

## Funding Agreement

**This Agreement** (the "Agreement"), made in duplicate is effective as of \_\_\_\_\_, 2020 (the "Effective Date"),

Between:

**Her Majesty the Queen in Right of the Province of Nova Scotia as represented by the Minister of Environment**  
("Nova Scotia")

And:

**Western Climate Initiative, Inc.**  
a body corporate constituted under the General Corporation Law (Delaware Code, Title 8, Chapter 1) of the State of Delaware ("WCI, Inc.")

### Background

The Province of Nova Scotia instituted a cap-and-trade program for greenhouse gas emission allowances to facilitate reductions of emissions while providing an opportunity to mitigate the total costs associated with emission reductions. The program came into effect in 2019.

To support the ongoing implementation of its cap-and-trade program, Nova Scotia is a participating jurisdiction in WCI, Inc. to take advantage of administrative, technical and infrastructure services provided through WCI, Inc.

The Province of Quebec and the State of California are participating jurisdictions in WCI, Inc. and have linked cap-and-trade programs that are supported by WCI, Inc.

The financial contributions from participating jurisdictions currently constitute the source of funding for WCI, Inc.

The parties therefore agree as follows:

### Article 1 - Interpretation and General Provisions

#### 1.1 Defined Terms

When used in the Agreement, the following words or expressions have the following meanings:

**"Business Day"** means any working day, Monday to Friday inclusive, but

excluding statutory and other holidays, namely: New Year's Day; Canadian Family or Heritage Day; U.S. Martin Luther King Jr. Day; U.S. President's Day; U.S. Caesar Chavez Day; Good Friday; Easter Monday; Canadian Victoria Day; U.S. Memorial Day; Canada Day; Canadian Civic Holiday; U.S. Fourth of July; U.S. and Canadian Labour Day; U.S. Veterans Day; U.S. Columbus Day; Canadian Thanksgiving Day; U.S. Thanksgiving Day; U.S. day after Thanksgiving; Canadian Remembrance Day; Christmas Eve; Christmas Day; and Boxing Day;

**"Confidential Information"** has the meaning attached to such term in section 5.1 of the Agreement.

**"Conflict of Interest"** shall mean providing services in return for compensation to, or accepting money or other consideration from, any person or entity regulated by Nova Scotia under its cap and trade program;

**"Expiry Date"** means December 31, 2021 or, if the original term is extended, the final date of the extended term;

**"FOIPOP"** means the Nova Scotia *Freedom of Information and Protection of Privacy Act, S.N.S. 1993 c.5*;

**"Fiscal Year"** means the period running from April 1 in one calendar year to, and including, March 31 in the next calendar year;

**"Indemnified Parties"** means each of the following and their directors, officers, advisors, agents, appointees and employees: the Province of Nova Scotia and the members of the Executive Council of Nova Scotia;

**"Losses"** means liabilities, costs, damages and expenses (including legal, expert and consulting fees);

**"Nova Scotia Address"** and **"Nova Scotia Representative"** means:

Nova Scotia Environment  
1903 Barrington Street, Suite 2085  
Halifax, Nova Scotia  
B3J 3L7

Nova Scotia Representative:  
Jason Hollett  
Telephone: 902-229-5494  
Facsimile: 902-424-6925  
Email: Jason.hollett@novascotia.ca

**"Person"** if the context allows, includes any individuals, firms, partnerships or corporations or any combination thereof;

**"Personal Information"** means: (a) information about an identifiable individual that may identify an individual; (b) all other information that is designated by Nova Scotia as "Personal Information" and which Nova Scotia has informed WCI, Inc. in writing as being Personal Information; and (c) other information that is subject to any Privacy Law, including, (i) the individual's name, address or telephone number, (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual's age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health-care history, including a physical or mental disability, (vii) information about the individual's educational, financial, criminal or employment history, (viii) anyone else's opinions about the individual, and (ix) the individual's personal views or opinions, except if they are about someone else; whether recorded in printed form, on film, by electronic means or otherwise, and any such information of users of or contained in the CITSS solution or of Personnel of Nova Scotia.

**"PIIDPA"** means the Nova Scotia *Personal Information International Disclosure Protection Act*, S.N.S. 2006, c. 3

**"Proceeding"** means any action, claim, demand, lawsuit, or other proceeding;

**"Record"**, for the purposes of the Agreement, means any recorded information in the custody or control of Nova Scotia, including any Personal Information, in any form:

- (a) provided by Nova Scotia to WCI, Inc., or provided by WCI, Inc. to Nova Scotia, for the purposes of the Agreement; or
- (b) created by WCI, Inc. in the performance of the Agreement;

**"Requirements of Law"** mean all applicable requirements, laws, statutes, codes, acts, ordinances, approvals, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Agreement or the Services or any part of them;

**"Services" or "Service"** means administrative and technical services provided by WCI, Inc., its contractors, and/or its Subcontractors to support the collaborative implementation of its members' cap-and-trade programs, as set forth in Schedule A;

**"Subcontractors"** means in the case of each party, any contractor of that party or any of its subcontractors at any tier of subcontracting;

**"Term"** means the period of time from the Effective Date up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Agreement in accordance with its terms;

**"WCI, Inc. Address" and "WCI, Inc. Representative"** mean:

Western Climate Initiative, Inc.  
980 9th Street, Suite 1600  
Sacramento, California  
95814

WCI, Inc. Representative: Greg Tamblyn  
Telephone: (916) 449-9966  
Facsimile: (916) 446-7104  
E-mail: [gtamblyn@wci-inc.org](mailto:gtamblyn@wci-inc.org)

**"WCI, Inc.'s Personnel"** includes the directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors of WCI, Inc.;

**1.2 No Indemnities from Nova Scotia**

Notwithstanding anything else in the Agreement, any express or implied reference in any document (including subcontracts) related to the Services under the Agreement, to Nova Scotia providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Nova Scotia, whether at the time of execution of the Agreement or at any time during the Term, shall be void and of no legal effect.

**1.3 Entire Agreement**

The Agreement embodies the entire agreement between the parties with regard to the provision of Services and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Services, existing between the parties at the date of execution of the Agreement.

**1.4 Severability**

If any term or condition of the Agreement, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

**1.5 Interpretive Value of Agreement Documents**

In the event of a conflict or inconsistency in any provisions in the Agreement, the main body of the Agreement shall govern over the Schedules to the Agreement.

**1.6 Interpretive Value of Headings**

The headings in the Agreement are for convenience of reference only and in no manner, modify, interpret or construe the Agreement.

### **1.7 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control.

The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event.

Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism. If a party seeks to excuse itself from its obligations under the Agreement due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. The parties shall extend the period of performance of such obligation to the latter of (1) the number of days of the delay or failure to perform caused by the force majeure event, or (2) by such other number of days as the parties may mutually agree upon in writing.

### **1.8 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, e-mail or facsimile and shall be addressed to, respectively, Nova Scotia Address to the attention of Nova Scotia Representative and to WCI, Inc.'s Address to the attention of WCI, Inc.'s Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, e-mail or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this section.

### **1.9 Governing Law**

The Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein and the parties hereby agree that any dispute arising out of or in relation to the Agreement shall be determined in the Province of Nova Scotia.

### **1.10 Currency**

All references to currency in the Agreement shall be to United States dollars.

## **Article 2 - Nature of Relationship Between Nova Scotia and WCI, Inc.**

### **2.1 WCI, Inc.'s Power to Contract**

WCI, Inc. represents and warrants that it has the full right and power to enter into

the Agreement.

## **2.2 Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

## **2.3 WCI, Inc. Not a Partner, Agent or Employee**

WCI, Inc. shall have no power or authority to bind Nova Scotia or to assume or create any obligation or responsibility, express or implied, on behalf of Nova Scotia. WCI, Inc. shall not hold itself out as an agent, partner or employee of Nova Scotia. Nothing in the Agreement shall have the effect of creating an employment, partnership or agency relationship between Nova Scotia and WCI, Inc. (or any of WCI, Inc.'s Personnel).

## **2.4 Responsibility of WCI, Inc.**

WCI, Inc. agrees that it is liable for its acts and those of WCI, Inc.'s Personnel. This section is in addition to any and all of WCI, Inc.'s liabilities under the Agreement and under the general application of law. WCI, Inc. shall advise these individuals and entities of their obligations under the Agreement and shall ensure their compliance with the applicable terms of the Agreement. This section shall survive the termination or expiry of the Agreement.

## **2.5 Subcontractors**

WCI, Inc. shall obtain prior authorization from Nova Scotia for all possible subcontracting while fulfilling the purpose of this Contract. Nova Scotia reserves the right to refuse any subcontract without the need to provide a rationale for its decision. All Subcontractors shall comply with the terms, conditions and obligations of this Contract. Whenever WCI, Inc. utilizes Subcontractors to fulfil its obligations under this Contract, the completion of those obligations shall at all times remain the responsibility of WCI, Inc.

## **2.6 Conflict of Interest**

WCI, Inc. shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to Nova Scotia without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements reasonably prescribed by Nova Scotia to resolve any Conflict of Interest, in cooperation with WCI, Inc.

In addition to all other contractual rights or rights available at law or in equity, Nova Scotia may immediately terminate the Agreement upon giving notice to WCI, Inc. where: (a) WCI, Inc. fails to disclose an actual or potential Conflict of Interest; (b) WCI, Inc. fails to comply with any requirements prescribed by Nova Scotia to resolve a Conflict of Interest; or (c) WCI, Inc.'s Conflict of Interest cannot be resolved. This section will survive any termination or expiry of the Agreement.

## **2.7 Agreement Binding**

The Agreement will inure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

## **Article 3 - Performance by WCI, Inc.**

### **3.1 Condonation Not a Waiver**

Any failure by Nova Scotia to insist in one or more instances upon strict performance by WCI, Inc. of any of the terms or conditions of the Agreement will not be construed as a waiver by Nova Scotia of its right to require strict performance of any such terms or conditions, and the obligations of WCI, Inc. with respect to such performance will continue in full force and effect.

### **3.2 Changes by Written Amendment Only**

Any changes to the Agreement must be by written amendment signed by the parties. No changes will be effective or will be carried out in the absence of such an amendment.

### **3.3 Work Volumes**

Nova Scotia makes no representation regarding the volume of goods and services required under the Contract.

### **3.4 Security Clearance**

WCI, Inc. shall, upon request from Nova Scotia, require those Persons providing services under the Agreement to submit to security checks and WCI, Inc. may be required to obtain and pay for security clearance. Where such security checks are required, Nova Scotia shall provide information on how WCI, Inc. can obtain them.

WCI, Inc. shall provide to Nova Scotia, upon request, the names, addresses, dates of birth and consents of its Persons for whom security checks are required. WCI, Inc. shall designate a chief security officer as the contact for this purpose. Any Person who is unable to obtain security clearance, or who refuses to consent to such security checks, will not be permitted to perform services under the Agreement.

Security clearance may be suspended or revoked if any Person fails to maintain security clearance or security standards required pursuant to the Agreement. WCI, Inc. shall notify Nova Scotia of any personnel changes, behaviours, or circumstances for which security clearance may require reconsideration.

Security clearance is not awarded in perpetuity. Nova Scotia may perform, or re-perform, security checks against any Person providing services under the Agreement at any time, and shall notify WCI, Inc. of this requirement.

WCI, Inc. will be considered in default of the Agreement if it fails to comply with the requirements of this section or if any security clearance results received by Nova Scotia are found, in the sole discretion of Nova Scotia, to be incompatible with the proper and impartial provision of the Services in accordance with the terms and conditions of the Agreement.

## **Article 4 - Financial Contribution and Audit**

### **4.1 Financial Contribution**

Nova Scotia shall, subject to WCI, Inc.'s compliance with the provisions of the Agreement, pay WCI, Inc. in accordance with Schedule B. Each financial contribution set forth in Schedule B will be made on the Payment Date.

### **4.2 No Expenses or Additional Charges**

There shall be no other charges payable by Nova Scotia under the Agreement to WCI, Inc. other than what is listed in Schedule B and what the parties may agree to under section 3.2.

### **4.3 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Agreement, WCI, Inc. shall maintain all necessary records to substantiate (a) all charges and payments under the Agreement and (b) that the Services were provided in accordance with the Agreement and with Requirements of Law. During the Term, and for seven (7) years after the Term, WCI, Inc. shall permit and assist Nova Scotia in conducting audits of the operations of WCI, Inc. to verify (a) and (b) above. Nova Scotia shall provide WCI, Inc. with at least thirty (30) calendar days prior notice of its requirement for such audit. WCI, Inc.'s obligations under this section will survive any termination or expiry of the Agreement.

### **4.4 Responsibility for HST**

The Province shall be responsible for any HST applicable to the Services. The HST shall be in addition to the Financial Contribution amounts set forth in Exhibit B.

### **4.5 Income Tax**

If the WCI, Inc. is not a resident of Canada, WCI, Inc. acknowledges and agrees that Nova Scotia shall be authorized, if required by law, to withhold income tax from any amounts payable to WCI, Inc. hereunder and to remit that tax to the Receiver General for Canada on WCI, Inc.'s behalf.

## **Article 5 - Confidentiality and *Freedom of Information and Protection of Privacy Act***

### **5.1 Meaning of Confidential Information**

(1) "Confidential Information" means any and all information of a party (the "Disclosing Party"), identified as confidential or marked as confidential information, or is clearly recognizable as confidential information to a prudent person with no special knowledge of the other Party's business, that has or will come into the possession or knowledge of the other party or any of its Personnel or subcontractors (the "Receiving Party"), or to which the Receiving Party has access in connection with or as a result of entering into this Agreement, including information concerning or of the Disclosing Party's past, present or future clients, customers, subcontractors, suppliers, technology or business. Confidential Information shall not include information that: (i) is

information that is derived pursuant to any Requirements of Law; (ii) is or becomes generally available to the public without fault or breach on the part of WCI, Inc. of any duty of confidentiality owed by WCI, Inc. to Nova Scotia or to any third-party; (iii) WCI, Inc. can demonstrate to have been rightfully obtained by WCI, Inc. without any obligation of confidence, from a third-party who had the right to transfer or disclose it to WCI, Inc. free of any obligation of confidence; (iv) WCI, Inc. can demonstrate to have been rightfully known to or in the possession of WCI, Inc. at the time of disclosure, free of any obligation of confidence when disclosed; or (v) is independently developed by WCI, Inc. but the exclusions in this definition of “Nova Scotia Confidential Information” shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Agreement or at law;

- (2) Notwithstanding the foregoing, “Nova Scotia Confidential Information” includes:
- (a) information of or provided by Nova Scotia that is identified as ‘confidential’ or marked as ‘confidential information’, or is clearly recognizable as confidential information to a prudent person with no special knowledge of Nova Scotia’s business; and
  - (c) information about Nova Scotia, personnel, financial circumstances, business plans and strategies, forecasts and forecast assumptions, business practices, operations and procedures that is identified as ‘confidential’ or marked as ‘confidential information’, or is clearly recognizable as confidential information to a prudent person with no special knowledge of Nova Scotia’s business.

## **5.2 Nova Scotia Confidential Information**

During and following the Term, WCI, Inc. shall: (a) keep all Nova Scotia Confidential Information confidential and secure; (b) limit the disclosure of Nova Scotia Confidential Information to only those of WCI, Inc.’s personnel who have a need to know it for the purpose of providing the Services and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Nova Scotia Confidential Information (except for the purpose of providing the Services, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of Nova Scotia and (ii) in respect of any Nova Scotia Confidential Information about any third-party, the written consent of such third-party; (d) provide Nova Scotia Confidential Information to Nova Scotia on demand; and (e) return all Nova Scotia Confidential Information to Nova Scotia before the end of the Term provided WCI, Inc. may keep a copy of Nova Scotia Confidential Information as permitted in Section 5 of Exhibit C and as may be required by law or where it is necessary to disclose to other jurisdictions to whom WCI, Inc., provides similar Services. Also, to the extent WCI, Inc. maintains electronic copies of any Nova Scotia Confidential Information, Nova Scotia Confidential Information will be deleted from all electronic back-up systems (to the extent possible after reasonable commercial efforts) upon termination of the Agreement, and cease use of Nova Scotia Confidential Information which shall be returned or destroyed in accordance with Nova Scotia instructions.

### **5.3 FOIPOP Records and Compliance**

Notwithstanding anything contained in the Agreement, each party acknowledges and agrees that the other party may disclose the Agreement or portions thereof, or any of WCI, Inc.'s Confidential Information, as may be required pursuant to the provisions of any law or regulation including, without limitation, FOIPOP. Furthermore, WCI, Inc. agrees:

- (a) to keep Records secure;
- (b) to provide Records to Nova Scotia within seven (7) calendar days of being directed to do so by Nova Scotia for any reason including an access request or privacy issue;
- (c) except as necessary to provide the Services, not to access any Personal Information unless Nova Scotia determines, in its sole discretion, that access is permitted under FOIPOP;
- (d) except as necessary to provide the Services, not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by Nova Scotia;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases (except as necessary to provide the Services), and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of WCI, Inc.'s Personnel who have a need to know for the purpose of providing the Services and who have been specifically authorized by Nova Scotia Representative to have such access for the purpose of providing the Services;

and the provisions of this section shall prevail over any inconsistent provisions in the Agreement.

### **5.4 Survival**

The provisions of this Article shall survive any termination or expiry of the Agreement.

### **5.5 Compliance with PIIDPA**

WCI, Inc. acknowledges and confirms that, for purposes of PIIDPA only, it is a "service provider" as defined in PIIDPA, that it has read and understands its obligations as a service provider thereunder and that as a service provider it is legally bound by the obligations imposed on it by PIIDPA. WCI, Inc. acknowledges and agrees that it will not, either directly or indirectly, acquire any rights to own any Personal Information other than the right to use it for the sole purpose of fulfilling

its obligations to Nova Scotia under the Agreement.

## **5.6 Notification of a FOIPOP Breach**

Each party shall notify the other immediately upon the discovery of a breach of FOIPOP, and will cooperate in every reasonable way to address the breach.

## **Article 6 - Indemnity and Insurance**

### **6.1 WCI, Inc. Indemnity**

WCI, Inc. shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with anything done or omitted to be done by WCI, Inc. or WCI, Inc.'s Personnel in the course of the performance of WCI, Inc.'s obligations under the Agreement or otherwise in connection the Agreement. The obligations contained in this section shall survive the termination or expiry of the Agreement.

### **6.2 WCI, Inc.'s Insurance**

WCI, Inc. hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of WCI, Inc. would maintain including, but not limited to, the following:

(a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than U.S. \$2,000,000 per occurrence, and products and completed operations aggregate. The policy is to include the following:

- the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of WCI, Inc.'s obligations under, or otherwise in connection with, the Agreement;
- contractual liability coverage;
- cross-liability clause;
- employers liability coverage;
- thirty (30) day written notice of cancellation, termination or material change;
- tenants legal liability coverage (if applicable and with applicable sub-limits); and,
- non-owned automobile coverage with blanket contractual coverage for hired automobiles.

### **6.3 Proof of Insurance**

WCI, Inc. shall provide Nova Scotia with certificates of insurance, or other proof, including a copy of each insurance policy if requested by Nova Scotia, that confirms the insurance coverage as provided for in Section 6.2, and renewal replacements on or before the expiry of any such insurance. WCI, Inc. shall ensure

that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Services.

### **6.3 WCI, Inc. Participation in Proceedings**

WCI, Inc. shall, to the extent requested by Nova Scotia, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. Nova Scotia may elect to participate in or conduct the defence of any such Proceeding by notifying WCI, Inc. in writing of such election without prejudice to any other rights or remedies of Nova Scotia under the Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. WCI, Inc. shall not enter into any settlement unless it has obtained the prior written approval of Nova Scotia. If WCI, Inc. is requested by Nova Scotia to participate in or conduct the defence of any such Proceeding, Nova Scotia agrees to co-operate with and assist WCI, Inc. to the fullest extent possible in the Proceedings and any related settlement negotiations. If Nova Scotia conducts the defence of any such Proceedings, WCI, Inc. agrees to co-operate with and assist Nova Scotia to the fullest extent possible in the Proceedings and any related settlement negotiations. This section shall survive any termination or expiry of the Agreement.

## **Article 7 -Termination, Expiry and Extension**

### **7.1 Immediate Termination of Agreement**

Nova Scotia may terminate the Agreement upon giving ninety (90) days prior written notice to WCI, Inc. of any of the following events ("Termination Event") and such Termination Event is not cured by WCI, Inc. within such ninety (90) day period:

- (1) WCI, Inc. has presented false or misleading information or made false representations;
- (2) WCI, Inc. is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of WCI, Inc.'s insolvency;
- (3) WCI, Inc. materially breaches any provision in Article 5 (Confidentiality and FOIPOP) of the Agreement;
- (4) WCI, Inc. materially breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between Nova Scotia and WCI, Inc.) of the Agreement;
- (5) WCI, Inc., prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to

Nova Scotia; or

- (6) WCI, Inc.'s acts or omissions constitute a substantial failure of performance;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law. In terminating the Agreement under the terms set forth in this Section 7.1, Nova Scotia must comply with the requirements of the termination and withdrawal procedures set forth in Exhibit C attached to this Agreement. If the Contingencies (as that term is defined in Exhibit C) are not yet satisfied and until the Contingencies are satisfied, the ninety (90) day period set forth in this Section 7.1 shall be a period of fourteen (14) Business Days.

This Agreement may be terminated and cancelled by WCI, Inc. upon Nova Scotia's material breach of the Agreement and upon WCI, Inc.'s compliance with the termination provisions set forth in this paragraph. WCI, Inc. must provide written notice to Nova Scotia of Nova Scotia's material breach of the Agreement ("Breach Notice"). WCI Inc. may terminate the Agreement if the breach is not cured by Nova Scotia within sixty (60) days of Nova Scotia's receipt of the Breach Notice by providing Nova Scotia with a written notice of termination ("Termination Notice"). The Termination Notice shall have the same effect as if Nova Scotia provided a Notice of Termination (as that term is defined in Exhibit C). The Termination Notice shall trigger the Procedures as set forth in Article X, Section 10.1 of WCI, Inc. Bylaws. All other terms and the Procedures set forth in Exhibit C shall apply to the termination of this Agreement and withdrawal of Nova Scotia from WCI, Inc. with the same force and effect as if Nova Scotia provided the Notice of Termination on the date upon which Nova Scotia received the Termination Notice..

## **7.2 Referral of Matters for Dispute Resolution**

- (1) If a dispute arises between the parties that cannot be resolved in the normal course of discussions between the parties, Nova Scotia Representative or WCI, Inc. Representative shall advise their counterpart in writing of the existence of the dispute as soon as reasonably practicable after they become aware of it. All disputes will be referred to, in the first instance, the appropriate staff at both Nova Scotia and WCI, Inc. for discussion and resolution.
- (2) If the dispute is not resolved within twenty (20) Business Days after the date of the written notice from a party advising of the existence of a dispute, then the dispute shall be referred to the Executive Director of Climate Change and the Chair of the Board of Directors for WCI, Inc. (unless the Chair of the Board is from Nova Scotia, in which case, the dispute would be referred to the Vice Chair or other Board member not from Nova Scotia) for discussion and resolution.
- (3) If the dispute is not resolved after the period set forth in Section 7.2(2) above, either party may take such actions as are available under the Agreement and

WCI, Inc.'s bylaws.

- (4) In the event of a dispute under this Section 7.2, the parties shall continue with their respective responsibilities under the Agreement including WCI, Inc. providing the Services and Nova Scotia continuing to make its payments to WCI, Inc. provided under Section 4.1 and Schedule B.

### 7.3 Termination on Notice

This Agreement may be terminated and cancelled by Nova Scotia prior to the end of the Term upon Nova Scotia complying with the requirements of the termination and withdrawal procedures set forth in Exhibit C attached to this Agreement. If the Contingencies (as that term is defined in Exhibit C) are not yet satisfied, Nova Scotia may terminate the Agreement upon thirty (30) days' prior written notice to **WCI, Inc.**

### 7.4 Termination for Non-Appropriation

If the Agreement extends into a Fiscal Year subsequent to its execution, continuation of the Agreement is conditional upon an appropriation of moneys by the Legislature of Nova Scotia (the "**Legislature**") sufficient to satisfy payments due under the Agreement. In the event that such moneys are not available as a result of: (i) non- appropriation by the Legislature for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor chargeable to an appropriation of the Legislature for a previous Fiscal Year, Nova Scotia may terminate the Agreement upon complying with the termination and withdrawal procedures set forth in Exhibit C. Termination will become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

### 7.5 WCI, Inc.'s Obligations on Termination

In the event of termination of the Agreement prior to such time as the Contingencies set forth in Exhibit C have been satisfied, WCI, Inc. shall, in addition to its other obligations under the Agreement and at law:

- (1) provide Nova Scotia with a report detailing: (i) the current state of the provision of Services by WCI, Inc. at the date of termination; and (ii) any other information requested by Nova Scotia pertaining to the provision of the Services and performance of the Agreement;
- (2) execute such documentation as may be required by Nova Scotia to give effect to the termination of the Agreement; and
- (3) comply with any other instructions provided by Nova Scotia, including but not limited to instructions for facilitating the transfer of its obligations to another Person.
- (4) This section will survive any termination of the Agreement.

Upon satisfaction of the Contingencies set forth in Exhibit C, the termination provisions set forth in Exhibit C shall control and the terms and conditions set forth in this Section 7.5 shall have no force or effect.

**7.6 Termination in Addition to Other Rights**

The express rights of termination in the Agreement are in addition to and shall in no way limit any rights or remedies of Nova Scotia or WCI, Inc. under the Agreement, at law or in equity.

**7.7 Expiry and Extension of Agreement**

The Agreement will expire on the original Expiry Date unless it is extended in writing in accordance with the Agreement.

**In Witness Whereof** the parties hereto have executed the Agreement effective as of the date first above written.

**WITNESSED BY:**

**WESTERN CLIMATE INITIATIVE, INC.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
for WCI, Inc.

**HER MAJESTY THE QUEEN in right of the  
Province of Nova Scotia as represented by  
the Minister of Environment**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
for the Minister

## **Schedule A**

### **Description of the Services**

#### **A. Background**

##### Department of Environment

Nova Scotia's Department of Environment is responsible for delivering effective and efficient regulatory management for the protection of the province's environment. Among the areas that the department is responsible for are: air quality, drinking water, solid waste, climate change, and parks and protected areas.

##### Nova Scotia Cap-and-Trade Program

In November 2016, Nova Scotia announced its intention to develop a cap-and-trade program to support the continued reduction of greenhouse gas emissions. Nova Scotia's program launched in January 2019. The program only includes Nova Scotia greenhouse gas emission allowances and is not linked with other jurisdictions.

##### Western Climate Initiative, Inc. (WCI, Inc.)

WCI, Inc. was incorporated in 2011 as a non-profit corporation to provide technical and scientific advisory services to the States of the United States and Provinces and Territories of Canada in the collaborative implementation of their respective greenhouse gas emissions trading programs.

WCI, Inc. provides coordinated administration and technical support to member state and provincial governments implementing emission trading programs to reduce GHG emissions. By coordinating support across jurisdictions, WCI, Inc. enables cap-and-trade programs to be administrated at a lower cost than would be possible with independent administration by each jurisdiction. Coordinated administrative support ensures that all programs maintain the highest level of security, enhances market oversight, reduces the potential for fraud and malfeasance, and provides a framework that can be expanded as more jurisdictions implement their respective programs.

#### **B. Description of the Services**

WCI, Inc. agrees to provide Nova Scotia, as a member jurisdiction, with participation in WCI, Inc. with access to the major components of their service:

1. Implementing a tracking system for monitoring all emissions allowances issued by Nova Scotia and providing the services associated with using and operating the system, including but not limited to:
  - creating, hosting and operating the tracking system;
  - ensuring the system's security.

2. Conduct the monitoring of transactions of emission allowances and any other system operation in collaboration with Nova Scotia authorities.
3. Implementing an auction system and providing services associated with using and operating the system, including but not limited to:
  - o creating, hosting and operating the auction system;
  - o ensuring the system's security.

WCI, Inc. acknowledges that Nova Scotia is continuing to develop and implement components of its cap-and-trade program. Accordingly, any changes to the Services may be initiated through the change order process to be mutually agreed to between the parties during the project's initiation. Services provided by **WCI, Inc., Inc.** should provide for any linking with another jurisdiction designated by Nova Scotia.

The parties to the Agreement acknowledge and agree that in addition to the aforementioned Services, WCI, Inc., Inc. also undertakes such activities necessary for the administration and operation of the corporation ("**Administrative Services**"). The Administrative Services also may include other services requested by any participating jurisdiction and approved by the WCI, Inc. Board of Directors. These Administrative Services are to the benefit of all WCI, Inc. participating jurisdictions, including Nova Scotia. Nova Scotia further acknowledges and agrees that the Payment Amounts set forth in Schedule B of the Agreement will be used, in part, to cover these Administrative Services and that WCI, Inc. does not and will not separately itemize or report to Nova Scotia the Payment Amounts attributable to any Administrative Services (whether individually or jointly).

## Schedule B Financial Contribution

Nova Scotia will provide a financial contribution to WCI, Inc. according to the following schedule:

Payment Dates	Payment Amount
June 1, 2020	\$267,669
July 1, 2020	\$133,834
October 1, 2020	\$133,834
January 1, 2021	\$159,008
April 1, 2021	\$159,008
July 1, 2021	\$159,007
October 1, 2021	\$159,007

## Exhibit C

### Termination and Withdrawal Procedures

The termination and withdrawal procedures set forth in this Exhibit C (“**Procedures**”) shall be effective and apply to this Agreement only upon the satisfaction of both of the following conditions (“**Contingencies**”):

1. California and Quebec have also agreed that these same Procedures are adopted and apply to their respective Funding Agreement; and
2. WCI, Inc. has amended its Bylaws to adopt Article X, Section 1 as set forth below in Section 1 of the Procedures.

Until both Contingencies are satisfied, the termination procedures set forth in Article 7 of the Agreement to which this Exhibit C is attached, shall remain in full force and effect.

#### Section 1. Notice of Termination and Withdrawal.

Subject to the terms of Article 7 of this Agreement, Nova Scotia must provide WCI, Inc. and each of the other Participating Jurisdictions, as that term is used in the WCI, Inc.’s Bylaws (“**Bylaws**”), with ninety (90) days prior written notice of its intent to terminate this Agreement prior to the end of the Term (“**Notice of Termination**”). The Parties acknowledge and agree that WCI, Inc.’s receipt of the Notice of Termination shall trigger the withdrawal procedures set forth in Article X, Section 10.1 of the Bylaws which provide for the termination of Nova Scotia as a Participating Jurisdiction, a copy of which is attached hereto as Attachment 1.

#### Section 2. Effect of Providing Notice of Termination.

WCI, Inc.’s receipt of the Withdrawal Notice shall have the following effects:

- a. Within fifteen (15) business days of WCI, Inc.’s receipt of the Notice of Termination, WCI, Inc. shall provide to Nova Scotia a draft plan of withdrawal (“**Withdrawal Plan**”). A copy of the Withdrawal Plan shall also be provided to all other Participating Jurisdictions.
- b. The Withdrawal Plan shall include, at a minimum, the following items:
  1. List of specific actions and tasks required on the part of WCI, Inc. to withdraw Nova Scotia as a Participating Jurisdiction including, but not limited to: removing Nova Scotia from all IT and related platforms, closing all escrow accounts, collecting and returning all Nova Scotia confidential and proprietary information that is in the actual or constructive possession of WCI, Inc. (collectively, “**Withdrawal Services**”);
  2. Describe the phasing out of Nova Scotia’s participation in WCI, Inc.’s programs and activities during the period prior to the Termination Date (as defined below);

3. Provide a list of all actions required of Nova Scotia to withdraw as a Participating Jurisdiction and a timeline for the execution of Withdrawal Services which shall include the estimated date upon which the Withdrawal Services shall be complete ("**Termination Date**");
  4. WCI, Inc.'s cost to provide the Withdrawal Services ("**Withdrawal Cost**") as described further in Section 3 below; and
  5. An accounting of the fees paid to WCI, Inc. under this Agreement by Nova Scotia and, after application of the Withdrawal Costs, whether there will be fees returned to Nova Scotia ("**Excess Fees**") or there are additional amounts that will be owed by Nova Scotia to WCI, Inc. ("**Additional Fees**").
- c. Nova Scotia shall have ten (10) business days to provide WCI, Inc., with a copy to all other Participating Jurisdictions, with its written comments on the draft Withdrawal Plan. WCI, Inc. and Nova Scotia, in consultation with the other Participating Jurisdictions to the extent possible, shall work in good faith and in a diligent manner to finalize the terms of a mutually agreeable Withdrawal Plan ("**Final Plan**") as soon as reasonably possible.

### Section 3. Withdrawal Costs.

Withdrawal Cost shall include all costs directly incurred by WCI, Inc. in providing the Withdrawal Services plus Nova Scotia's proportionate share of any WCI, Inc.'s fixed costs or non-terminable or non-refundable costs in the providing cap and trade program services. Excess Fees shall be paid by WCI, Inc. to Nova Scotia within twenty (20) business days after the earlier to occur of WCI, Inc.'s completion of the Withdrawal Services or the Termination Date. Additional Fees must be paid by Nova Scotia to WCI, Inc. within thirty (30) business days of the completion of the Final Plan.

### Section 4. Cooperation of Parties in Withdrawal Process.

WCI, Inc. shall, as soon as reasonably possible, notify Nova Scotia and the other Participating Jurisdictions of any circumstance or event of which it become aware that is related to or is resulting from Nova Scotia's withdrawal from WCI, Inc. that could potentially have a material negative affect to WCI, Inc., the remaining Participating Jurisdictions or applicable markets ("**Negative Consequences**"). WCI, Inc. and Nova Scotia, in consultation with the other Participating Jurisdictions, shall work in good faith and in a diligent manner to mitigate any such Negative Consequences which may include, but are not limited to, removing Nova Scotia from all IT and related platforms, closing all escrow accounts and de-linking Nova Scotia from any other Participating Jurisdiction.

### Section 5. Use of Nova Scotia Confidential and Proprietary Information Post-Termination.

In addition to and notwithstanding any other term or condition of the Agreement but subject to any laws of Nova Scotia, WCI, Inc. may keep a copy of the Nova Scotia's confidential and proprietary information for the use by WCI, Inc. and the remaining Participating Jurisdictions only if such use is necessary and only for as long as such use is necessary for the ongoing market monitoring and oversight of the remaining joint market. In keeping a copy of and using the Nova

Scotia's confidential and proprietary information, WCI, Inc. shall ensure use of such information is consistent with the use of such confidential and proprietary information by other entities during the Term of this Agreement. Nova Scotia shall allow use of the Nova Scotia's confidential and proprietary information by WCI, Inc. and the remaining Participating Jurisdictions only if WCI, Inc. and the remaining Participating Jurisdictions continue to maintain the confidentiality of such information consistent with the applicable information sharing agreements and each entities' responsibilities under their respective laws.