

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
 - 1.1 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
 - 1.2 “**Activity**” or “**Activity Id**” shall mean an element of the Works performed during the course of the Project. An Activity has an expected duration and cost requirements, and shall be the lowest level of any Works Schedule.
 - 1.3 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Third Party Contractors, DB Co or any DB Co Party, or RTG or any RTG Party) or the City’s own forces, engaged by the City to carry out the Additional Works.
 - 1.4 “**Additional Works**” means those works or services, in relation to any of the New City Infrastructure, New MTO Infrastructure, or any Existing Infrastructure owned by the City or MTO, which are not Works and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
 - 1.5 “**Adjacent Developments**” means any development works or like activity carried out during the Project Term by or on behalf of any third party adjacent to the Lands, New City Infrastructure or New MTO Infrastructure and which otherwise affects or may potentially affect any part of the Works, the Lands or the New City Infrastructure or New MTO Infrastructure.
 - 1.6 “**Adjudicator**” has the meaning given in Section 6.1 of Schedule 27 – Dispute Resolution Procedure.
 - 1.7 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of DB Co, shall include each of the unitholders, shareholders, partners or owners of DB Co, as applicable, and any person or entity controlling, controlled by or under common control with DB Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.
 - 1.8 “**Aggregate Actual Bus Rapid Transit Lane Closures**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.9 “**Aggregate Actual Bus Rapid Transit Lane Closures Cost**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.10 “**Aggregate Actual Lane Closures**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.11 “**Aggregate Actual Lane Closures Cost**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.1 “**Aggregate Vehicle Kilometres Availability Ratio**” for any period n means the total Revenue Service Vehicle Kilometres in period n plus the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved during period n due to causes or factors other

than a Construction Defect, divided by the total Scheduled Revenue Service Vehicle Kilometres for period n . For clarity, the formula is provided below:

$$AVKR_n = \frac{Rkm_n + NPCCKm_n}{Skm_n}$$

Where:

- $AVKR_n$ Means the Aggregate Vehicle Kilometres Availability Ratio for the relevant period n ;
- Rkm_n Means the total amount of Revenue Service Vehicle Kilometres for period n ;
- $NPCCKm_n$ Means the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved during period n due to causes or factors other than a Construction Defect; and
- Skm_n Means the total Scheduled Revenue Service Vehicle Kilometres for period n .

- 1.12 “**Ancillary Documents**” means the Design and Construction Contract.
- 1.13 “**Anticipated Final Completion Date**” means either the East Anticipated Final Completion Date or West Anticipated Final Completion Date.
- 1.14 “**Anticipated Substantial Completion Date**” means either the East Anticipated Substantial Completion Date or West Anticipated Substantial Completion Date.
- 1.15 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on DB Co, any DB Co Party, the City, or any City Party.
- 1.16 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.17 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.18 “**Apprenticeship Plan**” has the meaning given in Section 11.23(a) of the Project Agreement.
- 1.19 “**Archaeological Reports**” means, collectively, the following reports:
- (a) [REDACTED];
 - (b) [REDACTED];

- (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED]; and
 - (j) [REDACTED].
- 1.20 “**Architect**” means an architect licensed by the Ontario Association of Architects to practice in the Province of Ontario.
- 1.21 “**Art Cash Allowance**” has the meaning given in Section 11.30(f) of the Project Agreement.
- 1.22 “**Art Cash Allowance Items**” means the work and activities identified as being subject to the Art Cash Allowance, to be performed by DB Co pursuant to Article 12 of Part 1 of Schedule 15-2 of the Output Specifications.
- 1.23 “**As-built Drawings**” means drawings prepared by DB Co to reflect the installed, constructed or commissioned conditions of the Works, in a format and with content and details that the City (with respect to As-built Drawings related to the East Works and West Works) or MTO (with respect to As-built Drawings related to the Highway Works), acting reasonably, consider appropriate.
- 1.24 “**As-built Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.25 “**Associated Liabilities**” has the meaning given in Section 4.17(b) of the Project Agreement.
- 1.26 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority and includes, for clarity, any direction or instruction from Transport Canada arising from any contractual arrangement or board orders involving Transport Canada with respect to the System Infrastructure corridor.
- 1.27 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Cultural Heritage Reports, and the Environmental Assessments and any other report given or otherwise referred to in the Output Specifications), studies, plans, data, documents, or other information, given or made available to DB Co or any DB Co Party by the City or any City Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.28 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.

- 1.29 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.30 “**Beneficiary**” has the meaning given in Section 46.3(a) of the Project Agreement.
- 1.31 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act*, S.O. 1992, c.23 (Ontario), as amended from time to time.
- 1.32 “**Bus Rapid Transit**” or “**BRT**” means the existing network of transit traffic lanes including those segments identified in Section 1.6 of Schedule 34 – Mobility Matters.
- 1.33 “**Bus Rapid Transit Lane Closure**” has the meaning given in Schedule 34 – Mobility Matters.
- 1.34 “**Bus Rapid Transit Lane Closure Adjustment**” has the meaning given in Schedule 34 – Mobility Matters.
- 1.35 “**Business Corporations Act (Ontario)**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.
- 1.36 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Ottawa, Ontario.
- 1.37 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.38 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.39 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.40 “**Cash Allowance**” means either the Utility Company Works Cash Allowance or the Art Cash Allowance, as the case may be.
- 1.41 “**Category 1 Utility Company**” means any one of:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED]; and
 - (e) [REDACTED].

- 1.42 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.43 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.44 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.45 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 15.2 of the Project Agreement.
- 1.46 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person, to direct or cause the direction of the management, actions or policies of such person.
- 1.47 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.48 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.49 “**City**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.50 “**City Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with rail transit and other similar services, including the operation and maintenance of a live rail transit system on the System Infrastructure corridor and Existing Confederation Line.
- 1.51 “**City Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.52 “**City Design Team**” means any of the City, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design

- reviews, design evaluation, or design consultation processes with respect to the New City Infrastructure or the New MTO Infrastructure or the City Activities, but excluding DB Co and any DB Co Party.
- 1.53 “**City Engineer**” means the engineer appointed by the City in connection with, among other things, acceptance of the New Municipal Infrastructure Works.
- 1.54 “**City Event of Default**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.55 “**City HR Policy**” means the City’s human resources policies and guidelines, as they may be amended from time to time and provided to DB Co in writing.
- 1.56 “**City Jointly Developed Materials**” has the meaning given in Section 41.4(a)(i) of the Project Agreement.
- 1.57 “**City Party**” means any of the City and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the City Activities, including RTG and RTG Parties in performance of the RTG City Party Works, but excluding RTG and RTG Parties in performance of the RTG Stage 1 PA Works notwithstanding the definition of City Activities, and excluding DB Co and any DB Co Party, and the “the City Parties” shall be construed accordingly.
- 1.58 “**City Permits, Licences, Approvals and Agreements**” means only those the City permits, licences, approvals and agreements which are the responsibility of the City to obtain as set out in Schedule 35 - Permits, Licences, Approvals and Agreements, but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Schedule 35 - Permits, Licences, Approvals and Agreements but required by the terms of any such item set out in such Appendix.
- 1.59 “**City PLAA Deadline**” has the meaning given in Section 11.8(e) of the Project Agreement
- 1.60 “**City Representative**” means the person designated as such by the City on or prior to the date of the Project Agreement and any permitted replacement.
- 1.61 “**City Supplied Third Party Intellectual Property**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.62 “**City Taxes**” means taxes, or payments in lieu of taxes, imposed on the City and HST and property taxes for which the City is responsible pursuant to Section 4.11 of the Project Agreement.
- 1.63 “**City Trade-Marks**” means any and all Trade-Marks used by the City in any manner whatsoever.
- 1.64 “**CA**” means the *Construction Act*, R.S.O. 1990, c. C.30, as amended from time to time.
- 1.65 “**CMMS**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.66 “**Commercial Close**” means the date of the Project Agreement.

- 1.67 “**Commissioning Submittals**” means the commissioning submittals described in Section 1.6 of Schedule 14 – Testing & Commissioning.
- 1.68 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Testing & Commissioning;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the New City Infrastructure or the New MTO Infrastructure; and
 - (d) required to be included in a Testing & Commissioning Program by the Independent Certifier or the City Representative during its development pursuant to Section 25.2 of the Project Agreement.
- 1.69 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.70 “**Compensation Event**” has the meaning given in Section 33.1(a) of the Project Agreement.
- 1.71 “**Compensation Payment**” means the City Default Termination Sum, the DB Co Default Termination Sum or the Non-Default Termination Sum.
- 1.72 “**Completion Holdback**” means either the East Completion Holdback or West Completion Holdback, as the case may be.
- 1.73 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.74 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
 - (b) large penetrations are being created through slabs;
 - (c) any Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
 - (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.

- 1.75 “**Concurrent Delays**” means delays to the critical path caused by two or more independent which (a) occur at the same time and continue for the same period of time, and (b) which affect a Scheduled Substantial Completion Date, or Scheduled Final Completion Date.
- 1.76 “**Concurrent Delay Direct Costs**” mean the Direct Costs associated with so Concurrent Delays and referred to in clauses 1.1(i) through (x), inclusive, of Appendix A to Schedule 22 of this Project Agreement.
- 1.77 “**Condition Assessment**” means a close-up visual inspection of all structure elements to confirm and record severity and extent of material defects and suspected performance deficiencies of the various components in accordance with Ontario Structure Inspection Manual (OSIM).
- 1.78 “**Condition Assessment and Recommendations Report**” means a report documenting the findings of the Condition Assessment and providing the details of the recommended rehabilitation, repair or replacement method.
- 1.79 “**Confederation Line East Extension**” has the meaning given in the recitals to the Project Agreement.
- 1.80 “**Confederation Line West Extension**” has the meaning given in the recitals to the Project Agreement.
- 1.81 “**Confidant**” has the meaning given in Section 42.6(a)(i) of the Project Agreement.
- 1.82 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.83 “**Construction Access Management Plan**” means DB Co’s plan to manage construction and Site access in accordance with the requirements in Part 7 of Schedule 15-2.
- 1.84 “**Construction Activities**” means construction, rehabilitation, Reinstatement Work, rectification work, and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, inspection, calibration, testing or commissioning of any part of the New City Infrastructure and the New MTO Infrastructure;
 - (b) comprises the assessment of any New City Infrastructure or New MTO Infrastructure;
 - (c) may affect the structural integrity of any New City Infrastructure or New MTO Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by the City; or
 - (d) comprises Construction Clearing and Grubbing.
- 1.85 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.

- 1.86 “**Construction Clearing and Grubbing**” means the stage of the Works in which vegetation and debris is cleared from the Lands (clearing) and a root rake or similar device is employed to remove roots remaining in the soil (grubbing).
- 1.87 “**Construction Contractor**” means [REDACTED] engaged by DB Co to perform the Works and any substitute construction contractor engaged by DB Co as may be permitted by the Project Agreement.
- 1.88 “**Construction Contractor’s Direct Agreement**” means the direct agreement between the City, DB Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.
- 1.89 “**Construction Defect**” means any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement (including for clarity any defect in the Existing Infrastructure which has been fully incorporated into the Works to the extent such defect was patent at the time of incorporation into the Works, but without prejudice to the risk allocation set out in Section 18.8 of the Project Agreement), or any deficiency, defect or error in relation to any Product procured by DB Co or any DB Co Party, in each case, arising from a non-compliance by DB Co or any DB Co Party with the requirements of the Project Agreement.
- 1.90 “**Construction Document Submittals**” has the meaning given in Section 11.1(d)(ii) of the Project Agreement.
- 1.91 “**Construction Guarantor**” means [REDACTED].
- 1.92 “**Construction Latent Defect**” has the meaning given in Section 11.16(b)(iii) of the Project Agreement.
- 1.93 “**Construction Period**” means that period of time commencing on Financial Close and ending on the earlier of (i) the Termination Date, or (ii) the latest Final Completion Date.
- 1.94 “**Construction Period Payments**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.95 “**Construction Period Payment Application**” has the meaning given in Schedule 21 – Construction Period Payments
- 1.96 “**Construction Period Quality Failures**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.97 “**Construction Period Performance Criteria**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.98 “**Construction Management Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.99 “**Construction Safety Management Plan**” means the plans to be prepared by DB Co to manage the safety of the Works, as described in Schedule 11 – Integrated Management System Requirements.

- 1.100 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.101 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in DB Co; and
 - (b) [REDACTED].
- 1.102 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.103 “**COR Certification**” means, in respect of a person, receipt by such person of its (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.104 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by the City.
- 1.105 “**COR-Certified Construction DB Co Party**” has the meaning given in Section 11.25(a)(ii) of the Project Agreement.
- 1.106 “**COR-Qualified Construction DB Co Party**” means:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor;
 - (b) where the Construction Contractor is a joint venture, all members of the joint venture;
 - (c) where the Construction Contractor is a partnership, all partners of the partnership; or
 - (d) the parent(s) of the entity or entities in (a), (b) or (c) above, as applicable,
- provided that each such person has current OHSAS 18001 Accreditation in good standing.
- 1.107 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 32 – Financial Model.
- 1.108 “**Cost of the Works**” means the cost to DB Co of performing the Works as set out in Schedule 32 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.109 “**CN**” means the Canadian National Railway Company, and its successors.

- 1.110 “CPI” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.111 “CPI XFET” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.112 “CPI_{In}” is the value of CPI on January 1 of the relevant year, to be determined by reference to the relevant index in the month immediately preceding the indexation date.
- 1.113 “CPI_o” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.114 “Critical Construction Defect” means a Construction Defect in respect of the System Infrastructure which (a) results in a material disruption to operation of Confederation Line East or Confederation Line West which has caused the Aggregate Vehicle Kilometer Availability Ratio in relevant period prior to rectification to be lower than the Aggregate Vehicle Kilometer Availability Ratio constituting a Major Construction Defect or (b) results in a material disruption to access to any Station (including by System Users, understanding, however, that failure of any escalator or elevator shall not be deemed to be a material disruption provided there is a least one elevator is operational).
- 1.115 “Critical Construction Period Quality Failure” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.116 “Critical Items” has the meaning given in Section 12.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.117 “Critical Non-Conformance” means any Non-Conformance, or combination of Medium Non-Conformances, that:
- (a) is persistent, ongoing and repeated; or
 - (b) in the reasonable opinion of the City, by its continued existence or through the process of rectification, would:
 - (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to vehicular or rail traffic flow;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any City Activities;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the New City Infrastructure, New MTO Infrastructure, Existing Infrastructure, and / or Stage 1 Connection Infrastructure, including System Users, volunteers and visitors to the New City Infrastructure, New MTO Infrastructure, Existing Infrastructure and/or Stage 1 Connection Infrastructure, and members of the public;

- (iv) materially increase the City’s risk or transfer risk to the City or any City Party;
 - (v) materially adversely affect the ability of any the City Party to perform their activities as permitted or contemplated by the Project Agreement;
 - (vi) materially adversely affect or change the critical path of the Project as defined in the Works Schedule, adversely affect DB Co’s ability to achieve Substantial Completion by a Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving any Substantial Completion; or
 - (vii) potentially compromise the reputation or integrity of the City and/or any City Party or the nature of the public transit system in one or more of the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in the City of Ottawa, the Province of Ontario or the Project.
- 1.118 “**Critical Path(s)**” means the sequence of Activities determining the minimum time needed to complete the Works
- 1.119 “**Crown**” means Her Majesty the Queen in right of Ontario.
- 1.120 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c. 48, as amended from time to time.
- 1.121 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.122 “**Cultural Heritage Reports**” means, collectively, the following reports:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED].
- 1.123 “**Current PBS**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.124 “**Cut and Cover**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.125 “**DB Co**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.126 “**DB Co Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.127 “**DB Co Commissioning**” means the commissioning activities to be carried out by DB Co prior to the issuance of the relevant Substantial Completion Certificate (in the case of New City Infrastructure and New MTO Infrastructure, other than the Remaining Works), and prior to the issuance of the West Final Completion Certificate (in the case of the Remaining Works) in accordance with the Testing & Commissioning Program.
- 1.128 “**DB Co Commissioning Tests**” means all Commissioning Tests required to be performed by DB Co pursuant to a Testing & Commissioning Program.

- 1.129 “**DB Co Construction Event of Default**” means a DB Co Event of Default relating to a failure or breach by DB Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantor under the Performance Guarantee of Construction Guarantor.
- 1.130 “**DB Co Construction Period Payment Documentation**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.131 “**DB Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.132 “**DB Co Event of Default**” has the meaning given in Section 36.1(a) of the Project Agreement.
- 1.133 “**DB Co Group**” means DB Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of DB Co.
- 1.134 “**DB Co Party**” means:
- (a) the Construction Contractor;
 - (b) any person engaged by DB Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
 - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**DB Co Parties**” shall be construed accordingly.
- 1.135 “**DB Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Works in accordance with the Project Agreement and as required by Applicable Law, and including those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are the responsibility of DB Co to obtain as set out in Schedule 35 – Permits, Licences, Approvals and Agreements or which is the responsibility of DB Co to perform or fulfill as set out in Schedule 35 – Permits, Licences, Approvals and Agreements and the Output Specifications and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, the Encroachment Permits, and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement and as required by Applicable Law, but other than the City Permits, Licences, Approvals and Agreements.
- 1.136 “**DB Co Proposal Extracts**” means the documents attached as Schedule 13 – DB Co Proposal Extracts.
- 1.137 “**DB Co Representative**” means the person designated as such by DB Co on or prior to Commercial Close and any permitted replacement.
- 1.138 “**DB Co Response Period**” has the meaning given in Schedule 36 – Interface Agreement.

- 1.139 “**DB Co Utility Works**” means the works relating to Utility Infrastructure carried out by DB Co in connection with or as part of the Project Operations, including design, construction, installation, commissioning, protection, removal and relocation of duct banks, poles, pole lines, conduits, gas pipes, oil pipes, sewers and telephone and telecommunication lines, and related and ancillary works.
- 1.140 “**DB Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.141 “**Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.142 “**Debt Service Amount**” means, for any period, the principal and interest payable by DB Co or any DB Co Party to the Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Lenders is subject to a Hedging Agreement between DB Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Lenders shall be calculated based on the fixed rate payable by DB Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Lender or to the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Lenders under this Project Agreement shall be construed accordingly.
- 1.143 “**Delay Event**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.144 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.145 “**Demolition Default Event**” has the meaning given in Section 11.26(b) of the Project Agreement.
- 1.146 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.147 “**Demolition Plan**” means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.148 “**Demolition Requirements**” has the meaning given in Section 11.26(a) of the Project Agreement.
- 1.149 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by DB Co in accordance with Section 11.26(a)(iv)(A) of the Project Agreement.
- 1.150 “**Demolition Supervisor**” has the meaning given in Section 11.26(a)(ii) of the Project Agreement.
- 1.151 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.152 “**Design and Construction Contract**” means the design and construction contract between DB Co and the Construction Contractor dated on or about the date of Financial Close.

- 1.153 “**Design and Construction Certification Procedure**” means the process for review and issuance of Design Certificates and Construction Certificates in accordance with Schedule 10 – Review Procedure.
- 1.154 “**Design and Construction Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.155 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Appendix A of Schedule 10 – Review Procedure.
- 1.156 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by DB Co relating to the design, construction, testing or monitoring of the New City Infrastructure and the New MTO Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.157 “**Design Development**” means that process for DB Co’s development of design for the Project described in Section 11.1 of the Project Agreement.
- 1.158 “**Design Development Submittal**” has the meaning given in Section 11.1(d)(i) of the Project Agreement.
- 1.159 “**Design Life**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.160 “**Design Management Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.161 “**Design Manager**” means the DB Co Key Individual with the functions described in Schedule 9 – Key Individuals.
- 1.162 “**Design Report(s)**” means reports written to document engineering designs by providing parameters, conditions, needs and requirements to be taken into account in the design of the element in discussion and document the design process and describe the completed design.
- 1.163 “**Design Team**” means [REDACTED] engaged by DB Co to design the New City Infrastructure and the New MTO Infrastructure and any substitute design team engaged by DB Co as may be permitted by the Project Agreement.
- 1.164 “**Design Workshops**” means those workshops undertaken in accordance with Section 1.8 of Schedule 10 – Review Procedure.
- 1.165 “**Development Approvals**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements, required from time to time for construction of the New City Infrastructure and the New MTO Infrastructure.
- 1.166 “**Direct Cost**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.167 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a

substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses. For clarity, Direct Losses shall not include any "Deductions" (as such term is defined in the Stage 1 Project Agreement) made from any payment to RTG under the Stage 1 Project Agreement.

1.168 **“Direct or Indirect Power or Control”** means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:

- (a) ownership, beneficial or otherwise, of greater than [REDACTED] percent of any of the shares, units or equity interests of a person;
- (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] percent of the voting securities, units or equity interests of such person; or
- (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.

1.169 **“Discriminatory Change in Law”** means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:

- (a) transit systems, roads or highways, including rail transit systems, roads or highways, whose design, construction, and financing are procured by a contract similar to the Project Agreement in relation to other similar transit systems;
- (b) the New City Infrastructure or New MTO Infrastructure in relation to other transit systems, including rail transit systems, roads or highways;
- (c) DB Co in relation to other persons; or
- (d) persons undertaking projects for design, construction, and financing that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of DB Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on DB Co is greater than its effect on other companies; or
- (g) where such Change in Law is a change in Taxes that affects companies generally.

- 1.170 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.171 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.172 “**Division**” means one of the following: East Works, West Works, Highway Works, or Remaining Works.
- 1.173 “**Drainage**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.174 “**Draw Amount**” has the meaning given in Section 11.18D of the Project Agreement.
- 1.175 “**Earlier Scheduled Substantial Completion Date**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.176 “**Earned Value**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.177 “**East Anticipated Final Completion Date**” means the date (which, for greater certainty, will be on or before the East Scheduled Final Completion Date) on which DB Co anticipates that East Final Completion will be achieved.
- 1.178 “**East Anticipated Substantial Completion Date**” has the meaning given in Section 25.5(a)(i) of the Project Agreement.
- 1.179 “**East Completion Holdback**” has the meaning given in Section 25.10(a) of the Project Agreement.
- 1.180 “**East Construction Defect**” has the meaning given in Section 11.15(a) of the Project Agreement.
- 1.181 “**East DB Co Commissioning**” means the DB Co Commissioning in respect of the East Works other than the Highway Works.
- 1.182 “**East Final Completion**” means the completion of the East Works in accordance with the Project Agreement, including completion of all East Minor Deficiencies.
- 1.183 “**East Final Completion Countdown Notice**” has the meaning given in Section 25.13(a)(i) of the Project Agreement.
- 1.184 “**East Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.14(g) of the Project Agreement in respect of East Final Completion.
- 1.185 “**East Final Completion Date**” means the date on which East Final Completion is achieved as evidenced by the East Final Completion Certificate, as such date shall be stated therein.
- 1.186 “**East Final Completion Notice**” has the meaning given in Section 25.14(b) of the Project Agreement.
- 1.187 “**East Further Revised Substantial Completion Date**” has the meaning given in Section 25.5(j) of the Project Agreement.

- 1.188 “**East Initial Countdown Notice**” has the meaning given in Section 25.5(a)(i) of the Project Agreement.
- 1.189 “**East Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.190 “**East Minor Deficiencies**” has the meaning given in Section 25.10(a) of the Project Agreement.
- 1.191 “**East Minor Deficiencies List**” has the meaning given in Section 25.10(a) of the Project Agreement.
- 1.192 “**East Revised Substantial Completion Date**” has the meaning given in Section 25.5(g)(i) of the Project Agreement.
- 1.193 “**East Scheduled Final Completion Date**” means the date that is March 14, 2025 following the East Substantial Completion Date.
- 1.194 “**East Scheduled Substantial Completion Date**” means November 26, 2024, as such date may be amended pursuant to Section 32 of the Project Agreement.
- 1.195 “**East Subsequent Notice**” has the meaning given in Section 25.5(g)(i) of the Project Agreement.
- 1.196 “**East Substantial Completion**” means the point at which, in respect of the East Works, (i) the New City Infrastructure, other than the Remaining Works, have been completed in accordance with the Project Agreement; and (ii) all requirements for East Substantial Completion described in the East Testing & Commissioning Plan, other than in respect of East Minor Deficiencies, the Remaining Works, the Remaining Works Minor Deficiencies, and Trial Running have been satisfied.
- 1.197 “**East Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.4(d) of the Project Agreement.
- 1.198 “**East Substantial Completion Date**” means the date on which East Substantial Completion is achieved as evidenced by the East Substantial Completion Certificate, as such date shall be stated therein.
- 1.199 “**East Substantial Completion Notice**” has the meaning given in Section 25.4(b)(i) of the Project Agreement.
- 1.200 “**East Substantial Completion Payment**” means the amount of \$[REDACTED], less the East Completion Holdback as at the East Substantial Completion Payment Date.
- 1.201 “**East Substantial Completion Payment Date**” means the date that is 2 Business Days after the East Substantial Completion Date.
- 1.202 “**East Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the East Works included in the Testing & Commissioning Program.
- 1.203 “**East Warranty Letter of Credit**” has the meaning given in Section 11.18(a)(i) of the Project Agreement.

- 1.204 “**East Warranty Cash Amount**” has the meaning given in Section 4.2(c)(i) of the Project Agreement.
- 1.205 “**East Warranty Period**” means:
- (a) in respect of the East Works other than New Municipal Infrastructure, a period beginning on the East Substantial Completion Date and expiring on the date 2 years after such East Substantial Completion Date; and
 - (b) in respect of each New Municipal Construction Component comprising part of the East Works, a period beginning on the New Municipal Infrastructure Component Acceptance Date for such New Municipal Construction Component, and expiring on the date 2 years after such New Municipal Infrastructure Component Acceptance Date.
- 1.206 “**East Warranty Work**” has the meaning given in Section 11.17(a)(i) of the Project Agreement.
- 1.207 “**East Works**” means the Works as it relates to the Confederation Line East Extension, as generally described in Article 19 of Part 1 of Schedule 15-2.
- 1.208 “**Electronic Data Management System**” or “**EDMS**” means a management system as described in Article 3 of Schedule 10 – Review Procedure.
- 1.209 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.210 “**Encroachment Permits**” means the encroachment permits which DB Co is required to obtain from MTO to enable and authorize, among other things, DB Co to perform the Works.
- 1.211 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including System Users and City Parties) or any part of or the whole of the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure or the Stage 1 Connection Infrastructure;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
 - (iii) constitutes a hostage situation or state of emergency declared as such by the City Representative or the City (acting reasonably);
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the New City Infrastructure or New MTO Infrastructure, any part of the Lands, the conduct of Works, or the conduct of Governmental Activities; or
 - (v) constitutes a period of transition to or from war,

- and which, in the opinion of the City, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or
- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.212 “**Emergency Response Plan**” means the existing City of Ottawa Emergency Response Plan for the existing LRT system as amended and modified by the Emergency Management provisions in Schedule 15-2 Part 1.
- 1.213 “**Emergency Service Providers**” means any Police Service, firefighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the New City Infrastructure or New MTO Infrastructure from time to time.
- 1.214 “**Encumbrances**” means the Encumbrances listed in Schedule 16 - Encumbrances and any other encumbrances deemed to be Encumbrances as described in and for the purposes set out in Section 17.2(d) of the Project Agreement.
- 1.215 “**Environmental Assessments**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.216 “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- 1.217 “**Environmental Management Plan**” means has the meaning given in Schedule 17 – Environmental Obligations.
- 1.218 [Not used]
- 1.219 “**Environmental Reports**” means, collectively, the following reports:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED];
 - (j) [REDACTED];

- (k) [REDACTED];
- (l) [REDACTED];
- (m) [REDACTED];
- (n) [REDACTED];
- (o) [REDACTED];
- (p) [REDACTED];
- (q) [REDACTED];
- (r) [REDACTED];
- (s) [REDACTED];
- (t) [REDACTED];
- (u) [REDACTED];
- (v) [REDACTED];
- (w) [REDACTED];
- (x) [REDACTED];
- (y) [REDACTED];
- (z) [REDACTED];
- (aa) [REDACTED];
- (bb) [REDACTED];
- (cc) [REDACTED];
- (dd) [REDACTED];
- (ee) [REDACTED];
- (ff) [REDACTED];
- (gg) [REDACTED];
- (hh) [REDACTED];
- (ii) [REDACTED];
- (jj) [REDACTED];

- (kk) [REDACTED];
- (ll) [REDACTED];
- (mm) [REDACTED];
- (nn) [REDACTED];
- (oo) [REDACTED];
- (pp) [REDACTED];
- (qq) [REDACTED];
- (rr) [REDACTED];
- (ss) [REDACTED];
- (tt) [REDACTED];
- (uu) [REDACTED];
- (vv) [REDACTED];
- (ww) [REDACTED];
- (xx) [REDACTED];
- (yy) [REDACTED];
- (zz) [REDACTED];
- (aaa) [REDACTED];
- (bbb) [REDACTED];
- (ccc) [REDACTED];
- (ddd) [REDACTED];
- (eee) [REDACTED];
- (fff) [REDACTED];
- (ggg) [REDACTED];
- (hhh) [REDACTED]; and
- (iii) [REDACTED].

1.220 “**Erosion and Sediment Control Plan**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.

- 1.221 “ESA” means the *Endangered Species Act, 2007* (Ontario).
- 1.222 “Estimate” has the meaning given in Schedule 22 - Variation Procedure.
- 1.223 “Excise Tax Act (Canada)” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time.
- 1.224 “Executive Council Act (Ontario)” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.225 “Existing Adjacent Structures” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.226 “Existing Confederation Line” has the meaning given in the recitals to the Project Agreement.
- 1.227 “Existing Contamination” has the meaning given in Section 18.2(a) of the Project Agreement.
- 1.228 “Existing Infrastructure” means existing public realm, road, highway, Utility Infrastructure, railway infrastructure, drainage works, landscaping, infrastructure situated on the Lands, owned by the MTO, the City, Utility Companies, Railway Companies, or any other third party, but excluding the Stage 1 Connection Infrastructure.
- 1.229 “Expiry Date” means the first anniversary of the latest Final Completion Date.
- 1.230 “External IMS Audit” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.231 “Facilities” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.232 “Factory Acceptance Test” or “FAT” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.233 “Federal Lands” means:
- (a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut;
 - (b) the following lands and areas:
 - (i) the internal waters of Canada, in any area of the sea not within a province,
 - (ii) the territorial sea of Canada, in any area of the sea not within a province,
 - (iii) the exclusive economic zone of Canada, and
 - (iv) the continental shelf of Canada;

- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the Indian Act, and all waters on and airspace above those reserves or lands.
- 1.234 “**Final Completion**” means either East Final Completion or West Final Completion, as applicable.
- 1.235 “**Final Completion Certificate**” means a certificate to be issued by the Independent Certifier in accordance with Section 25.14 of the Project Agreement.
- 1.236 “**Final Completion Countdown Notice**” means either the East Final Completion Countdown Notice or West Final Completion Countdown Notice, as applicable.
- 1.237 “**Final Completion Date**” means either the East Final Completion Date or West Final Completion Date, as applicable.
- 1.238 “**Final Completion Notice**” means either the East Final Completion Notice or West Final Completion Notice, as applicable.
- 1.239 “**Final Design Development**” or “**FDD**” has the meaning given in Schedule 10 – Review Procedure.
- 1.240 “**Final New Municipal Infrastructure Works Acceptance Certificate**” means the certificate issued by the City Engineer to DB Co confirming New Municipal Infrastructure Works Acceptance.
- 1.241 “**Final New Municipal Infrastructure Works Requirements**” has the meaning given in Section 11.27(h) of the Project Agreement.
- 1.242 “*Financial Administration Act (Ontario)*” means the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended from time to time.
- 1.243 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.244 “**Financial Close Target Date**” means April 25, 2019, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.245 “**Financial Model**” means the computer spreadsheet [REDACTED] for the Project incorporating statements of DB Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, the profit and loss accounts and balance sheets for DB Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.246 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.247 “**Financing**” means the financing with the Lenders, that is consistent in all material respects with Schedule 32 - Financial Model and the Project Agreement, to finance the Project.

- 1.248 “FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. F.31, as amended from time to time.
- 1.249 “Float” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.250 “Force Majeure” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.251 “*Funeral, Burial and Cremations Services Act (Ontario)*” means the *Funeral, Burial and Cremations Services Act*, S.O. 2002, c.33, as amended from time to time.
- 1.252 “Geotechnical Reliant Reports” means:
- (a) those reports listed in the definition of “Geotechnical Reports” as items (a) – (c), (g) – (m), (p), and (s) – (z); and
 - (b) in respect of those reports listed in the definition of “Geotechnical Reports” as items (d) – (f), (n) and (aa), the geotechnical borehole data included in such reports, excluding any data interpretation or extrapolation expressed therein, as clarified in the reliance letters included the Background Information pertaining to such reports.
- 1.253 “Geotechnical Instrumentation and Monitoring Plan” has the meaning given in Schedule 15 – Output Specifications.
- 1.254 “Geotechnical Reports” means, collectively, the following geotechnical reports:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED];
 - (j) [REDACTED];
 - (k) [REDACTED];
 - (l) [REDACTED];
 - (m) [REDACTED];
 - (n) [REDACTED];

- (o) [REDACTED];
- (p) [REDACTED];
- (q) [REDACTED];
- (r) [REDACTED];
- (s) [REDACTED];
- (t) [REDACTED];
- (u) [REDACTED];
- (v) [REDACTED];
- (w) [REDACTED];
- (x) [REDACTED];
- (y) [REDACTED];
- (z) [REDACTED]; and
- (aa) [REDACTED].

1.255 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial and rail safety standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

1.256 “**Government Entity**” means any one or more of the Province and MOI.

1.257 “**Government Sensitive Information**” means any information which is designated as such by the City from time to time, or which a reasonable person having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of the City.

1.258 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands, New City Infrastructure and New MTO Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the City Activities.

1.259 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the City, any aspect of the performance of the Project Agreement, the operation of the System or the Governmental Activities, in each case to the extent

- it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.260 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.261 “**Guideway**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents
- 1.262 “**Handover**” has the meaning given in Appendix B of Schedule 10 – Review Procedure
- 1.263 “**H&S Certification Default Event**” has the meaning given in Section 11.25(b) of the Project Agreement.
- 1.264 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.25(b)(vii)(B) of the Project Agreement.
- 1.265 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.25(b)(vi)(B) of the Project Agreement.
- 1.266 “**H&S Construction Inspection**” has the meaning given in Section 15.2(a) of the Project Agreement.
- 1.267 “**H&S Construction Inspection Report**” has the meaning given in Section 15.1(b) of the Project Agreement.
- 1.268 “**H&S Construction Re-Inspection**” has the meaning given in Section 15.1(c)(ii) of the Project Agreement.
- 1.269 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 15.1(c)(iii) of the Project Agreement.
- 1.270 “**Hazardous Substances**” means any contaminant, pollutant, mould, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined in or identified pursuant to any Applicable Law.
- 1.271 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with DB Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.272 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by DB Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.273 “**Highway Construction Defect**” has the meaning given in Section 11.15(c) of the Project Agreement.
- 1.274 “**Highway Corridor Lands**” has the meaning given in Schedule 20 – Lands.
- 1.275 “**Highway DB Co Commissioning**” means the DB Co Commissioning in respect of the Highway Works.
- 1.276 “**Highway Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the Highway Works included in the Testing & Commissioning Program.

- 1.277 “**Highway Traffic Act (Ontario)**” means the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time.
- 1.278 “**Highway Works**” means the Works as it relates to the New MTO Infrastructure, as generally described in Article 19 of Part 1 of Schedule 15-2.
- 1.279 “**Hold Points**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.280 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act (Canada)*, and any successor legislation thereto.
- 1.281 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.282 “**IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.283 “**IMS Director**” means that individual identified as such in Schedule 9 – Key Individuals, and such replacements or substitutes as may be permitted from time to time in accordance with this Project Agreement.
- 1.284 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.285 “**Indemnifiable Taxes**” has the meaning given in Section 4.17(b) of the Project Agreement.
- 1.286 “**Indemnifier**” has the meaning given in Section 46.3(a) of the Project Agreement.
- 1.287 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.288 “**Independent Certifier Agreement**” means the contract entered into between DB Co, the City and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.289 “**Independent Safety Assessor**” means an independent party appointed by DB Co to assess:
- (a) the safety and security of the Works prior to Substantial Completion; and
 - (b) changes to the New City Infrastructure following Substantial Completion, if any.
- 1.290 “**Indirect Losses**” has the meaning given in Section 47.1(a) of the Project Agreement.
- 1.291 “**Infringing Material**” has the meaning given in Section 46.1(g) of the Project Agreement.
- 1.292 “**Initial Capital Investment Amount**” has the meaning given in Schedule 21 – Construction Period Payments.

- 1.293 “**Initial Countdown Notice**” has the meaning given in Section 25.5(a) of the Project Agreement.
- 1.294 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.295 “**Innovation Proposal**” has the meaning given in Section 31.2(b) of the Project Agreement.
- 1.296 “**Internal IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.297 “**Intrusion and Access Control System**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.298 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.299 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.300 “**Insurance Policies**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.301 “**Insurance Proceeds**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.302 “**Insurance Trust Account**” means [REDACTED] at [REDACTED].
- 1.303 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between the City, the Lenders’ Agent, DB Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.304 “**Integrated Management Plans**” or “**IMP**” have the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.305 “**Integrated Management System**” and “**IMS**” have the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.306 “**Intellectual Property**” means all intellectual and industrial property, including without limitation: (i) Trade-Marks; (ii) patents; (iii) copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including, without limitation, any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (xiv) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix)

- above; and (xi) all rights to sue and recover and retain damages and costs and attorneys' fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out.
- 1.307 **“Intellectual Property Rights”** means all right, title and interest in, to and under the Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after Commercial Close created, brought into existence, acquired, used or intended to be used by DB Co, any Subcontractor or by other third parties (for such third parties' use by or on behalf of or for the benefit of DB Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the New City Infrastructure and the New MTO Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
 - (b) the Project Agreement.
- 1.308 **“Interest Reference Rate”** means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.309 **“Interface Agreement”** means that interface agreement entered into by DB Co, the City and RTG upon the execution and delivery of this Project Agreement, in the form attached hereto as Schedule 36 – Interface Agreement.
- 1.310 **“Irrecoverable Tax”** has the meaning given in Section 4.13(b) of the Project Agreement.
- 1.311 **“Issued For Construction”** has the meaning given in Section 3.12 of Schedule 10 – Review Procedure.
- 1.312 **“Jointly Developed Materials”** has the meaning given in Section 41.4(a) of the Project Agreement.
- 1.313 **“Key Individuals”** means those DB Co Parties listed in Schedule 9 - Key Individuals.
- 1.314 **“Key Works Milestones”** has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.315 **“Lands”** has the meaning given in Schedule 20 – Lands.
- 1.316 **“Lane Closure”** has the meaning given in Schedule 34 – Mobility Matters.
- 1.317 **“Lane Closure Adjustment”** has the meaning given in Schedule 34 – Mobility Matters.
- 1.318 **“Latent Defect Warranty Period”** means the balance of the period after a Warranty Period during which DB Co remains responsible for correcting and Making Good of any Construction Latent Defect in accordance with Section 11.16(b)(iii) of the Project Agreement.
- 1.319 **“Legislative Holdback”** means the basic holdback to be retained pursuant to section 22(1) of the CA. For greater certainty, the amount of the holdback required by Part IV of the CA may be

- reduced by the amount of the holdback which has been paid by DB Co or the Construction Contractor in respect of Subcontracts certified complete under Section 33 of the CA in accordance with Section 25 of the CA.
- 1.320 “**Lenders**” means any or all of the persons acting arm’s length to DB Co and each DB Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of DB Co or a DB Co Party.
- 1.321 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.322 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders. Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by the City, DB Co or the Lenders.
- 1.323 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between the City, the Lenders’ Agent and DB Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.324 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by DB Co or any of its Affiliates relating to the Financing, including, for greater certainty, the Security Documents and the Hedging Agreements.
- 1.325 “**Letter of Credit Provider**” means the provider of a Standby Letter of Credit, and “**Letter of Credit Provider(s)**” means all providers of the Standby Letter(s) of Credit.
- 1.326 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.327 “**Licensor**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.328 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c.24, as amended from time to time.
- 1.329 “**Limited Modification Rights**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.330 “**Listed DB Co PLAA**” means those DB Co Permits, Licences, Approvals and Agreements listed in Appendix A to Schedule 35 – Permits, Licences, Approvals and Agreements.
- 1.331 “**LMSF**” means the light maintenance storage facility further described in Schedule 15 – Output Specifications.
- 1.332 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.333 “**Longstop Date**” has the meaning given in Section 36.1(a)(ii) of the Project Agreement.

- 1.334 “**Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.335 “**Maintenance Instructions**” means the maintenance data prepared and delivered by DB Co to the City pursuant to Section 25.7 of the Project Agreement.
- 1.336 “**Major Construction Defect**” means any Construction Defect in respect of the System Infrastructure which, when measuring its most severe consequences during the period prior to rectification of such Construction Defect, causes an Aggregate Vehicle Kilometres Availability Ratio of (i) between [REDACTED]% and [REDACTED]% during Peak Period(s), or (ii) between [REDACTED]% and [REDACTED]84% on a full day basis.
- 1.337 “**Major Existing Third Party Infrastructure**” means the following infrastructure:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED];
 - (j) [REDACTED];
 - (k) [REDACTED];
 - (l) [REDACTED];
 - (m) [REDACTED];
 - (n) [REDACTED];
 - (o) [REDACTED];
 - (p) [REDACTED];
 - (q) [REDACTED];
 - (r) [REDACTED];
 - (s) [REDACTED];

- (t) [REDACTED];
- (u) [REDACTED];
- (v) [REDACTED];
- (w) [REDACTED];
- (x) [REDACTED];
- (y) [REDACTED];
- (z) [REDACTED];
- (aa) [REDACTED];
- (bb) [REDACTED];
- (cc) [REDACTED];
- (dd) [REDACTED];
- (ee) [REDACTED];
- (ff) [REDACTED];
- (gg) [REDACTED];
- (hh) [REDACTED];
- (ii) [REDACTED];
- (jj) [REDACTED];
- (kk) [REDACTED];
- (ll) [REDACTED];
- (mm) [REDACTED];
- (nn) [REDACTED];
- (oo) [REDACTED];
- (pp) [REDACTED];
- (qq) [REDACTED]; and
- (rr) [REDACTED].

1.338 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing or performing filling

operation on: (a) the Works as required under the Project Agreement; or (b) any existing components disturbed (including Existing Infrastructure and Stage 1 Connection Infrastructure) due to the Works, to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.

- 1.339 “**Medium Construction Defect**” means any Construction Defect in respect of the System Infrastructure which, when measuring its most severe consequences during the period prior to rectification of such Construction Defect, causes an Aggregate Vehicle Kilometres Availability Ratio of (i) between [REDACTED]% and [REDACTED]% during Peak Period(s), or (ii) between [REDACTED]% and [REDACTED]% on a full day basis.
- 1.340 “**Medium Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of the Project Agreement; or
 - (b) the continued existence of which is reasonably expected to result in DB Co becoming unable to satisfy the requirements of Substantial Completion.
- 1.341 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. M.56, as amended from time to time.
- 1.342 “**Milestone**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.343 “**Minor Construction Defect**” means any Construction Defect that is not a Medium Construction Defect, Major Construction Defect or Critical Construction Defect.
- 1.344 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion, and that would not materially impair:
- (a) the public’s, System Users’, or the City’s use, normal operation, and enjoyment of the New City Infrastructure or any third parties use and enjoyment of the New MTO Infrastructure;
 - (b) the performance of the Governmental Activities;
 - (c) safety, security, or traffic or track flow on the New City Infrastructure or New MTO Infrastructure in any relevant respect; or
 - (d) the performance of maintenance services in respect of the System Infrastructure by RTG.
- For greater certainty Minor Deficiencies shall not be applicable to nor shall Minor Deficiencies include Minor Deficiency Nominated Signalling Subcontractor Works.
- 1.345 “**Minor Deficiency Nominated Signalling Subcontractor Works**” means defects, deficiencies and items of outstanding work arising from or related to the Nominated Signalling Subcontractor Works.

1.346 “**Minor Deficiencies List**” has the meaning given in Section 25.10 of the Project Agreement.

1.347 “**Minor Non-Conformance**” means any Non-Conformance that:

- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found that require correction in order to bring the Works fully into compliance with the Project Agreement; or
- (b) the continued existence of which is not reasonably expected to result in DB Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.

1.348 “**Mislocated Utility Infrastructure**” means:

- (i) Utility Infrastructure that is discovered more than 200mm horizontally from the provided surveyed point via any Quality Level A investigation in the Subsurface Utility Engineering (SUE) Report;
- (ii) Utility Infrastructure that is discovered more than 150mm vertically from the provided surveyed point via any Quality Level A investigation in a Subsurface Utility Engineering (SUE) Report;
- (iii) Utility Infrastructure that is discovered more than 1500mm horizontally from the location provided via any Quality Level B investigation in a Subsurface Utility Engineering (SUE) Report;
- (iv) Utility Infrastructure that is discovered more than 2000mm horizontally from the location provided in the Quality Level C investigation in a Subsurface Utility Engineering (SUE) Report;
- (v) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Quality Level D investigation in a Subsurface Utility Engineering (SUE) Report;
- (vi) Utility Infrastructure that is owned by the City that is discovered more than 600mm vertically from the location provided in a Subsurface Utility Engineering (SUE) Report; and
- (vii) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Roll Plans.

1.349 “**Modification**” has the meaning given in Schedule 24 – Intellectual Property.

1.350 “**MOECC**” means the Ontario Ministry of the Environment and Climate Change, and any successor ministry thereto.

1.351 “**MOI**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.

- 1.352 “**MOL**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Labour, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.353 “**Monthly Progress Report**” means a monthly progress report submitted by DB Co in accordance with Part 2 of Schedule 33 – Works Reports
- 1.354 “**MTO**” means Her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority.
- 1.355 “**MTO Jointly Developed Materials**” has the meaning given in Section 41.4(a)(ii) of the Project Agreement.
- 1.356 “**MTO Standards**” means the standards of MTO set out in Schedule 15 – Output Specifications.
- 1.357 “**Navigation Protection Act (Canada)**” means the *Navigation Protection Act*, R.S.C., 1985, c. N-22, as amended from time to time.
- 1.358 “**NCC**” means the National Capital Commission.
- 1.359 “**NCC Act**” means the *National Capital Act (Canada)*.
- 1.360 “**NCC Agreement In Principle**” means the agreement made between the City and the NCC on the 10th of May, 2016.
- 1.361 “**NCC Approval In Principle**” means the approval issued to the City by the NCC under the *National Capital Act* for the Western Light Rail Train (WLRT) project on January 23, 2017.
- 1.362 “**NCC FLUDTA**” means the federal land use, design and transaction approval of the NCC under the NCC Act required in respect of the change of use of, or erection, alteration, extension or demolition of a building or other work on, Crown Lands which are “public lands” within the “National Capital Region” (as such terms are defined in the NCC Act), as indicated in Schedule 35 – Permits, Licenses, Approvals and Agreements, which approval may include and be subject to conditions.
- 1.363 “**Near-Critical Activity(s)**” or “**Near Critical Path(s)**” means those Activities with a Float of less than 10 calendar days.
- 1.364 “**New City Infrastructure**” means the System Infrastructure and the New Municipal Infrastructure.
- 1.365 “**New MTO Infrastructure**” means the new, modified or improved infrastructure, as described in Schedule 15 - Output Specifications, to be installed, relocated, upgraded, reinstated, restored, downsized, designed and/or built by DB Co for MTO in accordance with the Project Agreement and in accordance with the applicable MTO Standards.
- 1.366 “**New Municipal Infrastructure**” means the new, modified or improved infrastructure described as such in Schedule 15 – Output Specifications, including as generally described in Section 2.3 of Part 1 Schedule 15-2, and all associated data, records, drawings, plans, reports and systems related thereto, all as described in the Project Agreement.

- 1.367 “**New Municipal Infrastructure Component**” means a component or element of the New Municipal Infrastructure, as set out in the Works Schedule.
- 1.368 “**New Municipal Infrastructure Component Acceptance**” means the point in time at which the City Engineer determines that an individual New Municipal Infrastructure Component has been completed in accordance with the Project Agreement and all requirements for New Municipal Infrastructure Component Acceptance described in the Output Specifications in respect of New Municipal Infrastructure Works have been satisfied; the New Municipal Infrastructure Component Works Requirements have been satisfied; and the issuance by the City Engineer of a New Municipal Infrastructure Component Acceptance Certificate.
- 1.369 “**New Municipal Infrastructure Component Acceptance Certificate**” means, in respect of an individual New Municipal Infrastructure Component, the certificate issued by the City Engineer to DB Co confirming acceptance of the applicable New Municipal Infrastructure Component.
- 1.370 “**New Municipal Infrastructure Component Acceptance Date**” means, in respect of an individual New Municipal Infrastructure Component, the date on which the City Engineer has issued a New Municipal Infrastructure Component Acceptance Certificate in respect of such New Municipal Infrastructure Component.
- 1.371 “**New Municipal Infrastructure Component Acceptance Notice**” has the meaning given in Section 11.27(d) of this Project Agreement.
- 1.372 “**New Municipal Infrastructure Component Works Requirements**” has the meaning given in Section 11.27(d) of this Project Agreement.
- 1.373 “**New Municipal Infrastructure Works**” means the design, construction, installation, testing and completion of the New Municipal Infrastructure as set out in the Output Specifications.
- 1.374 “**New Municipal Infrastructure Works Acceptance**” means the receipt by DB Co of New Municipal Infrastructure Component Acceptance Certificates for all New Municipal Infrastructure Components and completion and satisfaction of all Final New Municipal Infrastructure Works Requirements.
- 1.375 “**New Municipal Infrastructure Works Acceptance Date**” means the date in which New Municipal Infrastructure Works Acceptance is achieved.
- 1.376 “**New Municipal Infrastructure Works Component Countdown Notice**” has the meaning given in Section 11.27(c) of this Project Agreement.
- 1.377 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.378 “**Nominated Signalling Subcontract**” means that executed Subcontract between Construction Contractor and the Nominated Signalling Subcontractor substantially in the form attached as Schedule 13 – Nominated Signalling Subcontract to the RFP.

- 1.379 “**Nominated Signalling Subcontract Cash Allowance Account**” means the account established by the City in accordance with Section 11.31 of the Project Agreement for reimbursement of the costs of the Nominated Signalling Subcontractor Works.
- 1.380 “**Nominated Signalling Subcontract Milestone**” means a “Payment Milestone” (as defined in the Nominated Signalling Subcontract) set out in Schedule B – Subcontract Price and Payment Milestones of the Nominated Signalling Subcontract.
- 1.381 “**Nominated Signalling Subcontractor**” means [REDACTED].
- 1.382 “**Nominated Signalling Subcontractor Works**” means the scope of works to be undertaken by the Nominated Signalling Subcontractor in accordance with the Nominated Signalling Subcontract.
- 1.383 “**Nominated Signalling Contractor Works Cash Allowance**” has the meaning given in Section 11.31(c) of the Project Agreement.
- 1.384 “**Nominated Signalling Subcontractor Works Gainshare**” means the amount of \$[REDACTED].
- 1.385 “**Non-Conformance**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.386 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.387 “**Non-Debt Compensation Amount**” has the meaning given in Section 33.6(b)(i)(A) of the Project Agreement.
- 1.388 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.389 “**Non-Disclosure Agreement**” has the meaning given in Section 6.3(f) of Schedule 27 – Dispute Resolution Procedure.
- 1.390 “**Non-Renewed Warranty Letter of Credit**” has the meaning given in Section 11.18(i) of the Project Agreement.
- 1.391 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.392 “**Notice**” has the meaning given in Section 51.1(a) of the Project Agreement.
- 1.393 “**Notice of Delegation**” has the meaning given in Section 25.16(b) of the Project Agreement.
- 1.394 “**Notice of Dispute**” has the meaning given in Section 1.3 of Schedule 27 – Dispute Resolution Procedure.
- 1.395 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).

- 1.396 “**Occupational Health and Safety Act (Ontario)**” means the *Occupational Health and Safety Act*, R.S.O. 1990, C. o.1, as amended from time to time.
- 1.397 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.398 “**OHSAS 18001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.399 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.
- 1.400 “**Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011**” means the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.401 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.402 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.403 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.404 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.405 “**Overhead Contact System**” sometimes referred to as “Overhead Catenary System” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.406 “**Ownership**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.407 “**PAR Meeting**” has the meaning given in Section 14.6(f) of the Project Agreement.
- 1.408 “**PAR Meeting Expiry Date**” has the meaning given in Section 14.6(g) of the Project Agreement.
- 1.409 “**Party**” means either the City or DB Co, and “**Parties**” means collectively the City and DB Co.
- 1.410 “**Party Representative**” has the meaning given in Section 2.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.411 “**Patents**” includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.
- 1.412 “**Pavement Design Report**” means a report prepared for the purpose of providing recommendations for removal, resurfacing, and/or reconstruction of existing or new pavement structure based on collected pavement and subsurface data.

- 1.413 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.414 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.415 “**Payment Period**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.416 “**PBS**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.417 “**PBS Update**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.418 “**PBS Submittal**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.419 “**Peak Period**” means:
- (a) between the hours of 06:30 and 9:00 on each weekday which is not a statutory holiday in the Province of Ontario; and
 - (b) between the hours of 14:45 and 18:00 on each weekday which is not a statutory holiday in the Province of Ontario.
- 1.420 “**Performance Guarantee of Construction Guarantor**” means each performance guarantee given by the Construction Guarantors in the form set out in Schedule 29 – Form of Performance Guarantee of Construction Guarantor.
- 1.421 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.422 “**Permits, Licences, Approvals and Agreements**” means the City Permits, Licences, Approvals and Agreements and the DB Co Permits, Licences, Approvals and Agreements, and “**Permits, Licences, Approvals or Agreements**” means any of the foregoing.
- 1.423 “**Permitted Borrowing**” means:
- (a) any advance to DB Co under the Lending Agreements;
 - (b) any additional financing approved by the City in accordance with Section 1.9 of Schedule 22 - Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-in Period that does not increase the City’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.424 “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the

- custody or control of DB Co or any DB Co Party other than personal information of the employees of DB Co or the DB Co Parties and other than personal information that is wholly unrelated to the Works and not derived directly or indirectly from the City in respect of the Project.
- 1.425 “**Personal Information Protection and Electronic Documents Act (Canada)**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended from time to time.
- 1.426 “**Planned Value**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.427 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Ottawa Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.428 “**Post-Installation Checkout**” or “**PICO**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.429 “**Pre-Final Design Development**” or “**PFDD**” has the meaning given in Schedule 10 – Review Procedure.
- 1.430 “**Prequalification Submission**” means DB Co’s response to the request for qualifications issued in respect of the Project on September 13, 2016.
- 1.431 “**Prequalified Subcontractor**” means any Subcontractor that was identified in the list of subcontractors submitted as part of DB Co’s Prequalification Submission, as amended pursuant to the process set out in the Request for Proposals.
- 1.432 “**Proceeding At Risk**” has the meaning given in Section 14.6(g) of the Project Agreement.
- 1.433 “**Proceeding At Risk Matter**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.434 “**Proceeding At Risk Notice**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.435 “**Proceedings Against the Crown Act (Ontario)**” means the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended from time to time.
- 1.436 “**Procurement Monitoring and Implementation Plan**” has the meaning given in Section 11.24(a) of the Project Agreement.
- 1.437 “**Product**” means or “**Products**” mean material, machinery, equipment and fixtures forming the Works but does not include equipment or machinery used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.438 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.439 “**Prohibited Act**” has the meaning given in Section 50.1(a) of the Project Agreement.

- 1.440 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.441 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.442 “**Project Agreement Arbitration**” has the meaning given in Section 11.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.443 “**Project Co**” has the same meaning as “RTG”.
- 1.444 “**Project Co Party**” has the same meaning as “RTG Party”; and “**Project Co Parties**” has the same meaning as “RTG Parties”.
- 1.445 “**Project Data**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.446 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.447 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.448 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through DB Co or any DB Co Party and revealed to or discovered by the City, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works, including the design and construction of the New City Infrastructure and the New MTO Infrastructure; or
 - (b) the Project Agreement.
- 1.449 “**Project Operations**” means the performance of the Works and the performance of all other obligations of DB Co under the Project Agreement.
- 1.450 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the earlier of the Termination Date or latest Final Completion Date.
- 1.451 “**Project Zone of Influence**” has the meaning described in Part 3-7 (Instrumentation and Monitoring) of Schedule 15 – Output Specification.
- 1.452 “**Proprietor**” has the meaning given in Section 42.6(a) of the Project Agreement.
- 1.453 “**Protesters**” has the meaning given in Section 11.13(a) of the Project Agreement.
- 1.454 “**Province**” means Her Majesty the Queen in right of Ontario.
- 1.455 “**PS Services**” means those procurement support services performed by RTG in accordance with the PS Services Variation in respect of the scope, planning and administration of the City’s procurement of the Works pursuant to this Project Agreement.
- 1.456 “**PS Services Variation**” means that contract variation effective April 19, 2017, under the Stage 1 Project Agreement, governing performance of the PS Services under such project agreement.

- 1.457 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design or construction of rail transit systems.
- 1.458 “**Railway Approvals**” means all consents, approvals, permissions and agreements, and amendments thereto, required to be obtained from a Railway Company pursuant to a Railway Order or Applicable Laws, for the carrying out of Works on land or improvements of a Railway Company, but does not include any Railway Orders.
- 1.459 “**Railway Company**” means CN, VIA Rail and any other railway company that owns or operates a rail service, any part of which is on any part of the Lands during the Project Term and “**Railway Companies**” means all of them.
- 1.460 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of the City allowing or providing for:
 - (i) infrastructure comprising or to comprise New City Infrastructure or New MTO Infrastructure to be located upon and across land or improvements of a Railway Company; and
 - (ii) the construction, maintenance and use of such infrastructure upon and across such land or improvements; or
 - (b) for the carrying out of any Works on land or improvements of a Railway Company, and all amendments thereto.
- 1.461 “**Record Drawings**” means signed and sealed drawings prepared by the Professional Engineer or Architect, using As Built Drawings, after verifying the process in which the actual conditions of the completed project or applicable components as they are constructed, including any changes that were initiated due to site conditions or other causes and where all such changes are clearly identified through redlines in the As Built Drawings or by means of any other format agreed by the City.
- 1.462 “**Recoverable Tax**” has the meaning given in Section 4.13(c) of the Project Agreement.
- 1.463 “**Recovery Amount**” has the meaning given in Section 46.3(g) of the Project Agreement.
- 1.464 “**Recovery Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.465 “**Recovery Schedule Report**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.466 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.467 “**Reference Documents**” means those documents identified as such in Article 3 of Schedule 15-1.
- 1.468 “**Reimbursement Event**” has the meaning given in Section 27.5(a) of the Project Agreement.
- 1.469 “**Reinstatement Plan**” has the meaning given in Section 11.9(f) of the Project Agreement.

- 1.470 “**Reinstatement Work**” has the meaning given in Section 11.9(b) of the Project Agreement.
- 1.471 “**Release**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.472 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.473 “**Relevant Conviction**” means a charge or conviction, at any time within the previous 6 years, of any offense: (i) of moral turpitude in Canada or elsewhere; (ii) for which records exist under the *Criminal Records Act*; or (iii) otherwise designated as a Relevant Conviction by the City from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.474 “**Relief Event**” has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.475 “**Remaining Systems Integration Works**” means those Systems Integration Works to be performed by City Parties in respect of integration of the Confederation Line East Extension and Confederation Line West Extension with the Existing Confederation Line, as described in Schedule 14 – Testing & Commissioning.
- 1.476 “**Remaining Works**” means those Works described in Article 18 of Part 1 of Schedule 15-2.
- 1.477 “**Remaining Works Cash Amount**” has the meaning given in Section 4.2(g) of the Project Agreement.
- 1.478 “**Remaining Works DB Co Commissioning**” means the DB Co Commissioning in respect of the Remaining Works.
- 1.479 “**Remaining Works Letter of Credit**” has the meaning given in Section 11.18A(a) of the Project Agreement.
- 1.480 “**Remaining Works Minor Deficiencies**” means any defect, deficiencies and items of outstanding work arising from or related to the Remaining Works, including any Minor Deficiencies.
- 1.481 “**Remaining Works Minor Deficiency Inspection Request**” has the meaning given in Section 25.12A(a) of the Project Agreement.
- 1.482 “**Remaining Works Minor Deficiencies List**” has the meaning given in Section 25.12A(a) of the Project Agreement.
- 1.483 “**Remaining Works Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the Remaining Works included in the Testing & Commissioning Program.
- 1.484 “**Remaining Works Warranty Letter of Credit**” has the meaning given in Section 11.18B(a) of the Project Agreement.
- 1.485 “**Remaining Works Warranty Period**” means a period beginning on the West Final Completion Date and expiring on the date 2 years after such West Final Completion Date.

- 1.486 “**Remaining Works Warranty Works**” has the meaning given in Section 11.17(a)(iii) of the Project Agreement.
- 1.487 “**Request for Art Payment**” has the meaning given in Section 11.30(g) of the Project Agreement.
- 1.488 “**Request for Nominated Signalling Contractor Works Payment**” has the meaning given in Section 11.31(f) of the Project Agreement.
- 1.489 “**Request for Utility Works Payment**” has the meaning given in Section 11.29(h) of the Project Agreement.
- 1.490 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on June 26, 2017, as amended from time to time.
- 1.491 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (d) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
 - (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (f) is subject to a material claim of the City under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and

which (in respect of any such pending claim, if it were to be successful) would, in the City's view, in either case, be reasonably likely materially to affect the ability of DB Co to perform its obligations under the Project Agreement; or

- (g) has a material interest in the production of tobacco products.
- 1.492 **“Revenue Service Vehicle Kilometres”** means the total distance travelled by Vehicles in revenue service during a specified period, measured in Kilometres and reported to the City by RTG in RTG's monthly performance monitoring reports under the Stage 1 Project Agreement.
- 1.493 **“Review Procedure”** means the procedure set out in Schedule 10 - Review Procedure.
- 1.494 **“Review Procedure Activities”** means:
- (a) performance of the requirements of Schedule 10 – Review Procedure for all Works Submittals required to be delivered prior to Substantial Completion, including:
 - (i) all Submittals by DB Co;
 - (ii) City review periods and responses regarding Works Submittals;
 - (iii) amendment by DB Co, if required; and
 - (iv) re-submission by DB Co, if required;
 - (b) any other submission activities required by DB Co pursuant to the Project Agreement
- 1.495 **“Review Procedure Activities Register”** means a register of Review Procedure Activities which shall include the submission dates and review periods for all Works Submittals required under Schedule 10 – Review Procedure, Schedule 12 – Work Scheduling Requirements, and elsewhere in the Project Agreement.
- 1.496 **“RFP Financial Submission Deadline”** means October 22, 2018.
- 1.497 **“RFP Technical Submission Deadline”** means September 28, 2018.
- 1.498 **“Road Cut Permit”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.499 **“Road Safety Audit Certificate”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.500 **“Road Section”** has the meaning given in Part B of Schedule 34 – Mobility Matters.
- 1.501 **“Roadway”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.502 **“Roadway Works”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.503 **“Roll Plans”** means the following documents included in the Background Information:

- (a) [REDACTED]; and
- (b) [REDACTED].
- 1.504 “RTG” means Rideau Transit Group General Partnership, a general partnership established under the laws of Ontario [REDACTED] and each of their permitted successors and assigns.
- 1.505 “RTG City Party Works” the RTG Systems Integration Works and the RTG Interface and Design Management Works.
- 1.506 “RTG Interface and Design Management Works” means the work and activities performed, or required to be performed by RTG or any RTG Party to assist with the design review, quality control management and testing and commissioning oversight, from a System Infrastructure maintenance and life cycle perspective pursuant to that contract variation effective April 24, 2019, under the Stage 1 Project Agreement, governing performance of such work and activities but excluding for clarity any RTG System Integration Work.
- 1.507 “RTG Party” means:
- (a) [REDACTED] (collectively the “RTG CC”)
- (b) [REDACTED] (collectively the “RTG MC”);
- (c) any person engaged by RTG, RTG CC or RTG MC from time to time as may be to procure or manage the provision of the scope of work under the project agreement dated February 12, 2013 between the City and RTG, as permitted by such project agreement; and
- (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “RTG Parties” shall be construed accordingly
- 1.508 “RTG Stage 1 PA Works” means any work and activities performed, or required to be performed by RTG or any RTG Party pursuant to the Stage 1 Project Agreement, and the contract variations executed thereunder, but excluding the RTG City Party Works.
- 1.509 “RTG Systems Integration Works” means those Remaining Systems Integration Works performed, or required to be performed by RTG or any RTG Party in respect of integration of the Confederation Line East Extension and Confederation Line West Extension with the Existing Confederation Line, as described in Schedule 14 – Testing & Commissioning.
- 1.510 “RTG Works” means the RTG Stage 1 PA Works and RTG City Party Works.
- 1.511 “S&TCS” means signalling and train control system.
- 1.512 “Safety” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.513 “Schedule” means a schedule to the Project Agreement.
- 1.514 “Scheduled Final Completion Date” means either the East Scheduled Final Completion Date or West Scheduled Final Completion Date, as applicable.

- 1.515 “**Scheduled Revenue Service Vehicle Kilometres**” means the total revenue service vehicle kilometres required in a specified period by the City through the booking process set out in Article 3.3 of Appendix A to Schedule 15-3 of the Stage 1 Project Agreement, measured in kilometres and reported by RTG in RTG’s monthly performance monitoring reports under the Stage 1 Project Agreement.
- 1.516 “**Scheduled Substantial Completion Date**” means either the East Scheduled Substantial Completion Date or West Scheduled Substantial Completion Date, as applicable.
- 1.517 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.518 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.519 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of DB Co or any DB Co Party, give that competitor a competitive advantage over DB Co or such DB Co Party and thereby prejudice the business of DB Co or such DB Co Party.
- 1.520 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affects access by DB Co to such markets.
- 1.521 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by DB Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.522 “**Site**” means, at any time and from time to time, that portion of the Lands:
- (a) on which DB Co or any DB Co Party is engaged in any Construction Activities or Demolition activities or is otherwise engaged in completing the Works;
 - (b) on which any of the Works have been commenced but not completed in their entirety;
 - (c) that are hoarded, cordoned, or otherwise fenced off by DB Co, and any Lands immediately surrounding such hoarding, cordons or fencing; or
 - (d) within the active construction footprint of the Works.
- 1.523 “**Site Acceptance Test**” or “**SAT**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.524 “**Site Conditions**” means the condition of the Lands; including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.525 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by the City to be performed having an individual cost or aggregate cost with other

- linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Construction Period Quality Failure, or will increase the cost to DB Co of carrying out the Works.
- 1.526 “**Special Utility Debt Compensation Amount**” has the meaning given in Section 33.6(b)(i)(A) of the Project Agreement.
- 1.527 “**Species-at-Risk**” means any member of a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism that is listed in the Species at Risk in Ontario List maintained pursuant to the ESA and any analogous federal list under the *Species at Risk Act* (Canada), and any other species that has been classified as being threatened or endangered under Applicable Law.
- 1.528 “**Stage 1 Connection Infrastructure**” means that portion of the Existing Confederation Line, to which the System Infrastructure is be directly connected, including in respect of the East Works, rail, drainage, OCS, traction power, CTS and train control at the Existing Confederation Line’s termination point at Blair station and, in respect of the West Works, rail, drainage, OCS, traction power, CTS and train control at the Existing Confederation Line’s termination point at Tunney’s Pasture.
- 1.529 “**Stage 1 Connection Infrastructure Final Report**” means a report to be issued to DB Co following RTG’s completion of construction and commissioning of such Stage 1 Connection Infrastructure, describing the specifications and actual as-built condition of the Stage 1 Connection Infrastructure.
- 1.530 “**Stage 1 Connection Infrastructure Preliminary Report**” means the documentation provided to DB Co in the folder titled “Stage 1 Connection Infrastructure Preliminary Report” in the electronic data room established in accordance with the RFP, describing the specifications for, and anticipated as-built condition of, the Stage 1 Connection Infrastructure.
- 1.531 “**Stage 1 Project Agreement**” means that project agreement between the City and RTG dated February 12, 2013, as varied and amended from time to time.
- 1.532 “**Stage 1 Systems Information**” means the documentation provided to DB Co in the folder titled “Stage 1 Systems Integration” in the electronic data room established in accordance with the RFP.
- 1.533 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Schedule 15 - Output Specifications, but excluding the City.
- 1.534 “**Stakeholder Agreement**” has the meaning given in Section 10.3(f) of the Project Agreement.
- 1.535 “**Standards & Guidelines for Conservation of Provincial Heritage Properties**” means the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario) on April 28, 2010, as amended from time to time.
- 1.536 “**Standby Letter of Credit**” means a letter of credit attached as Schedule 7A – Standby Letter(s) of Credit, and “**Standby Letter(s) of Credit** or **Standby Letters of Credit**” means all letters of credit attached as Schedule 7A – Standby Letter(s) of Credit.

- 1.537 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.538 “**Station**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents
- 1.539 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.540 “**Stormwater management**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.541 “**Structure**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.542 “**Subcontract**” or “**Subcontracts**” means the contracts entered into by or between DB Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.543 “**Subcontractor**” means any subcontractor of DB Co engaged by or through DB Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.544 “**Subcontractor’s Direct Agreement**” means the agreement to be entered into among the City, DB Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 3 – Subcontractor’s Direct Agreement.
- 1.545 “**Submittal(s)**” means a Works Submittal.
- 1.546 “**Subsequent Notice**” means any East Subsequent Notice or West Subsequent Notice.
- 1.547 “**Substantial Completion**” means either East Substantial Completion or West Substantial Completion, as applicable.
- 1.548 “**Substantial Completion Certificate**” means either the East Substantial Completion Certificate or West Substantial Completion Certificate, as applicable.
- 1.549 “**Substantial Completion Date**” means either the East Substantial Completion Date or West Substantial Completion Date, as applicable.
- 1.550 “**Substantial Completion Notice**” has the meaning given in Section 25.4(b) of the Project Agreement.
- 1.551 “**Substantial Completion Payment**” means either the East Substantial Completion Payment or West Substantial Completion Payment, as applicable.
- 1.552 “**Substantial Completion Payment Date**” means either the East Substantial Completion Payment Date or West Substantial Completion Payment Date, as applicable.
- 1.553 “**Subsurface Utility Engineering (SUE) Reports**” means:
- (a) [REDACTED]; and
 - (b) [REDACTED].

- 1.554 “**Supplier**” means a person who supplies to DB Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Works.
- 1.555 “**Systems**” has the meaning given in Schedule 15-1.
- 1.556 “**System Extension**” has the meaning given in Schedule 37 – Extension and Additional Phases.
- 1.557 “**System Infrastructure**” means the new, modified or improved infrastructure described as such in Schedule 15 – Output Specifications, including as generally described in Section 2.2 of Part 1 of Schedule 15-2, and all associated data, records, drawings, plans, reports and systems related thereto, all as described in the Project Agreement.
- 1.558 “**Systems Integration Dispute**” has the meaning given in Section 1.1(n) of Schedule 14 – Testing & Commissioning.
- 1.559 “**Systems Integration Management Plan**” or “**SIMP**” has the meaning given in Schedule 15-2, Part 1, Article 11 – Systems Integration Program.
- 1.560 “**Systems Integration Test**” or “**SIT**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.561 “**Systems Integration Verifier**” has the meaning given in Section 1.1(n) of Schedule 14 – Testing & Commissioning.
- 1.562 “**Systems Integration Works**” means the overall sequential integration of each of the Confederation Line East Extension and the Confederation Line West Extension with the Existing Confederation Line and the integration of each with the Existing Confederation Line system such that the Confederation Line East Extension, Confederation Line West Extension and the Existing Confederation Line function together as one coherent working rail transit system as envisaged by Schedule 15 – 2 Part 1 and Schedule 15 – 2 Part 3 and Schedule 14 – Testing & Commissioning.
- 1.563 “**System Integrator**” means the role performed by DB Co in relation to Systems Integration as described in Schedule 14 – Testing & Commissioning.
- 1.564 “**System User**” means any member of the public, any City Party and any other person that is on or about the New City Infrastructure or is otherwise making use of the New City Infrastructure for any purpose, including customers, employees, consultants or contractors of the City.
- 1.565 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the City Taxes.
- 1.566 “**Technical Information**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.567 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports, the Archaeological Reports, and the Cultural Heritage Reports.
- 1.568 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.

- 1.569 “**Testing & Commissioning Coordinator**” has the meaning given in Section 1.2 of Schedule 14 – Testing & Commissioning.
- 1.570 “**Testing & Commissioning Plan**” means the testing and commissioning plan developed by DB Co in accordance with Schedule 14 – Testing & Commissioning for any of the East Works, West Works, Highway Works or Remaining Works, comprising part of the Testing & Commissioning Program.
- 1.571 “**Testing & Commissioning Program**” means the program, comprised of DB Co’s Testing & Commissioning Plans for each of the East Works, West Works, Highway Works or Remaining Works, submitted by DB Co in accordance with Schedule 14 – Testing and Commissioning and the Review Procedure, and assigned either “NO COMMENT” or “MINOR COMMENT”.
- 1.572 “**Testing & Commissioning Schedule**” has the meaning given in Section 8 of Schedule 12 – Works Scheduling Requirements.
- 1.573 “**Testing & Commissioning Team**” has the meaning given in Section 1.4 of Schedule 14 – Testing & Commissioning.
- 1.574 “**Third Party Arbitration**” has the meaning given in Section 11.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.575 “**Third Party Contractors**” means any person (not being, for the avoidance of doubt, DB Co or any DB Co Party, Additional Contractors, RTG or any RTG Party) that carries out any Third Party Works.
- 1.576 “**Third Party Facilities**” means telephone facilities, infrastructure and other property of Utility Companies and Railway Companies and other public facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Lands by any transit authority, communications provider, Utility Company, Railway Company or other third party (not including, for the avoidance of doubt, DB Co or any DB Co Party).
- 1.577 “**Third Party Lands**” means the Highway Corridor Lands.
- 1.578 “**Third Party Litigation**” has the meaning given in Section 11.2 of Schedule 27 – Dispute Resolution Procedure.
- 1.579 “**Third Party Works**” means any work performed by a Third Party Contractor on the Lands, including works in relation to,
- (a) an Encumbrance;
 - (b) Existing Infrastructure (other than Existing Infrastructure owned by the City or MTO);
 - (c) Third Party Facilities; and
 - (d) Utility Work and work pursuant to a Utility Agreement, Railway Order or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.580 “**TOCC**” means transit operations control centre.

- 1.581 “**Total Capital Cost Incurred to Date**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.582 “**Track**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.583 “**Traction Power**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.584 “**Traction Power Load Flow Study**” means a study that determines the number, locations and ratings of the traction power (TP) substations needed to support train operations. Determines the configuration and conductor sizes of the along-track dc distribution system. Sizes the major traction power equipment, such as substations’ dc circuit breakers and dc feeders.
- 1.585 “**Trade-Marks**” means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.
- 1.586 “**Traffic and Transit Management Plan**” or “**TTMP**” has the meaning given in Schedule 15-1.
- 1.587 “**Transitway**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.588 “**Transit System**” means any operating transit system that DB Co may encounter during the performance of its obligations under this Project Agreement.
- 1.589 “**Tree Compensation Plan**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.590 “**Tree Mitigation Plan**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.591 “**Trespassers**” has the meaning given in Section 11.13(a) of the Project Agreement.
- 1.592 “**Trial Running**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.593 “**Tunnel**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents
- 1.594 “**Underground Structures**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.595 “**Universal Design**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.596 “**Unpaid Construction Period Payment**” has the meaning given in Schedule 21 – Construction Period Payments.

- 1.597 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.598 “**Utility Baseline Report**” means the utility baseline report included herein as Schedule 38 – Utility Baseline Report, as may be amended in accordance with its terms.
- 1.599 “**Utility Agreement**” means any agreement entered into by DB Co with a Utility Company in connection with the design removal, construction, installation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time.
- 1.600 “**Utility Company**” means the owner or operator of any Utility Infrastructure or any company or companies designated by DB Co to provide Utilities.
- 1.601 “**Utility Company Self-Performed Works**” means the temporary and permanent installation, protection, removal, relocation, upgrading, reinstatement, restoration, downsizing, designing, and/or building works relating to Utility Infrastructure carried out by a Utility Company under a Utility Agreement in connection with or as part of the Project Operations, and identified as being subject to a Cash Allowance in Article 8 of Part 2 of Schedule 15-2 of the Output Specifications.
- 1.602 “**Utility Company Works Cash Allowance**” has the meaning given in Section 11.29(f) of the Project Agreement.
- 1.603 “**Utility Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure.
- 1.604 “**Utility Works**” means the DB Co Utility Works and the Utility Company Self-Performed Works.
- 1.605 “**Utility Works Cost**” means the actual cost of performing the Utility Company Self Performed Works.
- 1.606 “**Utility Works Fee**” has the meaning given in Section 11.29(g) of the Project Agreement.
- 1.607 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.608 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.609 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.610 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.611 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.612 “**Vehicles**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.

- 1.613 “**VIA**” means Via Rail Canada and its successors.
- 1.614 “**Warranty Cash Amount**” means either the East Warranty Cash Amount or West Warranty Cash Amount.
- 1.615 “**Warranty Letter of Credit**” has the meaning given in Section 11.18(a) of the Project Agreement.
- 1.616 “**Warranty Period**” means each of the East Warranty Period, West Warranty Period and Remaining Works Warranty Period, as applicable.
- 1.617 “**Warranty Protocol**” has the meaning given in Schedule 36 – Interface Agreement.
- 1.618 “**Warranty Request**” has the meaning given in Schedule 36 – Interface Agreement.
- 1.619 “**Warranty Work**” means all work, including any work to correct Construction Defects and Construction Latent Defects to satisfy the warranties provided pursuant to Section 11.16, and in accordance with the applicable Warranty Period. For clarity, this shall include all work required to Make Good any damage to other works caused by the repairing of such defects, deficiencies or failures to comply to the Project Agreement.
- 1.620 “**Weekday**” means Monday, Tuesday, Wednesday, Thursday, or Friday.
- 1.621 “**West Anticipated Final Completion Date**” means the date (which, for greater certainty, will be on or before the West Scheduled Final Completion Date) on which DB Co anticipates that West Final Completion will be achieved.
- 1.622 “**West Anticipated Substantial Completion Date**” has the meaning given in Section 25.5(a)(ii) of the Project Agreement.
- 1.623 “**West Completion Holdback**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.624 “**West Construction Defect**” has the meaning given in Section 11.15(b) of the Project Agreement.
- 1.625 “**West DB Co Commissioning**” means the DB Co Commissioning in respect of the West Works other than the Highway Works.
- 1.626 “**West Final Completion**” means the completion of the West Works in accordance with the Project Agreement, including completion of all West Minor Deficiencies, Remaining Works, Remaining Works Minor Deficiencies.
- 1.627 “**West Final Completion Countdown Notice**” has the meaning given in Section 25.13(a)(ii) of the Project Agreement.
- 1.628 “**West Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.14(g) of the Project Agreement in respect of West Final Completion.

- 1.629 “**West Final Completion Date**” means the date on which West Final Completion is achieved as evidenced by the West Final Completion Certificate, as such date shall be stated therein.
- 1.630 “**West Final Completion Notice**” has the meaning given in Section 25.14(c) of the Project Agreement.
- 1.631 “**West Further Revised Substantial Completion Date**” has the meaning given in Section 25.5(k) of the Project Agreement.
- 1.632 “**West Initial Countdown Notice**” has the meaning given in Section 25.5(a)(ii) of the Project Agreement.
- 1.633 “**West Minor Deficiencies**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.634 “**West Minor Deficiencies List**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.635 “**West Revised Substantial Completion Date**” has the meaning given in Section 25.5(h) of the Project Agreement
- 1.636 “**West Scheduled Substantial Completion Date**” means May 25, 2025, as such date may be amended pursuant to Section 32 of the Project Agreement.
- 1.637 “**West Scheduled Final Completion Date**” means the date that is two years following the West Substantial Completion Date.
- 1.638 “**West Subsequent Notice**” has the meaning given in Section 25.5(h) of the Project Agreement.
- 1.639 “**West Substantial Completion** ” means the point at which, in respect of the West Works, (i) the New City Infrastructure and New MTO Infrastructure comprising the West Works, other than the Remaining Works, have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 17.3(g) of the Project Agreement has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the CA; and (iii) all requirements for West Substantial Completion described in the West Testing & Commissioning Plan and Highway Testing & Commissioning Plan, other than in respect of West Minor Deficiencies, the Remaining Works, the Remaining Works Minor Deficiencies and Trial Running have been satisfied in respect of the New City Infrastructure as a whole.
- 1.640 “**West Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.4(d) of the Project Agreement.
- 1.641 “**West Substantial Completion Date**” means the date on which West Substantial Completion is achieved as evidenced by the West Substantial Completion Certificate, as such date shall be stated therein.
- 1.642 “**West Substantial Completion Notice**” has the meaning given in Section 25.4(b)(ii) of the Project Agreement.
- 1.643 “**West Substantial Completion Payment**” means the amount of \$[REDACTED], less the West Completion Holdback as at the West Substantial Completion Payment Date.

- 1.644 “**West Substantial Completion Payment Date**” means the date that is 2 Business Days after the West Substantial Completion Date.
- 1.645 “**West Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the West Works (other than Highway Works) included in the Testing & Commissioning Program.
- 1.646 “**West Warranty Cash Amount**” has the meaning given in Section 4.2(c)(ii) of the Project Agreement.
- 1.647 “**West Warranty Letter of Credit**” has the meaning given in Section 11.18(a)(ii) of the Project Agreement.
- 1.648 “**West Warranty Period**” means:
- (a) in respect of the West Works other than in respect of New Municipal Infrastructure and New MTO Infrastructure, a period beginning on the West Substantial Completion Date and expiring on the date 2 years after such West Substantial Completion Date;
 - (b) in respect of each New Municipal Construction Component comprising part of the West Works, a period beginning on the New Municipal Infrastructure Component Acceptance Date for such New Municipal Construction Component, and expiring on the date 2 years after such New Municipal Infrastructure Component Acceptance Date; and
 - (c) in respect of New MTO Infrastructure, a period beginning on the applicable Handover for such New MTO Infrastructure, and expiring on the date 2 years after such Handover.
- 1.649 “**West Warranty Work**” has the meaning given in Section 11.17(a)(ii) of the Project Agreement.
- 1.650 “**West Works**” means the Works as it relates to the Confederation Line West Extension, as generally described in Article 19 of Part 1 of Schedule 15-2, and all Highway Works related thereto.
- 1.651 “**Witness Point**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.652 “**Works**” means the design, construction, installation, testing, commissioning and completion of the New City Infrastructure and the New MTO Infrastructure, and the rectification of any Minor Deficiencies, Remaining Works Minor Deficiencies, Warranty Work, all other work under the Permits, Licences, Approvals and Agreements, and all work which is implied by the Project Agreement and that is necessary for the stability or safe and proper design, construction, installation, testing, commissioning and completion of the New City Infrastructure and the New MTO Infrastructure, except for all work which is expressly described in this Project Agreement, including Schedule 35 – Permits, Licences, Approvals and Agreements, as being the responsibility of the City.
- 1.653 “**Works Area Micro-Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.654 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;

- (b) occurs after the date that is 30 days prior to the RFP Technical Submission Deadline;
 - (c) requires DB Co to perform any work of alteration, addition, Demolition, extension or variation in the quality or function of the New City Infrastructure or the New MTO Infrastructure which is similar in nature to the Works but is not Works or capital replacement work which DB Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (d) was not reasonably foreseeable at the RFP Technical Submission Deadline by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any DB Co Party in relation to the Project.
- 1.655 “**Works Committee**” has the meaning given in Section 14.1(a) of the Project Agreement.
- 1.656 “**Works Committee End Date**” has the meaning given in Section 14.3(a) of the Project Agreement.
- 1.657 “**Works Report**” means those updates and reports to be issued by DB Co in accordance with Schedule 33 – Works Reports.
- 1.658 “**Works Schedules**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.659 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.660 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997*, S.O. ch.16, Sch. A (Ontario).
- 1.661 “**Zone of Influence**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
2. **Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
 - 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.
 - 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to DB Co and shall be construed and interpreted as if the words “DB Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.

- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any City Party shall be construed having regard to the interactive nature of the activities of the City Party and DB Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
 - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of DB Co's and the City's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "such as" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed

number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Ottawa, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to DB Co or the City they shall be construed and interpreted as synonymous and to read “DB Co shall” or “the City shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by DB Co to the City shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the transit system and railway system construction industry will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration DB Co’s and any DB Co Party’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands, including the Existing Infrastructure and Stage 1 Connection Infrastructure, carried out by DB Co or by any DB Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.