

## **Agreement**

**This Agreement** (the "**Agreement**"), made in duplicate, to support the operations of the Western Climate Initiative, Inc. is effective as of January 1, 2016 ("**Effective Date**"),

Between:

**Her Majesty the Queen in Right of Ontario**  
**as represented by the Minister of the Environment and Climate Change**

(referred to as the "**Ministry**")

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

(referred to as "**WCI, Inc.**")

WHEREAS cap and trade systems for greenhouse gas emission allowances are a flexible market mechanism capable of facilitating absolute reductions of greenhouse gas emissions while providing an opportunity to reduce total costs associated with emission reduction;

AND WHEREAS linkages among the cap-and-trade systems for greenhouse gas emission allowances implemented by various states and provinces may help reducing emissions at lower costs, resulting in a broader exchange market, improved liquidity and stimulate innovation;

AND WHEREAS the Governments of Ontario, Quebec, British Columbia and California are the founding jurisdictions of the non-profit corporation WCI, Inc., constituted in October, 2011;

AND WHEREAS WCI, Inc. seeks to provide administrative, technical and infrastructure services to support the implementation of greenhouse gas cap and trade programs in WCI, Inc. member jurisdictions, namely Ontario, California, and Quebec;

AND WHEREAS WCI, Inc. possesses the administrative, technical and infrastructure expertise to assist Ontario in implementing its cap and trade program;

AND WHEREAS Quebec and California already have linked cap and trade programs that are supported by WCI, Inc.;

AND WHEREAS by May 2016, Ontario intends to have in effect a regulation to establish its cap and trade program that could ultimately be linked to those in place in Quebec and California;

AND WHEREAS Ontario is seeking to hold an auction for emissions allowances in March 2017;

AND WHEREAS the Ministry desires to utilize the administrative, technical and infrastructure services provided by WCI, Inc. to its member jurisdictions;

AND WHEREAS member jurisdiction contributions currently constitute the source of funding for WCI, Inc.

AND WHEREAS the parties recognize that WCI, Inc. provides coordinated administrative, technical and infrastructure services to support member jurisdictions based on the direction it receives from member jurisdictions who must deliberate and reach agreement among the member jurisdictions prior to instructing WCI, Inc. and Subcontractors as to the Services;

NOW THEREFORE, in consideration of their respective agreements set out below, the parties covenant and agree as follows:

## **Article 1 – Interpretation and General Provisions**

### **1.01 Defined Terms**

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

**“Authorities” and “Authority”** means any government authority, agency, body or department, whether federal, state, provincial or municipal, having or claiming jurisdiction over the Contract;

**“Business Day”** means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year’s Day; Canadian Family 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;

**“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 the Ministry under its cap and trade program or who participates in any auction conducted under Ontario’s cap and trade program;

**"Contract"** means the aggregate of: (a) the Agreement, including Schedule A (Description of Services) and Schedule B (Financial Contribution), and any other schedule attached at the time of execution; and (b) any amendments executed in accordance with the terms of the Agreement;

**"Expiry Date"** means December 31, 2017 or, if the original term is extended, the final date of the extended term;

**"FIPPA"** means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended;

**"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: Ontario and the members of the Executive Council of Ontario;

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

**"Ministry Address"** and **"Ministry Representative"** mean:

Program Management Branch  
Ontario Ministry of the Environment and Climate Change  
40 St. Clair Avenue West, 4th floor  
Toronto, Ontario M4V 1M2

Ministry Representative: Dave Tiffin  
Telephone: (416) 558-0724  
Facsimile: (416) 325-8475  
E-mail: dave.tiffin@ontario.ca

**"Ontario"** means Her Majesty the Queen in Right of Ontario;

**"Ontario Public Service"** and **"OPS"** means the entities listed under the heading Ontario Public Sector on the Ministry of Government Services Internet site, as amended from time to time.

**"OPS Confidential Information"** means all information of a confidential nature, regardless of whether it is identified as confidential or not, that is provided by the Ministry to WCI, Inc. OPS 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 the OPS 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 "OPS Confidential Information" shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

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

**"Personal Information"** means recorded information about an identifiable individual or that may identify an individual;

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

**"Record"**, for the purposes of the Contract, means any recorded information in the custody or control of the Ministry, including any Personal Information, in any form: (a) provided by the Ministry to WCI, Inc., or provided by WCI, Inc. to the Ministry, for the purposes of the Contract; or (b) created by WCI, Inc. in the performance of the Contract;

**"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 Contract 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 attached hereto;

**"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 Contract 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

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

**1.02 No Indemnities from Ministry**

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

**1.03 Entire Agreement**

The Contract 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.

**1.04 Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, 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.

**1.05 Interpretive Value of Contract Documents**

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

**1.06 Interpretive Value of Headings**

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

**1.07 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract 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 Contract 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 Contract 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.

**1.08 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, the Ministry Address to the attention of the Ministry 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.

**1.09 Governing Law**

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

**1.10 Currency**

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

**Article 2 – Nature of Relationship Between Ministry and WCI, Inc.**

**2.01 WCI, Inc.'s Power to Contract**

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

**2.02 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.

**2.03 WCI, Inc. Not a Partner, Agent or Employee**

WCI, Inc. shall have no power or authority to bind the Ministry or to assume or create any obligation or responsibility, express or implied, on behalf of the Ministry.

WCI, Inc. shall not hold itself out as an agent, partner or employee of the Ministry. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Ministry and WCI, Inc. (or any of WCI, Inc.'s Personnel) or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Schedule A, as amended.

**2.04 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 Contract and under the general application of law. WCI, Inc. shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. This section shall survive the termination or expiry of the Contract.

**2.05 Subcontractors**

WCI, Inc. shall obtain prior authorization from the Ministry for all possible subcontracting while fulfilling the purpose of this Contract. The Ministry 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.

**2.06 Conflict of Interest**

WCI, Inc. shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Ministry 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 the Ministry 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, the Ministry may immediately terminate the Contract 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 the Ministry to resolve a Conflict of Interest; or (c) WCI, Inc.'s Conflict of Interest cannot be resolved. This section shall survive any termination or expiry of the Contract.

**2.07 Contract Binding**

The Contract shall enure 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.**

**3.01 Condonation Not a Waiver**

Any failure by the Ministry to insist in one or more instances upon strict performance by WCI, Inc. of any of the terms or conditions of the Contract shall not be construed as a waiver by the Ministry of its right to require strict performance

of any such terms or conditions, and the obligations of WCI, Inc. with respect to such performance shall continue in full force and effect.

**3.02 Changes By Written Amendment Only**

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

**3.03 Work Volumes**

The Ministry makes no representation regarding the volume of goods and services required under the Contract.

**3.04 Security Clearance**

WCI, Inc. shall, upon request from the Ministry, 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 the Ministry will provide information on how WCI, Inc. can obtain them.

WCI, Inc. shall provide to the Ministry, 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, shall 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 the Ministry of any personnel changes, behaviours, or circumstances for which security clearance may require reconsideration.

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

WCI, Inc. shall 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 the Ministry are found, in the sole discretion of the Ministry, to be incompatible with the proper and impartial provision of the Services in accordance with the terms and conditions of the Agreement.

**3.06 Accessibility Requirements**

The Ministry is committed to the highest possible standard for accessibility. When applicable, WCI, Inc. is responsible for complying with the requirements under the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, the *Ontarians with Disabilities Act, 2001*, S.O. 2001, c. 32, and the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005 c. 11 ("AODA"), any regulations made thereto. In



circumstances where WCI, Inc. is providing a Service to the public on behalf of the Ministry, it may need to follow Ministry direction to ensure Ministry compliance with the AODA and its regulations (such as the Accessibility Standards for Customer Service, and the Integrated Accessibility Standards Regulation). The Ministry shall notify WCI, Inc. in writing as soon as it becomes aware of such compliance requirements.

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

##### **4.01 Financial Contribution**

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

##### **4.02 No Expenses or Additional Charges**

There shall be no other charges payable by the Ministry under the Contract to WCI, Inc. other than what is listed in Schedule B and what the parties may agree to under section 3.04.

##### **4.03 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, WCI, Inc. shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Services were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, WCI, Inc. shall permit and assist the Ministry in conducting audits of the operations of WCI, Inc. to verify (a) and (b) above. The Ministry 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 shall survive any termination or expiry of the Contract.

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

##### **5.01 OPS Confidential Information**

During and following the Term, WCI, Inc. shall: (a) keep all OPS Confidential Information confidential and secure; (b) limit the disclosure of OPS 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 OPS 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 the Ministry and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party; (d) provide OPS Confidential Information to the Ministry on demand; and (e) return all OPS Confidential Information to the Ministry before the end of the Term provided WCI, Inc. may keep a copy of OPS Confidential Information 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 OPS Confidential Information, WCI, Inc. cannot guarantee that OPS Confidential Information will be deleted from all electronic back-up systems.

#### **5.02 FIPPA Records and Compliance**

WCI, Inc. and the Ministry acknowledge and agree that FIPPA applies to and governs the Records and may require the disclosure of such Records to third parties. Furthermore, WCI, Inc. agrees:

- (a) to keep Records secure;
- (b) to provide Records to the Ministry within seven (7) calendar days of being directed to do so by the Ministry 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 the Ministry determines, in its sole discretion, that access is permitted under FIPPA;
- (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 the Ministry;
- (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 it for the purpose of providing the Services and who have been specifically authorized by the Ministry 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 Contract.

#### **5.03 Notification of a FIPPA Breach**

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

#### **5.04 Survival**

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

## **Article 6 – Indemnity and Insurance**

### **6.01 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 Contract or otherwise in connection the Contract. The obligations contained in this section shall survive the termination or expiry of the Agreement.

### **6.02 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 \$2,000,000 per occurrence, and products and completed operations coverage with the endorsements indentified. 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 Contract;
- contractual liability coverage;
- cross-liability clause;
- employers liability coverage (or compliance with the section below entitled "Proof of W.S.I.A. Coverage" is required);
- 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; and,

### **6.03 Proof of Insurance**

WCI, Inc. shall provide the Ministry with certificates of insurance or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in Section 6.02, and renewal replacements on or before the expiry of any such insurance. Upon the request of the Ministry, a copy of each insurance policy shall be made available to it. 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.

#### **6.04 Proof of W.S.I.A. Coverage**

If WCI, Inc. is subject to the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Schedule A ("**WSIA**"), it shall submit a valid clearance certificate of WSIA coverage to the Ministry prior to the execution of the Agreement by the Ministry. In addition, WCI, Inc. shall, from time to time at the request of the Ministry, provide additional WSIA clearance certificates. WCI, Inc. covenants and agrees to pay when due, and to ensure that each of its Subcontractors pays when due, all amounts required to be paid by it/its Subcontractors, from time to time during the Term, under the WSIA, failing which the Ministry shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by WCI, Inc. or its Subcontractors and to deduct such amount from any amount due and owing from time to time to WCI, Inc. pursuant to the Contract together with all costs incurred by the Ministry in connection therewith.

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

WCI, Inc. shall, to the extent requested by the Ministry, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The Ministry 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 the Ministry under the Contract, 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 the Ministry. If WCI, Inc. is requested by the Ministry to participate in or conduct the defence of any such Proceeding, the Ministry agrees to co-operate with and assist WCI, Inc. to the fullest extent possible in the Proceedings and any related settlement negotiations. If the Ministry conducts the defence of any such Proceedings, WCI, Inc. agrees to co-operate with and assist the Ministry to the fullest extent possible in the Proceedings and any related settlement negotiations. This section shall survive any termination or expiry of the Contract.

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

#### **7.01 Immediate Termination of Contract**

The Ministry may immediately terminate the Contract upon giving fourteen (14) Business 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 fourteen (14) day period:

- (a) 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;

- (b) WCI, Inc. materially breaches any provision in Article 5 (Confidentiality and FIPPA) of the Agreement;
- (c) WCI, Inc. materially breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between Ministry and WCI, Inc.) of the Agreement;
- (d) WCI, Inc., prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the Ministry; or
- (e) 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.

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

- (a) If a dispute arises between the parties that cannot be resolved in the normal course of discussions between the parties, the Ministry Representative or WCI, Inc. Representative will advise their counterpart in writing of the existence of the dispute as soon as reasonably practicable after they become aware of it. All disputes shall be referred to, in the first instance, the appropriate staff at both the Ministry and WCI, Inc. for discussion and resolution.
- (b) 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 an Assistant Deputy Minister of the Ministry and the Chair of the Board of Directors for WCI, Inc. (unless the Chair of the Board is from Ontario, in which case, the dispute would be referred to the Vice Chair or other Board member not from Ontario) for discussion and resolution.
- (c) If the dispute is not resolved after the period set forth in Section 7.02 above, either party may take such actions as are available under this Contract and by law.
- (d) In the event of a dispute under this Section 7.02, the parties shall continue with their respective responsibilities under the Contract including WCI, Inc. providing the Services and the Ministry continuing to make its payments to WCI, Inc. provided under Section 4.01 and Schedule B.

## **7.03 Termination on Notice**

The Ministry reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to WCI, Inc. Notwithstanding any other term or

condition set forth in this Contract, in the event of termination of the Contract by the Ministry under this Section 7.03, Ministry shall remain responsible for any expenses incurred by WCI, Inc. prior to the date WCI, Inc. receives the termination notice and such expenses were incurred in relation to WCI, Inc.'s providing of the Services. This Section 7.03 shall survive any termination of the Contract.

**7.04 Termination for Non-Appropriation**

If the Contract extends into a Fiscal Year subsequent to its execution, continuation of the Contract is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Contract. 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, the Ministry may terminate the Contract upon giving notice to WCI, Inc. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

**7.05 WCI, Inc.'s Obligations on Termination**

On termination of the Contract, WCI, Inc. shall, in addition to its other obligations under the Contract and at law:

- (a) provide the Ministry 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 the Ministry pertaining to the provision of the Services and performance of the Contract;
- (b) execute such documentation as may be required by the Ministry to give effect to the termination of the Contract; and
- (c) comply with any other instructions provided by the Ministry, including but not limited to instructions for facilitating the transfer of its obligations to another Person.
- (d) This section shall survive any termination of the Contract.

**7.06 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 the Ministry under the Contract, at law or in equity.

**7.07 Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date.

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

**Her Majesty the Queen in Right of Ontario as  
represented by the Minister of the Environment and  
Climate Change**

Signature: Signature on File

Name: Paul H. Evans

Title: Deputy Minister

Date of Signature: MARCH 17, 2016

Pursuant to delegated authority

**Western Climate Initiative, Inc.**

Signature: Signature on File

Name: Mary D. Nichols

Title: Chair

Date of Signature: March 18, 2016

I have authority to bind WCI, Inc.

## **Schedule A**

### **Description of the Services**

#### **A. Background**

##### Ministry of the Environment and Climate Change

The Ministry is responsible for protecting Ontario's air, water and land by developing and implementing legislation, policies and programs in support of its vision of a healthy environment for a strong Ontario. As part of this approach, the Ministry monitors entities emitting 25,000 metric tonnes or more greenhouse gases (GHGs) annually.

These entities will be participants in the Ontario government's cap and trade program, which is anticipated to be activated in 2016.

##### Ontario Cap and Trade Program

In April 2015, Ontario announced its intention to link its cap and trade program with similar programs in California and Quebec.

Ontario's program is anticipated to include the following:

- Ontario-only auctions of carbon allowances, along with linked auctions with California and Quebec, at a frequency to be determined; and
- Reserve sales of carbon allowances, on a frequency to be determined.

##### 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 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 administrative 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 administered 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 Ontario, as a member jurisdiction, with participation in WCI, Inc. with access to administrative systems being developed and administered to support



the implementation of state and provincial greenhouse gas trading programs. Ontario will be provided access to administrative systems including development and administration of the Cap-and-Trade Compliance Instrument Tracking System Service (CITSS); administration of a CITSS help desk; development and administration of an allowance auction platform; coordinated auction financial administration; and analyses supporting market monitoring performed by each jurisdiction of allowance auctions and allowance and offset credit trading.

The parties to this Contract acknowledge and agree that in addition to the aforementioned Services, WCI, 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 Ontario. The Ministry further acknowledges and agrees that the Payment Amounts set forth in Schedule B of this Contract will be used, in part, to cover these Administrative Services and that WCI, Inc. does not and will not separately itemize or report to the Ministry the Payment Amounts attributable to any Administrative Services (whether individually or jointly).

**Schedule B**  
**Financial Contribution**

The Ministry will provide a financial contribution to WCI, Inc. according to the following schedule:

Payment Dates	Payment Amount
March 31, 2016	\$387,110
June 30, 2016	\$300,000
September 30, 2016	\$300,000
December 31, 2016	\$300,000
March 31, 2017	\$398,745
June 30, 2017	\$350,000
September 30, 2017	\$350,000
December 31, 2017	\$350,000