to be repaid in full, Metrolinx shall hold any surplus in the amount of the Metrolinx Fee in a segregated account maintained for the benefit of the Parties (such fund to be maintained as a running balance) as provided in this Section 2.8 (the "**Surplus Fund**"). Metrolinx shall provide a Surplus Fund Report (in the form and following the method of calculation set out in Schedule 2.8 (Surplus Fund Calculation) within 120 days of each provincial government year end.
- (b) Metrolinx shall be responsible for the investment of funds in the Surplus Fund account. Such investment will be done in a manner consistent with Metrolinx investment policies.
- (c) If Metrolinx is required to pay any amount to the TTC pursuant to Section 2.4, such amounts shall, to the extent possible, be paid out of the Surplus Fund, with Metrolinx responsible for the remainder of such amounts not satisfied by a payment out of the Surplus Fund. For greater certainty, any Metrolinx responsibility under this Section 2.8(a) that exceeds the Surplus Fund shall

constitute a Metrolinx Expenditure for the purposes of any Surplus Fund calculation and distribution under this Section 2.8.

- (d) Upon the expiry of the Term (as such term is defined in the Operational Services Agreement), and upon the expiry of each renewal of the Term as provided in the Operational Services Agreement, and provided that in each case the Parties renew the Operational Services Agreement (or such other basis as may be agreed by the Parties), the funds retained in the Surplus Fund shall be dealt with as follows:
  - (i) If there are planned expenditures to be made in accordance with the terms of the Master Agreement or any applicable Ancillary Agreement, Metrolinx shall be entitled to retain an amount of the Surplus Fund sufficient to cover the cost of such future capital and associated operating expenditures.
  - (ii) Subject to Section 2.8(f), if there are no planned expenditures to be made in accordance with the terms of the Master Agreement, or if there are remaining amounts in the Surplus Fund after any such expenditures are provided for pursuant to Section 2.8(d)(i), the Surplus Fund shall be divided equally between Metrolinx and the TTC.
- (e) Subject to Section 2.8(f), in the event of the termination or expiry of this Funding Agreement, the Surplus Fund will be equally divided between the TTC and Metrolinx, provided that, prior to such equal division, Metrolinx shall have a first claim on the Surplus Fund in respect of Metrolinx's reasonable termination expenses, including any Metrolinx commitments that have been made but not yet expended (such expenses to be determined prior to any equal distribution of the Surplus Fund by the Parties due to such termination).
- (f) In the event that Metrolinx has any financial liability to TTC in connection with the performance of PRESTO NG or the Managed Services, Metrolinx shall be entitled to direct that an amount be paid to the TTC out of the Surplus Fund in full or partial satisfaction (as applicable) of that liability. Such amount shall be paid out of the Surplus Fund prior to any equal division of the Surplus Fund between the Parties.

### **ARTICLE 3 FINANCIAL REPORTING**

#### **3.1 Record-keeping**

During the Term and for a period of seven years thereafter, Metrolinx shall maintain all data, records, documents and other information relating to the Managed Services and in accordance with the TTC Business Requirements and as are customary to record the fare revenue collected, remitted and retained hereunder in accordance with generally accepted auditing standards and generally accepted accounting principles in Canada. After such period, the data, records, documents, and other information will be handled in accordance with applicable Ontario government policy.

### **3.2 Financial Reporting**

Metrolinx shall provide TTC with the financial reports in accordance with Exhibits B, C and G of the TTC Business Requirements.

### **3.3 Changes to Financial Reports**

If the TTC wishes a Change of any financial report to be provided in accordance with Section 3.2, or to have any additional financial report or reports generated by Metrolinx, it shall request such change through the Change Order Procedure provided for in the Master Agreement.

## **ARTICLE 4 TERM AND TERMINATION**

### **4.1 Term**

This Funding Agreement shall continue for a period equal to the Term of the Operational Services Agreement (the “**Term**”) and shall be coterminous with the Operational Services Agreement.

### **4.2 Survival**

The provisions of Sections 2.8, 3.1 and ARTICLE 5 shall remain in effect after the termination or expiry of this Funding Agreement, until such time as the Parties mutually agree to the release of the obligations contained therein. No termination of this Funding Agreement by any Party shall affect the rights and obligations of any Party which have accrued as of the date of such termination.

## **ARTICLE 5 GENERAL PROVISIONS**

### **5.1 Invalidity**

If any of the provisions or part thereof contained in this Funding Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions or parts thereof contained herein shall not be in any way affected or impaired thereby.

### **5.2 No Amendment**

No supplement, modification or termination of this Funding Agreement shall be binding unless executed in writing by the Party to be bound thereby.

### **5.3 No Waiver**

No waiver of or consent to depart from the requirements of any provision of this Funding Agreement shall be binding against either Party unless it is in writing and is signed by

the Party giving it. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it has been given and shall not be deemed or constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of either Party to exercise, and no delay in exercising, any right under this Funding 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.

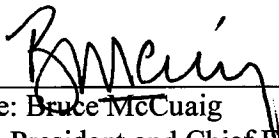
#### **5.4 Counterparts**

This Funding Agreement may be executed in any number of counterparts. Either Party may send a copy of its executed counterpart to the other Party by facsimile transmission instead of delivering a signed original of that counterpart. Each executed counterpart (including each copy sent by facsimile transmission) shall be deemed to be an original; all executed counterparts taken together shall constitute one agreement.

**[Signature Pages Follow]**

**IN WITNESS WHEREOF** this Funding Agreement has been executed by the Parties as of the Effective Date.

**METROLINX**

By:   
Name: Bruce McCuaig  
Title: President and Chief Executive Officer

**TORONTO TRANSIT COMMISSION**


By: \_\_\_\_\_  
Name: Andy Byford  
Title: Chief Executive Officer

**IN WITNESS WHEREOF** this Funding Agreement has been executed by the Parties as of the Effective Date.

**METROLINX**

By: \_\_\_\_\_  
Name: Bruce McCuaig  
Title: President and Chief Executive Officer

**TORONTO TRANSIT COMMISSION**


By:  \_\_\_\_\_  
Name: Andy Byford  
Title: Chief Executive Officer

**IN WITNESS WHEREOF** this Funding Agreement has been executed by the Parties as of the Effective Date.

**METROLINX**

By: \_\_\_\_\_  
Name: Bruce McCuaig  
Title: President and Chief Executive Officer

**TORONTO TRANSIT COMMISSION**

By:  \_\_\_\_\_  
Name: Andy Byford  
Title: Chief Executive Officer



## SCHEDULE 1.2 DEFINITIONS FOR THIS FUNDING AGREEMENT

**Note: All capitalized terms used in this Funding Agreement, and not otherwise defined herein, have the meaning ascribed to such terms in the Master Agreement, unless the context otherwise requires.**

“**E-Fare Revenue**” means all revenue, including Gross Receipts, in respect of TTC fares collected by Metrolinx through the Managed Services, regardless of channel.

“**Funding Agreement**” means this Funding and Financial Reporting Agreement between Metrolinx and the TTC.

“**Gross Receipts**” means the aggregate amount of all sales receipts collected or for which Metrolinx should have been collected in accordance with the Managed Services, (subject to the adjustments contemplated by Section 2.3(d)) in respect of TTC Customers (as defined in the TTC Business Requirements) utilizing PRESTO NG, collected by Metrolinx. For greater clarity, Gross Receipts does not include revenue collected through the TTC Fare Collection Responsibility.

“**Master Agreement**” means the Master E-Fare Collection Outsourcing Agreement between Metrolinx and TTC dated November 28, 2012.

“**Metrolinx Fee**” has the meaning ascribed to it in Section 2.3(a).

“**Metrolinx Expenditure**” means the total of all amounts expended or costs incurred by Metrolinx relating to infrastructure, system (including system refreshes) or development to support the Managed Services provided to the TTC (including amounts expended or costs incurred prior to the Effective Date for the development of PRESTO NG and including costs expended by Metrolinx to retrofit the LRVs to allow for the installation and operation of the PRESTO NG system on light rail vehicles and for the replacement of free-wheeling turnstiles): (a) relating to the provision of the PRESTO Equipment and Services (including any amounts paid to third party contractors); (b) to purchase or replace or improve equipment for use in connection with the Managed Services; (c) to implement, operate, maintain and repair the PRESTO Equipment and Services forming part of the Managed Services (including such percentage of all amounts expended in respect of the Metrolinx PRESTO division’s total administrative overhead costs and expenses, as is equal to the percentage of the total number of all transactions processed by Metrolinx for SPs that are processed for the TTC); (d) to satisfy Metrolinx’s obligations to the TTC under this Agreement or the Master Agreement, including obligations under Section 2.4 and Section 2.8(f) (less any amounts collected by Metrolinx from any subcontractor in connection with the failure that gave rise to the payment under Section 2.4; and (e) the interest paid on funds actually borrowed to fund items (a) through (d) hereof, or the cost of money (at the prevailing Ontario bond rate) as if borrowed to fund items (a) through (d) hereof (as applicable); provided that, in the event of any termination or expiry of the Master Agreement, Metrolinx Expenditure shall also include all of Metrolinx’s termination-related costs and expenses.

“**Minimum Annual Fee Amount**” has the meaning ascribed to it in Section 2.3(i).

“**Minimum Fee Differential**” has the meaning ascribed to it in Section 2.3(i).

“**Minimum Fee Start Date**” means the first Business Day following the date that Metrolinx has installed 8,100 operational Reader Assemblies with Full PRESTO NG Functionality under the Managed Services.

“**Reconciliation Report**” means the report(s) that will be prepared as part of the month-end reporting and in accordance with the TTC Business Requirements.

“**Stage One Deployment Date**” means the first Business Day following the date that Metrolinx has installed 1,900 operational Reader Assemblies with Full PRESTO NG Functionality under the Managed Services.

“**Stage Two Deployment Date**” means the first Business Day following the date that Metrolinx has installed 7,400 operational Reader Assemblies with Full PRESTO NG Functionality under the Managed Services.

“**Surplus Fund**” shall be the surplus fund maintained by Metrolinx as set out in Section 2.8 which shall hold any excess after Metrolinx has deducted all Metrolinx expenditures from the total of all Metrolinx Fees received by it.

“**Taxes**” means all sales, use, value add and other taxes payable in connection with the Managed Services.

“**Term**” has the meaning ascribed to it in Section 4.1.

“**TTC Bank of Record**” means the bank designated by TTC from time to time on prior written notice to Metrolinx.

**SCHEDULE 2.4(F)**  
**INTERIM COMPENSATION FOR LOST FARE REVENUE**

If the TTC, acting reasonably, determines that:

1. The Gross Receipts during a specified monthly reporting period were at least \$30,000 less than the Gross Receipts that should reasonably have been collected during such period, and the shortfall was a direct result of a failure of the Managed Services or any part thereof; or
2. The Gross Receipts during up to three consecutive monthly reporting periods were at least \$30,000 less than the Gross Receipts that should reasonably have been collected during such periods, and the shortfall was a direct result of the same failure of the Managed Services or any part thereof in each of those months;

the TTC shall deliver a deficiency notice to Metrolinx together with evidence to support its determination.

If Metrolinx agrees with such notice, the Parties agree to adjust the Gross Receipts for such period to an amount that should reasonably have been collected for that period as if there was no such failure(s) of the Managed Services. The adjusted Gross Receipts shall be payable to the TTC net of the Metrolinx Fee in accordance with Section 2.3. If Metrolinx rejects such notice, the matter shall be referred to the dispute resolution procedure in accordance with Article 14 of the Master Agreement.

**SCHEDULE 2.8  
SURPLUS FUND CALCULATION**

<b>Year XX - Opening Balance</b>			<b>\$xx</b>
	Add the greater of:		
	(i) Gross Receipts:	\$ xx	
	(ii) Minimum Fee	xx	\$ \$
<b>Adjusted Gross Receipts:</b>			<b>\$ xx</b>
Bank Earned Interest (Bank Fees)		\$ xx	
Metrolinx Expenditures		(\$ xx)	
Metrolinx Planned Expenditures		(\$ xx)	
<b>Metrolinx Expenditure</b>			<b>\$ xx</b>
<b>Gross Receipts Net of Metrolinx Expenditures:</b>			<b>\$ xx</b>
Payments for Compensation for Lost Fare Revenue, s.2(4)		(\$ xx)	
<b>Year XX Closing Balance:</b>			<b>\$ xx</b>
<b>(Cumulative) Funds Available for Distribution</b>			<b>\$ xx</b>