

**VIA Contract No:**

## **ACCESS AND USE AGREEMENT**

**THIS ACCESS AND USE AGREEMENT is**

**BETWEEN:**

**TOWN OF AMHERST**

98 East Victoria Street

Amherst, NS

B4H 1X6

(hereinafter referred to as the "**Town**")

OF THE FIRST PART

**AND:**

**VIA RAIL CANADA INC.**

3 Place Ville Marie

Montreal, Québec

H3B 2C9

(hereinafter referred to as the "**VIA**")

OF THE SECOND PART

**WHEREAS** concurrently with the signature of this Access and Use Agreement, the parties shall enter into a Lease Agreement whereby the Town of Amherst agrees to lease to VIA Rail Canada Inc. the Station Property;

**WHEREAS** in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### **1.0 ACCESS AND USE**

- 1.1. Subject to the terms and conditions herein **the Town agrees to provide** irrevocable access to VIA to the parking lots adjacent to the Amherst Station located at 27 Station Street, Amherst, NS and being PID 25503160 (the "Station Property") for use in common with others, which parking lots are Lot 18-1 and 18-3 as shown on the

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subdivision survey record in the Cumberland County Land Registration Office as document no. 112135141, which lots are respectively PIDs 25503152 and 25503178 for vehicle pick up and drop off area, vehicular crossings, walkways, parking areas including handicap parking, and any other Station Property lands and which parcels are referenced herein as the “Common Area Lands” and for which copy of drawings of all referenced lands and parcels are contained in Schedule “A”. For greater certainty, the Town agrees VIA shall have rights with respect to the **Common Area Lands** for:

- (a) access and use of the Common Area Lands in common with others;
- (b) access to the Station Property from Station Street and from the rail passenger platform;
- (c) access to the rail passenger platform from Station Street and from the Station Property; and
- (d) use of the said rail passenger platform, being PID 25503186 and Lot 18-4 on the subdivision survey of VIA’s land and as shown on Schedule A attached;

which rights shall be similar to the current rights of VIA on the Common Area Lands, notably with respect to use and operation of VIA’s Services, and are more specifically described as follows (collectively called the “**Access and Use Rights**”) for the Common Area Lands: the Town grants to VIA its employees, licensees, contractors and customers the right to enter the Common Area Lands at all times as pedestrians or with vehicles and equipment, for the operation of rail passenger services and related activities in the Station Property. The Town shall maintain clear and sufficient access to meet VIA's operational requirements throughout the term of this Access and Use Agreement and shall not unreasonably block or impede the passage over the Common Area Lands.

- 1.2. The Town acknowledges that VIA is a major tenant and that the Common Area Lands shall be used by VIA only for the operation of rail passenger services and related activities around the Station Property. VIA shall have full access to the passenger platform adjacent to the CNR tracks and access to sufficient parking spaces for its customers, free of rent, maintenance, operating or capital costs. The Town shall comply with CNR’s conditions. For greater certainty, the Town acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Common Area Lands .The Town acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Town has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA shall not be responsible to the Town for any damage to property or persons located on the Common Area Lands as a result of its railway operations. In addition to its other obligations under this Lease, the Town agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the VIA or any governmental authority.

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## 2.0 TERM

- 2.1 This Access and Use Agreement shall be for a term of Twenty (20) years commencing on the 1<sup>st</sup> day of March, 2019 and being the date that VIA shall transfer to the Town Station Street, the Station Property and the Common Area Lands, and being PIDs 25503152, 25503160, 25503178 and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

## 3.0 RENT

- 3.1 VIA shall pay the Town a rent of one dollar (\$1.00) (the "**Rent**") for the access to and use of the Common Area Lands, the sufficiency of which use payable on or before the Commencement Date.
- 3.2 Rent is inclusive of all costs.

## 4.0 RENEWAL

- 4.1 VIA may, without restriction and so long as it is not in default, renew this Access and Use Agreement for one (1) additional term of Twenty (20) years provided it renews its Lease for the Station Property dated even date herewith by giving a sixty (60) day notice to the Town prior to the end date of this Access and Use Agreement, on the same terms and conditions as are applicable to the initial term of this Access and Use Agreement, except with regard to rent.

## 5.0 OPERATING COSTS

- 5.1 For the initial Term and subsequent renewal term, the Rent shall be inclusive of all property costs whatsoever namely maintenance (sweeping, lighting, painting, etc.), property taxes and snow removal, which operating costs shall be borne solely by the Town. CN Flagging costs will be borne by VIA.
- 5.2 The Town shall also remove snow from the rail passenger platform adjacent to the Common Areas and the Station Property.

## 6.0 REPAIRS, MAINTENANCE AND OPERATION

- 6.1 The Town shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Common Area Lands and parking lots subject to reasonable wear and tear, damage by the VIA, and obligations of the VIA to repair or pay cost thereof.

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6.2 The Town shall at its sole cost and expense to:

- (a) Keep each and every sidewalk, motor vehicle parking area, and passageway adjoining, contiguous or appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (b) Remove snow and ice from the Common Area Lands and including the platform and common walkways as indicate.

6.3 The Town may undertake work on the Common Area Lands provided:

1. VIA has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain VIA's operation and Services.
2. Access for emergency vehicles and maintenance vehicles to the Station Property and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to VIA, acting reasonably, being made.
4. During any period when the Station or the railway platform is inaccessible or when accessibility is substantially reduced, the Town shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of VIA's Services including necessary access to rail passenger platform, street and parking, parking for passengers within reasonable distance of the Station Property, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Station Property, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
5. Such alternate lands shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Common Area Lands and have a reasonable access to the rail passenger platform.
6. Any such alternative arrangements shall be at the Town sole expense and shall be subject to the approval of both parties, acting reasonably.
7. If the Town does not provide acceptable alternate access prior to the Common Area Lands becoming unusable, then VIA may immediately undertake the provision of the reasonable alternate parking and access and the Town shall be responsible for all reasonable costs associated with such work or the VIA may take whatever action under law is required to maintain its operation and Services.

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- 6.4 Any work in the vicinity of the railway platform or tracks or capable of falling in the railway corridor shall be approved by the VIA and CN in writing and be protected by a flagman at the Town's costs.

## 7.0 ENVIRONMENTAL MATTERS

- 7.1 The Town shall be responsible for any environmental contamination caused by the Town, those for whom the Town is in law responsible and VIA shall be responsible for any environmental contamination caused by the VIA or those for whom the VIA is in law responsible or by the VIA's customers.

## 8.0 NOTIFICATION OF DEFECT

- 8.1 The Town shall promptly give VIA notice in writing of any accident, defect or damage within the Common Area Lands, systems or services for which the Town has an obligation under this Access and Use Agreement and which have come to VIAs attention. Subject to Section 6.0, if the Town fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts VIA's use of the Common Area Lands, then VIA may undertake any necessary repairs and the Town will compensate VIA for all costs incurred.

## 9.0 ACCESS AND USE

- 9.1 The Town shall permit the public access to and use of the Common Area Lands for the purpose of embarking and disembarking from passenger trains and use of all passenger related facilities including in particular and without limiting the generality hereof, access to and use of the rail passenger platform, parking, vehicle pick up and drop off area.

The Town shall permit VIA, its employees, agents or servants to enter the Station Property from the Common Area Lands at any time as may be required by VIA.

## 10.0 QUIET ENJOYMENT

- 10.1 The Town hereby covenants with VIA for quiet enjoyment of the Common Area Lands in common with others.

## 11.0 ASSIGNMENT

- 11.1 This Access and Use Agreement shall not be assigned or transferred by the Town.
- 11.2 This Access and Use Agreement shall not be assigned or transferred by VIA without the prior written consent of the Town except to a successor corporation.

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**12.0 DIRECTION AS TO EMERGENCY**

- 12.1 The Town may from time to time direct VIA to use a telephone number designated by the Town for notifying the Town of any emergency situation.

**13.0 INSURANCE**

- 13.1 The Town undertakes to obtain and maintain, at its own expense, for the duration of this Access and Use Agreement, the following insurance coverage with insurers carrying a financial rating of "A" or better:

- a) Commercial general liability covering the liability of the Town and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include VIA as an additional insured and shall provide for the following coverage:
- Personal injury
  - Bodily injury
  - Unlicensed vehicles / motorized equipment
  - Property damage, including loss of use of property
  - Contingent Employer's Liability
  - Contractual Liability assumed under this contract
  - Cross Liability and/or Severability of interests
  - Non-owned automobile liability
- b) Automobile liability insurance covering the liability of the Town for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Town for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of this Access and Use Agreement, the Town shall provide the VIA with certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Town's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to VIA within thirty (30) days after renewal should such renewal occur during the term of the Access and Use Agreement. The above insurance policies shall include an endorsement whereby VIA shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

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The acquisition and maintenance of insurance by the Town as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Town and its representatives under this Access and Use Agreement.

VIA confirms that it is self-insured and may provide a letter of confirmation upon request from the Town on or after the effective Access and Use Agreement start date.

#### 14.0 NO WASTE OR NUISANCE

##### 14.1 VIA shall not:

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Common Area Lands; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

#### 15.0 INDEMNITY AND REPOSSESSION

The Town shall indemnify VIA and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Common Area Lands caused by the Town's breach of its obligations towards VIA or by the negligence of the Town or its representatives.

Neither party shall be liable to the other party in connection with this Access and Use Agreement, whether based on contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town's emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA's notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town's (or its successors) costs.

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**16.0 TERMINATION**

VIA shall have the right to terminate this Access and Use Agreement by giving a notice in writing to the Town sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

**17.0 NOTICE**

17.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Town:

**TOWN OF AMHERST**  
98 East Victoria Street  
Amherst, NS  
B4H 1X6

Attention:

if to VIA:

**VIA RAIL CANADA INC.**  
3 Place Ville-Marie  
Suite 500  
Montréal, QC  
H3B 2C9

Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have

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not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

## 18.0 LAW TO THE CONTRARY

18.1 This Access and Use Agreement shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

## 19.0 SEVERANCE

19.1 If any portion of this Access and Use Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Access and Use Agreement.

## 20.0 GOVERNING LAW

20.1 This Access and Use Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

## 21.0 WAIVER

21.1 Waiver by the Town of any default by VIA shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

## 22.0 REFERENCES

22.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

## 23.0 AMENDMENT

23.1 This Access and Use Agreement may not be modified or amended except by an instrument in writing signed by the Town and VIA.

## 24.0 REMEDIES NOT EXCLUSIVE

24.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

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**25.0 CHARGES ON TITLE**

25.1 There shall be no charges on title of the Common Area Lands.

**26.0 CAPTIONS**

26.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

**27.0 INTERPRETATION**

27.1 Wherever the singular or masculine or neuter is used in this Access and Use Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

**28.0 ENTIRE AGREEMENT**

28.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Access and Use Agreement along with the Lease upon their execution.

**29.0 TIME OF ESSENCE**

29.1 Time is of the essence of this Lease.

**30.0 FURTHER ASSURANCES**

30.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Access and Use Agreement.

**31.0 COVENANTS AND CONDITIONS**

31.1 All the provisions of this Access and Use Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

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**32.0 CONFIDENTIALITY**

- 32.1 This Access and Use Agreement and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

**33.0 ACKNOWLEDGMENT**

The parties acknowledge that:

- (1) this Access and Use 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 Access and Use Agreement. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Access and Use Agreement from a legal advisor of their choice; and
- (2) the parties negotiated this Access and Use Agreement jointly and this Access and Use Agreement shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

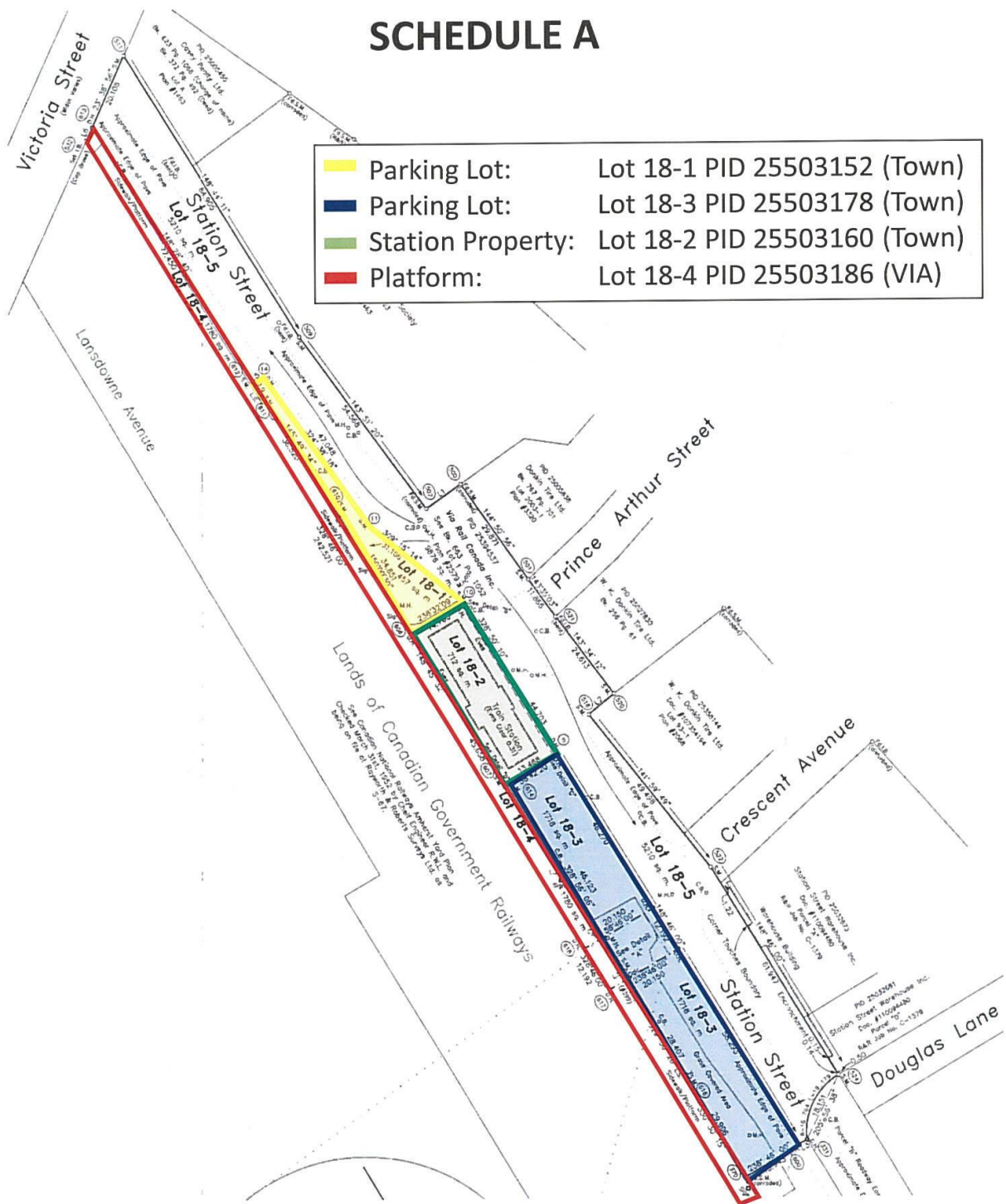
We have understood, consented to and signed two original copies of this Lease on the day and year below written.

<b>VIA RAIL CANADA INC.</b>		<b>TOWN OF AMHERST</b>		<b>TOWN OF AMHERST</b>	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

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# SCHEDULE A – DRAWINGS LANDS AND PARCELS

## SCHEDULE A



CONFIDENTIAL

VIA Rail Canada Inc.

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