

PROJECT AGREEMENT

OTTAWA LIGHT RAIL TRANSIT PROJECT

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SCHEDULES

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Schedule 2	–	Completion Documents
Schedule 3	–	Custody Agreement
Schedule 4	–	Lenders' Direct Agreement
Schedule 5	–	Direct Agreements
Schedule 6	–	Independent Certifier Agreement
Schedule 7	–	[Intentionally deleted]
Schedule 8	–	Energy Matters
Schedule 9	–	Key Individuals
Schedule 10	–	Review Procedure
Schedule 11	–	Quality Management
Schedule 12	–	[Intentionally deleted]
Schedule 13	–	Project Co Proposal Extracts
Schedule 14	–	Commissioning
Schedule 15	–	Output Specifications
15-1	–	Technical Definitions and Reference Documents
15-2	–	Design and Construction Requirements
15-3	–	Maintenance and Rehabilitation Requirements
15-4	–	Regulatory Standards
Schedule 16	–	Title Encumbrances
Schedule 17	–	Environmental Obligations
Schedule 18	–	Communications and Public Consultation Protocol
Schedule 19	–	Milestone Payments
Schedule 20	–	Payment Mechanism
Schedule 21	–	[Intentionally deleted]
Schedule 22	–	Variation Procedure
Schedule 23	–	Compensation on Termination
Schedule 24	–	Expiry Transition Procedure
Schedule 25	–	Insurance and Performance Security Requirements
Schedule 26	–	Record Provisions
Schedule 27	–	Dispute Resolution Procedure
Schedule 28	–	Refinancing
Schedule 29	–	Standby Letter of Credit
Schedule 30	–	Insurance Trust Agreement
Schedule 31	–	Project Co Information
Schedule 32	–	Financial Model Extracts
Schedule 33	–	Works Reports
Schedule 34	–	Vehicle and Fixed Equipment Warranties
Schedule 35	–	Additional Vehicles
Schedule 36	–	Milestones
Schedule 37	–	Mobility Matters

Schedule 38	–	Extension and Additional Phases
Schedule 39	–	Operations Matters
Schedule 40	–	Highway Work
Schedule 41	–	Intellectual Property
Schedule 42	-	[Intentionally deleted]
Schedule 43	-	Procurement Support Services
Schedule 44	-	Stage 2 Additional Vehicles
Schedule 45	-	Belfast MSF Expansion
Schedule 46	-	Stage 2 Interface and Design Management Services

THIS PROJECT AGREEMENT is made as of the 12th day of February, 2013

BETWEEN:

CITY OF OTTAWA

(THE “CITY”)

AND

**RIDEAU TRANSIT GROUP GENERAL PARTNERSHIP, by its Partners
ACS RTG PARTNER INC., SNC RTG PARTNER INC. and ELLISDON
RTG PARTNER INC.**

(“PROJECT CO”)

WHEREAS:

- A. The City wishes to procure (i) a new light rail transit system in Ottawa, Ontario, as the first of several phases in the City’s Transportation Master Plan and which includes a 12.5 km line along the City’s Bus Rapid Transit corridor from Blair station in the east to Tunney’s Pasture station in the west, a tunnel through the Downtown Core and 3 underground stations, (ii) the widening of Highway 417 and (iii) the completion of related Civic Works.
- B. Project Co will carry out and perform the Project Scope (the “**Project**”).
- C. The City and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the activities within the Project Scope.
- D. The construction of the System and the Highway Work will provide an overall improvement to the quality of life of the citizens of Ottawa and its outlying regions as well as to visitors to the City.
- E. IO is engaged as a consultant by the City as its commercial procurement lead with respect to the Project. IO is not acting as a Crown Agent in connection with this Project Agreement or the Project and, accordingly, HMQ will not be liable for any liability of IO in connection therewith.
- F. Public ownership and control of the System and Highway 417 will be preserved.
- G. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that the City and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

- H. This Project Agreement was amended on April 19, 2017 to add a new Schedule 43 entitled Procurement Support Services.
- I. This Project Agreement was further amended on June 21, 2017 to add a new Schedule 44 entitled Stage 2 Additional Vehicles.
- J. This Project Agreement was further amended on September 26, 2017 to add a new Schedule 45 entitled Belfast MSF Expansion DBF Schedule.
- K. This Project Agreement was further amended on April 24, 2019 to add a new Schedule 46 entitled Stage 2 Interface and Design Management Services.
- L. The Project Agreement was further amended on September 16, 2019 to amend the Maintenance Services to include the maintenance of the Stage 2 Additional Vehicles, the Belfast MSF Expansion, Stage 2 East and Stage 2 West.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement.

Schedule No.	Description
Schedule 1	– Definitions and Interpretation
Schedule 2	– Completion Documents
Schedule 3	– Custody Agreement
Schedule 4	– Lenders' Direct Agreement
Schedule 5	– Direct Agreements
Schedule 6	– Independent Certifier Agreement
Schedule 7	– [Intentionally deleted]
Schedule 8	– Energy Matters
Schedule 9	– Key Individuals
Schedule 10	– Review Procedure
Schedule 11	– Quality Management
Schedule 12	– [Intentionally deleted]
Schedule 13	– Project Co Proposal Extracts
Schedule 14	– Commissioning
Schedule 15	– Output Specifications

15-1	–	Technical Definitions and Reference Documents
15-2	–	Design and Construction Requirements
15-3	–	Maintenance and Rehabilitation Requirements
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Schedule 17	–	Environmental Obligations
Schedule 18	–	Communications and Public Consultation Protocol
Schedule 19	–	Milestone Payments
Schedule 20	–	Payment Mechanism
Schedule 21	–	[Intentionally deleted]
Schedule 22	–	Variation Procedure
Schedule 23	–	Compensation on Termination
Schedule 24	–	Expiry Transition Procedure
Schedule 25	–	Insurance and Performance Security Requirements
Schedule 26	–	Record Provisions
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Schedule 35	–	Additional Vehicles
Schedule 36	–	Milestones
Schedule 37	–	Mobility Matters
Schedule 38	–	Extension and Additional Phases
Schedule 39	–	Operations Matters
Schedule 40	–	Highway Work
Schedule 41	–	Intellectual Property
Schedule 42	-	[Intentionally Deleted]
Schedule 43	-	Procurement Support Services
Schedule 44	-	Stage 2 Additional Vehicles
Schedule 45	-	Belfast MSF Expansion
Schedule 46	-	Stage 2 Interface and Design Management Services

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, the City or anyone else (including anyone pursuant to Schedule 27 – Dispute

Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Scope, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.

- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the Discretion of the City, no consent, approval or satisfaction of the City or the City Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) Schedules 43, 44, 45 and 46;
 - (iv) the body of this Project Agreement;
 - (v) Schedule 1 – Definitions and Interpretation;
 - (vi) Schedule 27 – Dispute Resolution Procedure;
 - (vii) Schedule 19 – Milestone Payments;
 - (viii) Schedule 20 – Payment Mechanism;
 - (ix) Schedule 15 – Output Specifications;
 - (x) Schedule 17 – Environmental Obligations;
 - (xi) Schedule 25 – Insurance and Performance Security Requirements;
 - (xii) Schedule 22 – Variation Procedure;
 - (xiii) Schedule 10 – Review Procedure;
 - (xiv) Schedule 14 – Commissioning;

- (xv) Schedule 11 – Quality Management;
 - (xvi) Schedule 28 – Refinancing;
 - (xvii) Schedule 23 – Compensation on Termination;
 - (xviii) Schedule 26 – Record Provisions;
 - (xix) Schedule 24 – Expiry Transition Procedure;
 - (xx) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xxi) Schedule 13 – Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Scope, the provision that applies to the specific part of the Project Scope shall govern for that specific part of the Project Scope.
- (c) To the extent that Schedule 40 – Highway Work contains provisions that apply only to the Highway Work, those provisions that apply only to Highway Work shall govern and take precedence, otherwise the provisions of this Project Agreement and in particular of this Section 1.2 shall prevail.
- (d) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or the City, upon discovery of same, shall immediately give notice to the City Representative. The City Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (e) The City and Project Co shall comply with the determination of the City Representative pursuant to this Section 1.2 unless the City or Project Co disputes the decision of the City Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

1.3 Conflict of Documents

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Project Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of the City set out in the Lenders’ Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

1.4 Legal Requirements

- (a) Whenever standards of Applicable Law differ, the most stringent standards shall govern.

1.5 Impact of Stage 2 Maintenance Services Variation

- (a) As of September 16, 2019 this Project Agreement was amended in order to increase the scope of the Maintenance Services. The Parties agree that such amendment was not intended to and does not amend the Design and Construction Works, the Highway Work or the Civic Works or any obligations connected with the Design and Construction Works, the Highway Work and the Civic Works (this principle being referred to as the “**Ring Fencing Principle**”).
- (b) In order to give effect to the Ring Fencing Principle and to recognize that certain provisions relate to the period prior to the execution of the Stage 2 Maintenance Services Variation, the Parties agree that the following provisions of this Project Agreement shall be read and interpreted as if the Stage 2 Maintenance Services Variation had not been entered into and, in particular, so that all defined terms shall be read as they were defined on October 1, 2017 (provided that, in respect of those provisions marked below with an asterisk (*), the above principle shall only apply for the purpose of interpreting the Parties’ respective rights and obligations in respect of the Design and Construction Works):
- (i) Sections 5, 6.3(a)(i) 6.5, 9.2(a)(ii)(H)*, 9.2(a)(v), 9.2(a)(vi), 9.4(b)*, 9.4(e), 9.4(f), 9.5(a)(v), 9.5(a)(vi), 9.6(a), 9.6(b), 9.6(c), 9.8, 9.9, 10.4(a), 11, 15.3(e)*, 16.1, 16.1A, 16.2(a), 16.2(b)(ii), 16.5(a), 16.5(d), 16.5(e), 16.5(i), 19(a)*, 19(b)*, 20.1, 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8, 20.9, 20.11, 20.13, 21.1*, 21.3, 21.5*, 22, 24.4, 24.5, 24.6, 26, 29.5, 29.6, 33.1(a), 34.1, 43.1(a)(viii), 43.2(b), 44.2(b), 45.1(a)(ii), 45.1(a)(iii), 45.1(a)(iv), 45.1(a)(vi), 45.1(a)(xxi), 48.4(a)(i), 48.4(a)(ii), 48.4(a)(iii), 56.1(a)(v), 56.1(a)(vi), 56.1(a)(vii) and 56.2(a)(iv) of this Project Agreement;
- (ii) the following defined terms in Schedule 1:
- (A) Adjacent Structures;
 - (B) Advanced Environmental Reports;
 - (C) After-Acquired Lands;
 - (D) Archaeological Reports;
 - (E) As-Built Highway Drawings;
 - (F) Bus Rapid Transit or BRT;
 - (G) Checking Team;
 - (H) City Design Team;
 - (I) Civic Works;

- (J) Commencement of Construction;
- (K) Commercial Close;
- (L) Construction;
- (M) Construction Activities;
- (N) Construction Clearing and Grubbing;
- (O) Construction Easements;
- (P) Contribution Agreements*;
- (Q) Correction*;
- (R) Cost of the Highway Financing;
- (S) Cost of the Highway Work;
- (T) Defect*;
- (U) Design;
- (V) Design and Certification Procedure;
- (W) Design and Construction Performance Requirements;
- (X) Design and Construction Specifications;
- (Y) Design and Construction Works;
- (Z) Design Period;
- (AA) Design Team;
- (BB) EA Approvals;
- (CC) Existing Highway Infrastructure;
- (DD) Final Completion;
- (EE) Final Completion Date;
- (FF) Final Completion Notice;
- (GG) Highway Minor Deficiencies;
- (HH) Integration;

- (II) Liquidated Damages;
- (JJ) Milestone Acceptance;
- (KK) Minor Deficiencies;
- (LL) NCC FLUA;
- (MM) NCC Stations;
- (NN) New System Infrastructure;
- (OO) Other Existing Infrastructure;
- (PP) Output Specifications*;
- (QQ) Permits*;
- (RR) Pre-Existing Environmental Site Conditions*;
- (SS) Project Co Commissioning;
- (TT) Railway Approvals;
- (UU) Response or Responses;
- (VV) Response Drawings;
- (WW) Response Vehicle Drawings;
- (XX) Revenue Service Availability;
- (YY) Revenue Service Availability Date;
- (ZZ) Revenue Service Availability Payment Date;
- (AAA) Revenue Service Commencement;
- (BBB) Revenue Service Commencement Date;
- (CCC) Safety Requirements;
- (DDD) Site*;
- (EEE) Stage 1 E&M*, provided that for the purpose of interpreting this Section in the context of the Design and Construction Works under this Section 1.5(b), the terms “Project Scope” and “Output Specification” within this definition shall not be taken to include the Belfast MSF Expansion and the Stage 2 Additional Vehicles Variation;

- (FFF) Stage 1 Fixed Facilities*, provided that for the purpose of interpreting this Section in the context of the Design and Construction Works under this Section 1.5(b), the terms “Project Scope” and “Output Specification” within this definition shall not be taken to include the Belfast MSF Expansion and the Stage 2 Additional Vehicles Variation;
- (GGG) Stage 1 System*, provided that for the purpose of interpreting this Section in the context of the Design and Construction Works under this Section 1.5(b), the term “Output Specification” within this definition shall not be taken to include the Belfast MSF Expansion and the Stage 2 Additional Vehicles Variation;
- (HHH) Stakeholders*;
- (III) Substantial Completion;
- (JJJ) Substantial Completion Date;
- (KKK) Substantial Completion of the Vehicle Component;
- (LLL) Substantial Completion of the Vehicle Component Date;
- (MMM) System Design Functionality;
- (NNN) Vehicle Milestone; and
- (OOO) Work or Works;
- (iii) Section 2.32 of Schedule 1*;
- (iv) Schedule 8;
- (v) Schedule 10, Part A, and Appendices A, B and C;
- (vi) Schedule 13*;
- (vii) Schedule 14;
- (viii) Schedule 15-2;
- (ix) Schedule 15-4*;
- (x) Schedule 17, Sections 2.1*, 2.2(f)*, 2.2(g)*, 2.5*, 2.9*, 2.10, 3.1(a)*, 3.1(c)(ii)*, 3.1(c)(viii)*, 3.2(a)*, 3.2(c)(i)*, 3.1(c)(v)*, 3.7(a)*, 3.7(e)(v)*, 3.7(f)*, 3.7(l)*, 3.8(b)(i)*, 3.8(b)(vi)*, 3.8(c)*, 3.9*, 3.10(c)* and 4, Appendix A and Appendix B;
- (xi) Schedule 18, Sections 2.2, 3.2 and 6;

- (xii) Schedule 19;
- (xiii) Schedule 25, Appendix A;
- (xiv) Schedule 27, Sections 4.2, 4.3, 4.4 and 10;
- (xv) Schedule 29;
- (xvi) Schedule 31;
- (xvii) Schedule 33;
- (xviii) Schedule 34;
- (xix) Schedule 35;
- (xx) Schedule 37;
- (xxi) Schedule 38;
- (xxii) Schedule 40;
- (xxiii) Schedule 41, in the manner outlined in Section 4.2(b)(i) thereof;
- (xxiv) Schedule 43;
- (xxv) Schedule 44; and
- (xxvi) Schedule 45.

For ease of reading, the provisions listed above have been underlined in this Project Agreement and, where relevant, the original defined terms are shown as the original text in the Stage 2 Maintenance Services Variation Confirmation and are also set out in Appendix 8 to Schedule 1.

In addition, the Parties agree that, between themselves, the provisions of the Construction Contractor's Direct Agreement and the Independent Certifier Agreement will be interpreted in accordance with the Ring Fencing Principle and they will conduct themselves with respect to any other counterparties to those agreements accordingly.

- (c) The Parties also acknowledge that the scope of the Maintenance Services shall be increased over time as follows (the "**Timing Principle**"):
 - (i) until Belfast MSF Expansion Substantial Completion, the Maintenance Services shall apply only to the Stage 1 System;
 - (ii) subject to Section 1.5(c)(v), from the Belfast MSF Expansion Substantial Completion Date until Stage 2 East Substantial Completion Date, the

Maintenance Services shall apply only to the Stage 1 System and the Belfast MSF Expansion;

- (iii) subject to Section 1.5(c)(v), from the Stage 2 East Substantial Completion Date until Stage 2 West Substantial Completion Date, the Maintenance Services shall apply only to the Stage 1 System, the Belfast MSF Expansion and Stage 2 East;
 - (iv) from the Stage 2 West Substantial Completion Date, the Maintenance Services shall apply to the Expanded System as a whole; and
 - (v) as regards the Stage 2 Additional Vehicles, the Maintenance Services for each Stage 2 Additional Vehicle shall start on Delivery of such Stage 2 Additional Vehicle.
- (d) The Parties acknowledge that, as of the date of the Stage 2 Maintenance Services Variation, it is assumed that the Stage 2 East Substantial Completion Date will occur before Stage 2 West Substantial Completion Date and the Stage 2 East Revenue Service Availability Date will occur before Stage 2 West Revenue Service Availability Date, and accordingly certain provisions of this Agreement have been drafted on the basis of this assumption. In the event that this should not occur, the City shall issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree.
- (e) This Project Agreement shall be read and interpreted so as to apply the Ring Fencing Principle and the Timing Principle.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 15 to 25, 28 to 30, 35, 37 to 39 and 51 to 64, and Schedules 1 to 3, 9 to 11, 13, 16, 18, 19, 22, 25 to 27, 29, 34, 35, 36, 38, 39, 40 as to Sections 1.1, 1.2 and 9.4 only, 41 and 42 will come into effect on Commercial Close. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) On Commercial Close, Project Co shall deliver, or cause to be delivered, to the City an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of dollars (\$) substantially in the form of Schedule 29 – Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by the City in accordance with the provisions of this Project Agreement, the City shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.

- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to the City for the City's approval drafts of all documents referred to in Section 1 of Schedule 2 – Completion Documents.
- (b) On or before the Financial Close Target Date:
- (i) Project Co shall deliver to the City the documents referred to in Section 1 of Schedule 2 – Completion Documents; and
 - (ii) The City shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 – Completion Documents.
- (c) In the event that any of the City's conditions precedent set out in Section 2.5(a) are not satisfied, or if Project Co fails to deliver to the City any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by the City of its obligations under Section 2.3(b)(ii)) and the City does not waive such requirement or such requirement is not deemed to have been satisfied in accordance with Section 2.5 the City will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre estimate of the damages that the City will suffer as a result of the happening of the specified event and it would be difficult or impossible to quantify such damages upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.5 of the Request for Proposals, Project Co shall, no later than 10 days following written instructions from the City at Financial Close, pay the Coordination Fee amount plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by the City. If Project Co is directed to pay the Coordination Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If the City fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of

the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect and neither of the Parties shall have any further obligations or liabilities to each other. In addition, if the Project Agreement is terminated as a result of any of the conditions contained in Section 2.5(b) Project Co will be entitled to the return of the Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals, plus any applicable HST and the parties shall have no further obligations or liabilities to each other.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, the City may in its Discretion either:
 - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
 - (ii) direct Project Co to assign to the City and the City will assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences and Approvals; and
 - (B) those contracts between Project Co and any Project Co Party which the City elects to be assigned.
- (c) If the City exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus 20% of such fee, plus any applicable HST. The City's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the City, that such fee represents full and final satisfaction of any obligation or liability of the City to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

2.5 Conditions to Financial Close

- (a) Conditions for the Benefit of the City

The obligation of the City to complete the Financial Close shall be subject to fulfilment of the following conditions on the Financial Close Target Date:

(i) Obligations of Project Co

On Financial Close, all of the covenants and obligations of this Project Agreement to be complied with or performed by Project Co on or before the Financial Close Target Date shall have been complied with or performed in all material respects.

(ii) Representations and Warranties of Project Co

On Financial Close, the representations or warranties of Project Co set out in Section 5.1 shall be true and accurate in all material respects and Project Co shall have delivered to the City a certificate of Project Co signed by a senior officer of Project Co without personal liability, having knowledge of the matters certified therein with respect thereto (the “**Project Co Certificate**”).

(iii) Project Co Event of Default

On Financial Close, there shall be no Project Co Event of Default, nor shall there be any breach of this Project Agreement by Project Co or any other matter which has occurred which, if not cured, shall result in a Project Co Event of Default.

(iv) Completion Documents

On Financial Close, the City is satisfied with the forms of the Completion Documents to be delivered by Project Co referred to in Section 1 of Schedule 2 – Completion Documents.

The conditions set forth in this Section 2.5(a) are for the sole benefit of the City and may be waived in whole or in part by the City by notice to Project Co on or before 5:00 p.m. on the Financial Close Target Date. If the City does not notify Project Co on or before 5:00 p.m. on the Financial Close Target Date that a condition set forth in this Section 2.5(a) has not been satisfied, such condition shall be deemed to have been satisfied.

(b) Mutual Conditions

The obligations of the City and Project Co to complete the Financial Close are subject to the fulfillment of the following conditions:

- (i) the EA Approvals have been obtained;
- (ii) the City has acquired the Real Property Interests in the Lands described in Appendix 2 to Schedule 1 – Definitions and Interpretation, excluding the After-Acquired Lands; and
- (iii) no injunction or restraining order or other decision or order of a court or Relevant Authority of competent jurisdiction being in effect on Financial Close which prohibits, restrains, limits or imposes conditions having a material adverse effect

on the obligations or liabilities of either of the Parties, or the transactions contemplated by this Project Agreement.

If any of the foregoing conditions are not performed or fulfilled on or before 5:00 p.m. on the Financial Close Target Date, either the City or Project Co may terminate this Project Agreement, in which event this Project Agreement shall be terminated, the Standby Letter of Credit shall be returned to Project Co without deduction and the Parties shall have no further obligations or liabilities to each other.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the activities within the Project Scope in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to the City, except as otherwise provided in this Project Agreement.

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Project Co acknowledges that the City (i) may from time to time develop, or permit the development of, commercial and other opportunities (including, for greater certainty, all retail and parking operations and all naming rights) on or associated with the System, in, around and above the stations, in, around and above the Alignment (including, for greater certainty, air rights) and in respect of Highway 417 (“**Business Opportunities**”); (ii) reserves the right to all Business Opportunities; and (iii) may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.
- (b) To the extent that the development of a Business Opportunity materially adversely interferes with Project Co’s licence rights hereunder or materially adversely interferes with Project Co’s ability to perform the activities within the Project Scope, such development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for the City’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. The City may accept any such proposal in its Discretion and subject to such terms and conditions as the City may require.
- (d) Notwithstanding that Project Co has proposed a Business Opportunity to the City for its consideration, Project Co acknowledges that the City reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity and Project Co shall not be entitled to receive any payment or

compensation from the City (in any form) on the basis that Project Co proposed such Business Opportunity to the City, even if the City proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or any third party.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to the City that as of Commercial Close:
- (i) Project Co is a general partnership between ACS RTG Partner Inc., SNC RTG Partner Inc. and EllisDon RTG Partner Inc. formed and validly existing under the laws of the Province of Ontario, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to duly observe and perform its obligations hereunder:
 - (A) ACS RTG Partner Inc. is a duly incorporated and validly existing company under the laws of British Columbia and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
 - (B) SNC RTG Partner Inc. is a duly incorporated and validly existing company under the laws of Canada, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
 - (C) EllisDon RTG Partner Inc. is a duly incorporated and validly existing company under the laws of Ontario, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
 - (ii) Project Co is and shall remain a Special Purpose Vehicle during the Project Term;
 - (iii) all partnership interests in Project Co as of Commercial Close have been disclosed to the City;
 - (iv) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction and maintenance of light rail transit projects and have extensive experience in the construction of highways and other public roads similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the activities within

the Project Scope in a timely and professional manner as set out in this Project Agreement including, without limitation, the services required by the Contract Documents, to review and interpret the Contract Documents and to complete the Highway Work in accordance with the standard of care set out in Section 11.2(a)(viii) of Schedule 40 – Highway Work;

- (A) Project Co and certain of the Project Co Parties have conducted an investigation and examination of the Contract Documents, and any other documents made available to Project Co by the City (which include, to the extent made available to Project Co by the City, equipment lists, a legal description of the Highway Site, copies of any registered and unregistered agreements affecting the Highway Site, results of tests, reports of independent testing agencies and surveys and documents indicating the location of Utilities and other structures to the extent obtained by the City, information regarding the critical requirements to maintain the operations of the Existing Highway Infrastructure, including the Highway Site Background Reports and the Contract Documents referred to in Section 11.7(c) of Schedule 40 – Highway Work) so as to ascertain the nature or location of the Highway Work and the Highway Site, the physical conditions of the Highway Site, the interface with the Existing Highway Infrastructure and protocols, rules and regulations if any, possible delays in commencing the Highway Work, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Highway Work and to identify any Highway Design Issues. Project Co has delivered to the Consultant requests for information in respect of all questions arising out of the foregoing inspections, investigations and examinations and in respect of each Highway Design Issue identified. Based on this review, Project Co has established a Project Co Design Contingency adequate, in its judgement, to fund any change or delay cost that may arise as a result of any further Highway Design Issue that may be identified and properly characterized as a Project Co Highway Design Issue;
- (v) Project Co has solicited bids from and will award Subcontracts for the Approved Highway Subcontractor Highway Work only to the applicable Approved Highway Subcontractors and has not solicited bids from and will not award Subcontracts for the Approved Highway Subcontractor Highway Work except to the applicable Approved Highway Subcontractors;
- (vi) Project Co and the Project Co Parties, collectively, have the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (vii) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (viii) this Project Agreement has been duly authorized, executed, and delivered on behalf of Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (ix) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which any of its properties or assets are bound or affected;
- (x) no Project Co Event of Default has occurred and is continuing;
- (xi) the information concerning Project Co set out in Schedule 31 (Project Co Information) is true and accurate, except as disclosed in writing to the City prior to Commercial Close and, there is not outstanding at the date hereof any offer, agreement or other arrangement whereby:
 - (A) any Person is at the date of this Project Agreement or at any time entitled to or obligated to subscribe for or take by means of transfer or by conversion of any form of investment or security any securities or voting rights in Project Co (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against Project Co or any other Person), but excluding any rights or entitlements of the Lenders pursuant to the Lending Agreements; or
 - (B) any alteration to the constitution or power of the board of directors of Project Co may take effect;

- (xii) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of Project Co's ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xiii) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of the City, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works and the Highway Work or performing the activities within the Project Scope in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xiv) Project Co is able to meet its obligations as they generally become due;
- (xv) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its registration number is 82972 5449 RT0001;
- (xvi) each of the Scheduled Milestone Acceptance Dates, the Highway Scheduled Substantial Completion Date and the Required Revenue Service Availability Date is a realistic date and is achievable by Project Co performing the Design and Construction Works and the Highway Work in accordance with this Project Agreement;
- (xvii) Project Co is a Canadian partnership for purposes of the *Income Tax Act* (Canada);
- (xviii) except in respect of liabilities that have arisen in the ordinary course of the management of the affairs of Project Co in preparing to enter into this Project Agreement, the Lending Agreements and all other agreements referred to herein, Project Co has no material financial obligations;
- (xix) the copy of the constating documents of Project Co certified by appropriate officers of Project Co and delivered to the City immediately prior to entering into this Project Agreement is true and accurate and there are no outstanding proposals to amend such documents;
 - (A) Project Co has satisfied itself as to the nature and extent of the risks assumed by it in relation to the Project;

- (xx) Project Co is and shall be the sole and exclusive owner of the Project Co Intellectual Property and has and shall have the right to provide the Licences granted to the City herein;
- (xxi) none of the Project Co Intellectual Property infringes, or is a misappropriation of, any third Person's Intellectual Property Rights, and as of the date of this Project Agreement and Commercial Close, to the extent that Project Co Has Knowledge, no allegations of infringement or notices of misappropriation have been issued by any Person regarding any of the Project Co Intellectual Property;
- (xxii) all of the agreements with the Project Co Parties, the Shareholders Agreement and all other agreements and documentation constituting the Project Co Closing Documents are unamended, in good standing and there are no defaults thereunder;
- (xxiii) there has been no material change to any of the information including the financial information provided by Project Co to the City as provided in the Response and there has been no Change in Control with respect to Project Co;
- (xxiv) there is no misrepresentation or material omission of any nature or kind whatsoever contained in the Response including without limitation that the Canadian Content Certificate submitted with the Response is true and correct in all material respects and that, subject to Section 2.8 of Schedule 35 – Additional Vehicles, the Vehicles are expected to meet the Canadian Content Requirements upon delivery to the City;
- (xxv) all of the Contracts together shall be sufficient to create the entire System and accomplish Integration;
- (xxvi) no Restricted Person has Direct or Indirect Power or Control over Project Co in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project; and
- (xxvii) no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project.
- (b) The representations and warranties contained in Sections 5.1(a)(i), (ii), (iv) to (ix), (xiii), (xvii), (xviii), (xxiii), and (xxv) to (xxvii) shall survive Financial Close and shall not be deemed to be merged thereon. The remaining representations and warranties contained in Section 5.1(a) shall be deemed to have merged on the Financial Close.

5.2 Representations and Warranties of the City

- (a) The City represents and warrants to Project Co that as of Commercial Close:
 - (i) the execution and delivery of this Project Agreement and all documents, instruments and agreements required to be executed and delivered by the City pursuant to this Project Agreement, and the completion of the transactions contemplated by this Project Agreement, have been duly authorized, and this

Project Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as may be limited by laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court and except as may be subject to the special jurisdiction and powers of the Ontario Municipal Board over defaulting municipalities under the *Municipal Affairs Act*, R.S.O. 1990 c. M.46, as amended;

- (ii) the City has full power and capacity to enter into and carry out the transactions contemplated by and duly observe and perform all of its obligations contained in this Project Agreement;
 - (iii) there are no third party consents required for the execution by the City of, and performance of its obligations under this Project Agreement;
 - (iv) other than any proceeding under the *Expropriations Act*, (Ontario) which could delay the acquisition by the City of the Lands and/or the After-Acquired Lands and/or Real Property Interests, Construction Easements and/or Permanent Easements therein, there are no current and, to the Knowledge of the City, there are no pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions, or other proceedings of, by, against, or relating to, the City which could have a material adverse effect on the ability of the City to perform its obligations under this Project Agreement and the City does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;
 - (v) all of the agreements and documents constituting the City Closing Documents are unamended, in good standing and there are no defaults by the City thereunder;
 - (vi) the City has (or, in the case of the After-Acquired Lands, will have) acquired the Real Property Interests in the Lands and After-Acquired Lands sufficient to enable to City to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1;
 - (vii) City has rights of use and access to, on and over the Highway Site and the Highway that are sufficient to enable City to grant to Project Co the licence rights contemplated in Section 9.1 of Schedule 40 – Highway Work; and
 - (viii) City has obtained all necessary City Permits, Licences and Approvals required to allow for the commencement of the Highway Work.
- (b) The representations and warranties contained in Sections 5.2(a)(i), (ii), (iii), and (vi) to (viii) shall survive the Financial Close and shall not be deemed to be merged thereon. The remaining representations and warranties contained in Section 5.2(a) shall be deemed to have merged on the Financial Close.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 6.6, 16.1, 16.1A, 16.1B, 16.2, 16.3, 16.4 and 16.5 neither the City nor any City Party shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from the City or any City Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.
- (b) Except as expressly provided in Sections 6.4, 6.6, 16.1, 16.1A, 16.1B, 16.2, 16.3, 16.4 and 16.5 or Schedule 43 to this Project Agreement neither the City nor any City Party shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from the City or any City Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Stage 2 Background Information by, or on behalf of, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 6.6, 16.1, 16.1A, 16.1B, 16.2, 16.3, 16.4 and 16.5:
 - (i) neither the City nor any City Party gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither the City nor any City Party warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither the City nor any City Party shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.
- (b) Except as expressly provided in Sections 6.4, 6.6, 16.1, 16.1A, 16.1B, 16.2, 16.3, 16.4 and 16.5 or Schedule 43 to this Project Agreement:

- (i) neither the City nor any City Party gives any warranty or undertaking of whatever nature in respect of the Stage 2 Background Information and, specifically (but without limitation), neither the City nor any City Party warrants that the Stage 2 Background Information represents all of the information in its possession or power relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
- (ii) neither the City nor any City Party shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Stage 2 Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Stage 2 Background Information.

6.3 No Claims

- (a) Project Co acknowledges and confirms that:
 - (i) it has conducted its own analysis and review of the Background Information for the purpose of Stage 1 (based on the definitions of Project Scope and Output Specifications as they were defined at the date of this Agreement) only and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance;
 - (ii) in carrying the Procurement Support Services, it has conducted its own analysis and review of the Stage 2 Background Information provided to it prior to the date of the Stage 2 Maintenance Services Variation for the purposes of carrying out the Procurement Support Services;
 - (iii) except as expressly provided in Sections 6.4, 6.6, 16.1, 16.1A, 16.1B, 16.2, 16.3, 16.4 and 16.5, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against the City or any City Party (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
 - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient; and

- (iv) except as expressly provided in Sections 6.4, 6.6, 16.1, 16.1A, 16.1B, 16.2, 16.3, 16.4 and 16.5 or Schedule 43 to this Project Agreement, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against the City or any City Party (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
- (A) of any misunderstanding or misapprehension in respect of the Stage 2 Background Information; or
 - (B) that the Stage 2 Background Information was incorrect or insufficient,

nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

6.4 Technical Reports

- (a) The City agrees that, if at Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by the City or any City Party, or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the Knowledge of the City, incorrect or there is relevant information in the possession or control of the City that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the activities within the Project Scope or materially adversely affects Project Co's cost of performing activities within the Project Scope, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) The City agrees that, if at the date of the Stage 2 Maintenance Services Variation, except as disclosed in any Stage 2 Background Information (other than the Stage 2 Technical Reports) or as otherwise disclosed by the City or any City Party, or known by Project Co or any Project Co Party, any of the information in:
- (i) the Stage 2 Technical Reports (other than the Geotechnical Reliant Reports (as defined in the DB Co Works Agreement)) is, to the Knowledge of the City, incorrect, or there is relevant information in the possession or control of the City that would make any of the information in such Stage 2 Technical Reports incorrect, or
 - (ii) the Geotechnical Reliant Reports (as defined in the DB Co Works Agreement) is incorrect,

then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the activities within the Project Scope or materially adversely affects Project Co's cost of performing activities within the Project Scope, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

6.5 Highway Work Document Review

- (a) Project Co acknowledges having conducted a thorough review of the Contract Documents and has reported to the Consultant and City any Highway Design Issue found by Project Co in the Contract Documents during its review. If Project Co does discover any Highway Design Issue in the Contract Documents, Project Co shall not proceed with the Highway Work affected until Project Co has first complied with the provisions of Section 11.18 of Schedule 40 – Highway Work. Project Co acknowledges that it is responsible for the risks assumed by Project Co in Sections 11.17 and 11.18 of Schedule 40 – Highway Work and that any additional costs resulting from such risks will form part of the Project Co Design Contingency. It is intended that the review of the Contract Documents conducted by Project Co pursuant to this Section 6.5(a) be carried out by Project Co and the Project Co Parties using their own experiences and expertise in accordance with the standard of care set out in Section 11.2(a)(viii) of Schedule 40 – Highway Work and in accordance with the representations and warranties of Project Co set out in Section 5.1.
- (b) Except as may constitute a Highway Design Issue properly characterized as a Project Co Highway Design Issue under Section 11.17 of Schedule 40 – Highway Work, and except in respect of those Contract Documents which, under the terms of this Project Agreement, Project Co is required to prepare or produce, Project Co shall not be responsible for verifying that the Contract Documents are in compliance with Applicable Law.
- (c) If the Contract Documents are at variance with Applicable Law, or if, subsequent to the Submission Date, changes are made to Applicable Law which require modification to the Contract Documents, Project Co shall notify the Consultant in writing requesting direction immediately upon such variance or change becoming known. The Consultant will make the changes required to the Contract Documents as provided in Section 38 below and Schedule 22 – Variation Procedure.
- (d) If Project Co fails to notify the Consultant in writing, fails to obtain direction as required in Section 6.5(c), and performs Highway Work knowing it to be contrary to any Applicable Law, Project Co shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to its failure to comply with the provisions of such Applicable Law.

6.6 **DB Co Originated Stage 2 Background Information**

Nothing in this Section 6 shall prevent Project Co from (i) making a claim against DB Co under the DB Co Interface Agreement, (ii) pursuing a claim under Section 9.12 for Equivalent Project Relief pursuant to a DB Co Direct Claim Entitlement or a DB Co-Derived Claim Entitlement pursuant to Section 9.12 in respect of any Stage 2 Background Information originating from DB Co, or (iii) pursuing any other demand, claim, action or proceeding Project Co may have against DB Co or any DB Co Party.

7. PROJECT DOCUMENTS

7.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to the City.

7.2 Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 32.3, 45.5, 59.3 and 60.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of the City, whether actual or potential;
 - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of the City, whether actual or potential; or
 - (iv) enter into, or permit the entry by any other person into, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of the City, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of the City, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 59.3.

- (b) Upon the written request of City or the Consultant, Project Co will deliver or cause to be delivered to City or the Consultant a copy of any notices delivered or received by Project Co under any of the Ancillary Documents.

7.3 Changes to Lending Agreements and Refinancing

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of the City, whether actual or potential, unless:
 - (i) such action is a Permitted Borrowing; or
 - (ii) such action is a Refinancing, other than a Mandatory Refinancing, effected in accordance with the provisions of Schedule 28 – Refinancing.

7.4 Compliance with Lending Agreements

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

8. CITY RESPONSIBILITIES

8.1 General

- (a) The City shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) subject to any obligations of Project Co set out in Schedule 40 – Highway Work, cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that the City shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement;
 - (iii) acquire the Real Property Interests in the After-Acquired Lands described in Appendix 2 to Schedule 1 – Definitions and Interpretation, as amended from time to time, in accordance with the acquisition dates specified in the said Appendix;
 - (iv) make such payments to Project Co as are specifically provided for in this Project Agreement;

- (v) subject to any obligations of Project Co set out in Schedule 40 – Highway Work, cooperate with Project Co in using reasonable efforts to manage the impact of road traffic upon the Construction; however, the City shall have no liability to Project Co in connection therewith;
 - (vi) perform those additional obligations specifically provided for in this Project Agreement; and
 - (vii) in accordance with Schedule 15-4 – Regulatory Standards, use commercially reasonable efforts, with the assistance of Project Co, to develop and adopt regulatory standards (the OLRT Regulations) relating to the design, construction, operation, safety, security and maintenance of a light rail transit system, including the System and the Project. For certainty, the City shall be solely responsible for the formal adoption of the OLRT Regulations (by way of by-law or otherwise) after Project Co has developed these for City approval from time to time in accordance with Schedule 15-4 – Regulatory Standards.
- (b) Nothing in this Project Agreement shall in any way fetter the right, authority and Discretion of the City or any of the City Party in fulfilling its statutory or other functions under Applicable Law. Project Co agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, subject to Section 39.1(b), with all written directions issued by or on behalf of the City from time to time as a party to this Project Agreement and as a Governmental Authority with regulatory jurisdiction over the Project and the System.
- (c) The City shall, and shall cause all City Parties to, take reasonable steps to minimize undue interference with the provision of the Project Scope by Project Co or any Project Co Party.
- (d) The City may, without legal obligation to do so and at the expense of Project Co, take such commercially reasonable steps as Project Co may request to facilitate temporary access for Project Co to lands not forming part of the Lands or the After-Acquired Lands to the extent Project Co may reasonably require to perform the activities within the Project Scope, provided that Project Co has demonstrated, to the reasonable satisfaction of the City, that it has not been able to gain such access through the use of its own commercially reasonable efforts.
- (e) The City shall provide for the attendance of the requisite number of employees for the employee training to be provided by Project Co in accordance with the requirements of Schedule 15-2 – Design and Construction Requirements.
- (f) The City shall provide Drivers and controllers to support the required commissioning activities in accordance with the requirements of this Project Agreement.

8.2 City Permits, Licences and Approvals

- (a) The City shall, at its own cost and risk:
- (i) obtain on or before Financial Close, except as otherwise provided in Appendix 1 – Permits, Licences and Approvals of Schedule 1 – Definitions and Interpretation, maintain, and, as applicable, renew all City Permits, Licences and Approvals which may be required for the performance of the activities within the Project Scope;
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms; and
 - (iii) execute all documents which, under Applicable Law, only the City as a land owner is entitled to execute and which are required to obtain or maintain any City Permits, Licences and Approvals.
- (b) The City shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as the City may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that the City shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of the City. For greater certainty, the City shall not be obligated to:
- (i) exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences and Approvals;
 - (ii) automatically grant Project Co Permits, Licences and Approvals for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co for such Project Co Permits, Licences and Approvals; and
- (c) Notwithstanding the provisions of Section 9.4(a)(i), the City shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to the System which can only be effected by the City pursuant to the *Municipal Act, 2001* (Ontario), subject to receipt by the City of any required consent(s) from the Crown in right of Canada and subject to Project Co having, at its own cost, providing or causing to be provided such information, documentation, and technical or administrative assistance, as the City may request and as Project Co may reasonably be able to provide to enable the City to effect such requirements.

8.3 Limitation on the City's Obligations

- (a) The City shall have no obligations of any nature or kind whatsoever to Project Co except those obligations expressly enumerated as the City obligations specifically referred to in Section 8 or otherwise specifically provided in this Project Agreement.

9. PROJECT CO RESPONSIBILITIES**9.1 Other Business**

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of the City, in its Discretion.

9.2 General

- (a) Project Co shall, at its own cost and risk:
- (i) observe all provisions of this Project Agreement in compliance with Applicable Law;
 - (ii) perform all activities within the Project Scope:
 - (A) in compliance with Applicable Law;
 - (B) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
 - (C) so as to satisfy the Output Specifications;
 - (D) in accordance with Good Industry Practice (Works) and Good Industry Practice (Highway Work);
 - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of persons and property;
 - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of the City or City Party to comply with Applicable Law;
 - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities;

- (J) in accordance with all other terms of this Project Agreement (including, for greater certainty, Schedule 40 – Highway Work);
 - (iii) cooperate with the City in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of the City’s obligations under this Project Agreement;
 - (iv) in accordance with Schedule 15-4 – Regulatory Standards, develop and implement regulatory standards relating to the design, construction, operation, safety, security and maintenance of a light rail transit system, including the System and the Project;
 - (v) Project Co shall be responsible for the Integration of the System and shall cause the System to be constructed and Integrated such that Revenue Service Availability shall have occurred on or before the Required Revenue Service Availability Date; and
 - (vi) in addition to Project Co having responsibility for Integration, as amongst the Contractors, the Construction Contractor shall assume responsibility for the Integration of the System.
- (b) Project Co shall, in performing all activities within the Project Scope, cooperate with the City by, amongst other things, participating in meetings, committees and subcommittees related to the Project in respect of which the City requires Project Co’s participation and, in the event that such participation is determined by Project Co and the City to constitute a material expense to Project Co, Project Co’s participation shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

9.3 Project Co Parties

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the activities within the Project Scope, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

9.4 Project Co Permits, Licences and Approvals

- (a) Subject to Sections 9.4(e) and (f) below and Section 17.1(a), Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the activities within the Project Scope including those Permits, Licences and Approvals in respect of which Project Co has responsibility as provided for in Appendix 1 – Permits, Licences and Approvals of Schedule 1 – Definitions and Interpretation;

- (ii) assume the obligations of the City under the City Permits, Licences and Approvals as set out in Appendix 1 – Permits, Licences and Approvals of Schedule 1 – Definitions and Interpretation as at Financial Close or as they become available provided that in the case of NCC FLUA, Project Co shall comply with NCC FLUA requirements at its expense unless a requirement constitutes a Variation in compliance with the criteria provided for in Section 9.4(e)(iii), in which case such NCC FLUA requirement shall be deemed to be a Variation Enquiry and Project Co shall not comply with the requirement without a Variation Confirmation or a Variation Directive in accordance with Schedule 22 – Variation Procedure. For clarity, the obligations of Project Co in Section 9.4(a)(ii) shall not derogate from the obligations of the City contained in Section 9.4(e)(i).
- (iii) comply with all Permits, Licences and Approvals in accordance with their terms;
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on the City or any City Party, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences and Approvals without the prior written consent of the City, provided that the City shall not be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. The City shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on the City or any City Party by the requirements of any Project Co Permit, Licence or Approval obtained with the City’s consent under this Section 9.4(b).
- (b1) The City agrees that it will not agree with DB Co pursuant to section 11.8(b) of the DB Co Works Agreement to impose on RTG or any RTG Party any conditions, liabilities or obligations in a DB Co Permit, Licence, Approval or Agreement (as defined in the DB Co Works Agreement) without the prior written consent of RTG, not to be unreasonably withheld or delayed.
- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the City may request and as Project Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable the City to obtain, maintain or renew any City Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of the City to obtain any City Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.
- (d) The City shall use commercially reasonable efforts (subject to any Applicable Law or policy restrictions) to provide Project Co with or cause to be provided to Project Co such information and documentation as Project Co may reasonably require in relation to Permits, Licences and Approvals.

- (e) With respect to the NCC FLUA:
- (i) the City shall obtain the NCC FLUA, subject to Section 9.4(e)(ii);
 - (ii) Project Co shall use commercially reasonable efforts to assist the City in obtaining the NCC FLUA as required from time to time including, without limitation:
 - (A) the preparation and delivery of all Design Data in respect of the NCC FLUA pursuant to Schedule 10 – Review Procedure;
 - (B) the preparation and delivery of Design Development Submittals and/or Construction Development Submittals pursuant to Section 20.3 that are reasonably necessary or desirable to obtain the NCC FLUA;
 - (C) the preparation and delivery of such other plans, specifications, agreements, documents and instruments in respect of the Design and Construction Works and/or the Maintenance Services and amendments thereto that are reasonably necessary or desirable to obtain the NCC FLUA; and
 - (D) Project Co shall make changes to the Design Data as required by NCC to further assist the City in obtaining the NCC FLUA and Project Co shall take such other actions as may be reasonably directed by the City from time to time with respect thereto; and
 - (iii) if, following Commercial Close:
 - (A) NCC requires a change to the Design Data or any other additional obligation to be assumed in respect of the NCC FLUA pursuant to Section 9.4(a); and
 - (B) the City in its Discretion requires Project Co to make such change or to assume such additional obligation,

provided the change or other obligation is not otherwise a responsibility or obligation of Project Co under this Project Agreement, then such change or obligation shall result in a Variation subject to and in accordance with Schedule 22 – Variation Procedure.
- (f) Notwithstanding the provisions of Section 9.4(a)(i), in respect of the Highway Work MTO shall be responsible for all authorizations, designations, assumptions, road closures, transfers and any other applicable requirements relating to the Highway which can only be effected by MTO pursuant to the *Public Transportation and Highway Improvement Act* (Ontario) or the *Highway Traffic Act* (Ontario), provided that Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and technical or administrative assistance as MTO may request and as Project Co may reasonably be able to provide to enable MTO to effect such requirements.

9.5 Safety and Security

- (a) Project Co shall:
- (i) comply with the Safety Management Plan;
 - (ii) keep the Site in a safe and orderly state, as appropriate in accordance with Good Industry Practice (Works), to avoid danger to persons on the Site and in the immediate vicinity of the Site provided that to the extent Project Co for any reason vacates all or part of the Site on a temporary basis, the abandoned area shall be maintained by Project Co in a state that is safe for public use;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice (Works) to maintain and secure the Stage 1 Lands and the Site to prevent access thereto prior to Revenue Service Availability, and to maintain and secure the MSFs in accordance with the Maintenance Services to prevent access thereto during the Maintenance Term, by any persons or creatures not entitled to be there;
 - (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including without limitation the *OHSA* and the *FCLC*, and all regulations thereto;
 - (v) with respect to the Works, perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify the City and each other City Party against any and all of the liabilities of the “constructor”, under the *OHSA* and the *FCLC*, as applicable, and all regulations thereto; and
 - (vi) provide the City with a certificate of good standing from WSIB or any successor thereto once every 90 days from Financial Close until Final Completion, and from Final Completion until the Termination Date, at the request of the City Representative from time to time.

9.6 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, prior to the Revenue Service Commencement Date, the City shall not be responsible for the presence on or around the Site, or any interference affecting the Site or the Design and Construction Works of any persons participating in civil disobedience, demonstration or protest action (“Protesters”) or any other persons otherwise not entitled to be on or around the Site (“Trespassers”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Site shall not be a breach of the obligation of the City to grant licence rights of the use and access to Project Co on and over the Lands pursuant to Section 14, nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) Prior to the Revenue Service Commencement Date, the management of any Protesters or Trespassers shall be the responsibility of Project Co (to the extent same is not otherwise the responsibility of the Police Service). If at any time prior to the Revenue Service Commencement Date, any part of the Site is occupied, or access to the Site is prevented

or interfered with, by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers including the pursuit of the remedies referred to in Section 9.6(c)(i) and promptly notify the City Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, provided that if Project Co does so elect to exercise any such legal remedy, Project Co shall give the City Representative not less than 24 hours notice prior to commencing any legal proceeding for that purpose (except in a case of Emergency, where, in such circumstances, such notice may be given to the City less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the City Representative as to the status of any such proceeding in reasonable detail and at reasonable intervals, and provided further that:

- (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and
 - (ii) Project Co shall not by virtue of this Section 9.6(b) be prevented from entering into bona fide settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (c) Prior to the Revenue Service Commencement Date, Project Co may request the assistance of the City (at the cost of Project Co) to remove Protesters or Trespassers where Project Co demonstrates to the City's reasonable satisfaction that:
- (i) it is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works that Project Co is unable to mitigate.
- Following such request, the City shall notify Project Co whether the City can lawfully provide any assistance in relation to the removal of the Protesters or Trespassers that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, the City shall provide such assistance (at the cost of Project Co) to the extent it is, in the Discretion of the City, reasonable and appropriate in the circumstances to do so.
- (d) On and after the Revenue Service Commencement Date, the City shall be responsible for the management of any Protesters or Trespassers on or around the Lands and the System (to the extent same is not otherwise the responsibility of the Police Service), provided that:

- (i) this Section 9.6(d) shall not alter or impair the rights or obligations of the City provided in this Project Agreement, including in Schedule 15-3 – Maintenance and Rehabilitation Requirements;
 - (ii) this Section 9.6(d) shall not alter or impair the rights or obligations of Project Co provided in this Project Agreement, including in respect of Maintenance Services or otherwise in Schedule 15-3 – Maintenance and Rehabilitation Requirements; and
 - (iii) Project Co shall do all acts and things which are necessary or desirable to permit complete access to the MSFs (and the remainder of the System) by the City (or a Police Service, if applicable) for the purposes of this Section 9.6(d).
- (e) For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Site shall not be a breach of the obligation of the City to grant licence rights of use and access to Project Co on and over the Lands pursuant to Section 14, nor a breach of any other obligation, representation or warranty under this Project Agreement.

9.7 Additional Works/Third Party Works

- (a) The City reserves the right to carry out Additional Works and to issue permissions, consents, approvals, certificates, licences, agreements and authorizations, permits in respect of Third Party Works. The City may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the Third Party Works and the safety training in respect of the Additional Works and the Third Party Works to Project Co.
- (b) In connection with the Additional Works, the City shall:
- (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site and the Highway Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with (A) the Design and Construction Works during the performance of the Design and Construction Works, (B) the Highway Work during the performance of the Highway Work, and (C) at the request of the City, with the Maintenance Services during the performance of the Maintenance Services as the City considers appropriate taking into account the nature of the Additional Works and the potential for impact on the Maintenance Services;
 - (ii) enter into separate contracts with Additional Contractors under conditions of contract which are compatible with the conditions of this Project Agreement and provide for compliance by Additional Contractors with Section 9.7(d) and all directions of Project Co in respect of any matter regarding health and safety on the Site and the Highway Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works in those cases where the City has requested Project Co to proceed in accordance with Section 9.7(d) during the performance of the Works and the Highway Work and

- during the performance of the Maintenance Services only to the extent that such Additional Works materially adversely affect Project Co's ability to provide the Maintenance Services;
- (iii) ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than \$; and
 - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Third Party Works, the City shall:
- (i) cause Third Party Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site and the Highway Site and coordination and scheduling of the Third Party Works with (A) the Design and Construction Works during the performance of the Design and Construction Works, (B) the Highway Work during the performance of the Highway Work; and (C) at the request of the City, with the Maintenance Services during the performance of the Maintenance Services as the City considers appropriate taking into account the nature of the Third Party Works and the potential for impact on the Maintenance Services;
 - (ii) issue encroachment permits to Third Party Contractors containing conditions which are compatible with the conditions of this Project Agreement and provide for compliance by Third Party Contractors with Section 9.7(d) and all directions of Project Co in respect of any matter regarding health and safety on the Site and the Highway Site and coordination and scheduling of the Third Party Works in those cases where the City has requested Project Co to proceed in accordance with Section 9.7(d) during the performance of the Works and Highway Work and during the performance of the Maintenance Services only to the extent that such Third Party Works materially adversely affect Project Co's ability to provide the Maintenance Services; and
 - (iii) require (A) that insurance coverage is provided as would be required by a prudent owner similarly situated and (B) that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works or Highway Work and in any event, such insurance shall provide for liability insurance of not less than \$.
- (d) In connection with the Additional Works and the Third Party Works, Project Co shall, during the performance of the Design and Construction Works and the Highway Work, and at the request of the City, during the performance of the Maintenance Services as the City considers appropriate taking into account the nature of the Additional Works or the Third Party Works, as applicable, and the potential for impact on the Maintenance Services:

- (i) where the City has assigned to Project Co the matters referred to in Section 9.7(a) and subject to the performance by the City of its obligations under Sections 9.7(b)(i) and (ii) or Sections 9.7(c)(i) and (ii), as applicable:
 - (A) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works and the Third Party Works with the Works and the Highway Work to be performed under this Project Agreement; and
 - (B) for the Additional Contractors and in respect to such Additional Works and for the Third Party Contractors and in respect to such Third Party Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety at the Site and the Highway Site, including all the responsibilities of the ‘constructor’ under the OHSA, prior to Revenue Service Availability and, at the request of the City exercised in a manner consistent with the said Act, at any time that Project Co is acting as a ‘constructor’ on the Site and the Highway Site following Revenue Service Availability;
 - (ii) afford Additional Contractors and Third Party Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works and the Third Party Works, as applicable;
 - (iii) participate with the City, Additional Contractors and Third Party Contractors, as applicable, in reviewing their construction schedules when directed to do so by the City; and
 - (iv) where part of the Works or the Highway Work is affected by or depends upon, for its proper execution, the Additional Works or the Third Party Works, promptly report to the City in writing and prior to proceeding with that part of the Works or the Highway Work any readily apparent deficiencies in the Additional Works or the Third Party Works. Failure by Project Co to so report shall invalidate any claims against the City by reason of such readily apparent deficiencies.
- (e) In the case of Additional Works and Third Party Works carried out prior to Revenue Service Availability, if:
- (i) any Additional Contractors or Third Party Contractors cause any damage to the Design and Construction Works or the Highway Work;
 - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule or the Highway Construction Schedule as a result of any Additional Contractors or Third Party Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
 - (iii) subject to the performance by Project Co of its obligations under Section 9.7(d), if Project Co incurs any additional costs or there is any delay in the Works Schedule

or the Highway Construction Schedule as a result of any such Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional Contractors in accordance with Good Industry Practice (Works) and Good Industry Practice (Highway Work) and in accordance with the terms of their respective contracts or engagements with the City) or any Third Party Works,

then any such delay in the Works Schedule, the Highway Construction Schedule or additional costs in respect of the Design and Construction Works or the Highway Work shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.

- (f) Claims, disputes, and other matters in question between Project Co and Additional Contractors or Third Party Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors and Third Party Contractors have reciprocal obligations and the City has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Additional Contractors and the encroachment permits with the Third Party Contractors, as applicable. Project Co shall be deemed to have consented to arbitration of any dispute with any Other Contractor whose contract with the City or encroachment permit, as applicable, contains a similar agreement to arbitrate.
- (g) In connection with the Additional Works, Project Co may request a Variation as follows:
- (i) Project Co shall have a period of 10 Business Days following notice from the City of the City’s intention to carry out such Additional Works including a reasonable description of such Additional Works to request a Variation if such Additional Works are (A) reasonably expected to make a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice (Works) or Good Industry Practice (Highway Work), void or (B) reasonably expected to have a material negative consequence on Project Co’s ability to perform any of the activities within the Project Scope or (C) reasonably expected to make a warranty provided by DB Co, any DB Co Party or any supplier to any of them void;
 - (ii) if Project Co has made a request for a Variation in accordance with Section 9.7(g)(i), the City shall, within 10 Business Days of such request, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
 - (iii) either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the activities within the Project Scope for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iv) where the City has, under Section 9.7(g)(ii), given notice to Project Co that it does not agree that a Variation is required, the City shall, within 10 Business Days of a

subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:

- (A) the City shall not be entitled to withdraw any such Variation Enquiry unless the City determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.7(g)(i)) or will not result in any material negative consequence on Project Co's ability to perform any activities within the Project Scope and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (h) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors and the Third Party Works performed by Third Party Contractors on and to the Works or the Highway Work performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works or the Highway Work, except to the extent expressly described in any Variation Confirmation.
- (i) Without prejudice to the terms of the Belfast MSF Expansion Variation, and in so far as such matters may impact on the performance of the Maintenance Services:
- (i) if any Additional Belfast MSF Expansion Works (as such term is defined in Schedule 45) are carried out, such works shall be treated as being Additional Works performed by Additional Contractors (and not work carried out by Project Co or any Project Co Party) for the purposes of Sections 9.7(f) and 9.7(g); and
 - (ii) if any Belfast MSF Expansion Third Party Works (as such term is defined in Schedule 45) are carried out, such works shall be treated as being Third Party Works performed by Third Party Contractors (and not work carried out by Project Co or any Project Co Party) for the purposes of Sections 9.7(f) and 9.7(g).
- (j) In so far as such matters may impact on the performance of the Maintenance Services:
- (i) if any Additional Works (as such term is defined in the DB Co Works Agreement) are carried out, such works shall be treated as being Additional Works performed by Additional Contractors for the purposes of Sections 9.7(f) and 9.7(g); and
 - (ii) if any Third Party Works (as such term is defined in the DB Co Works Agreement) are carried out, such works shall be treated as being Third Party Works performed by Third Party Contractors for the purposes of Sections 9.7(f) and 9.7(g).

The City shall notify Project Co of its intent to carry out Additional Works or Third Party Works (as each such term is defined in the DB Co Works Agreement).

9.8 Algonquins of Pikwakanangan

- (a) Project Co acknowledges that the nature of the Design and Construction Works and the Maintenance Services has been discussed with the Algonquins of Pikwakanangan. This First Nation group has notified the City that personnel, equipment and resources are available to Project Co, if required. Project Co shall contact the Algonquins of Pikwakanangan in writing, copying the City, and invite them to a meeting to discuss the availability of personnel, equipment and materials for the Design and Construction Works and the Maintenance Services.

9.9 Meeting with the National Arts Centre

- (a) The City may, in its Discretion, at any time during the Design Period and upon 30 days written notice to Project Co, convene a one (1) day meeting between Project Co and the National Arts Centre to discuss the feasibility and potential of adding a connection from the Downtown East Station to the existing parking garage tunnel of the National Arts Centre, located under Queen Street west of Elgin Street in which case Project Co shall attend the one (1) day meeting.
- (b) If directed by the City to attend the one (1) day meeting Project Co shall provide the following to the City at least 5 days prior to the meeting for review, comment and, if acceptable to the City, use, at such meeting:
- (i) schematic design drawings in plan and cross section of a recommended design for the pedestrian tunnel;
 - (ii) schematic design drawings showing how this tunnel would integrate into the Downtown East Station concourse;
 - (iii) order of magnitude cost estimate; and
 - (iv) preparation for discussions on constructability, schedule and other impacts.

9.10 DB Co Interface Agreement

- (a) Concurrently with, or promptly after, the City executing the DB Co Works Agreement with DB Co, the parties shall, and the City shall cause DB Co to, enter into the DB Co Interface Agreement.
- (b) If the DB Co Works Agreement is terminated prior to the occurrence of both of the East Final Completion Date (as defined in the DB Co Works Agreement) and the West Final Completion Date (as defined in the DB Co Works Agreement), the City shall issue a Variation Enquiry to amend or supplement this Project Agreement, including the Stage 2 Variation Schedules, either: (i) with a view to the City procuring a replacement contractor

to complete the remaining scope of the work under the DB Co Works Agreement; or (ii) to reflect any alternative course of action that the City may decide to take, and in each case for Project Co's obligations under this Project Agreement, including the Stage 2 Variation Schedules, to be adjusted accordingly to accommodate this in a manner that is consistent with the Stage 2 MOU and Project Co's assumption of risk thereunder. The relevant provisions of Schedule 22 - Variation Procedure shall apply except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree.

- (c) Upon the City entering into a contract with any such replacement contractor for the purposes of completing the remaining scope of work under the DB Co Works Agreement, the parties shall, and the City shall cause such replacement contractor to, enter into a form of interface agreement which shall be consistent with the terms of the DB Co Interface Agreement.

9.11 Enforcement of DB Co Works Agreement and Related Agreements

- (a) Subject to Section 9.13, the City and Project Co agree that, for the purposes of this Agreement:
 - (i) subject to Section 9.14(b), the consequences of any delay caused to the Stage 2 East Substantial Completion Date and/or the Stage 2 East Revenue Service Commencement Date, or to the Stage 2 West Substantial Completion Date and/or the Stage 2 West Revenue Service Commencement Date (including in each case as a result of any delay in the DB Co Works) shall be governed by Section 5.3 of Part B of Schedule 20;
 - (ii) without prejudice to paragraph (iv) below, the consequences of any non-compliance by DB Co with the terms of the DB Co Works Agreement that is discovered by Project Co prior to the Stage 2 East Substantial Completion Date or (as the case may be) to the Stage 2 West Substantial Completion Date shall be governed by:
 - (A) the terms of the Stage 2 Interface and Design Management Variation; and
 - (B) the obligations in the DB Co Interface Agreement, to the extent applicable;
 - (iii) without prejudice to paragraph (iv) below, the consequences of any DBF Defect that is discovered by Project Co after the Stage 2 East Substantial Completion Date or (as the case may be) the Stage 2 West Substantial Completion Date shall be governed by:
 - (A) the obligations in the DB Co Interface Agreement, including Appendix 5 – Warranty Protocol, in relation to DB Co's obligation to rectify DBF Defects and in relation to Project Co's entitlement to costs and other Direct Losses from DB Co;

- (B) the provisions of Section 42.1(a)(xix) and Section 42.1(a)(xx), in relation to Project Co's entitlement to relief from its obligations under this Project Agreement as result of such non-compliance by DB Co; and
- (iv) the consequences of any interference by DB Co with the performance by Project Co of its obligations or other loss or damage caused by DB Co or any DB Co Party shall be governed by the remaining provisions of this Agreement, subject, where applicable, to the application of Section 9.12 [Equivalent Project Relief].

9.12 Equivalent Project Relief

- (a) The City shall:
 - (i) perform all of its obligations under the DB Co Works Agreement to the extent failure to do so would adversely affect Project Co or its rights under the DB Co Interface Agreement or this Project Agreement;
 - (ii) enforce its rights under the DB Co Works Agreement in accordance with this Section 9.12; and
 - (iii) not make or agree to make any amendment to or variation of the DB Co Works Agreement without complying with the provisions of Schedule 43 to this Project Agreement, *mutatis mutandis*.
- (b) The Parties agree that:
 - (i) certain entitlements of the City under the DB Co Works Agreement are related to the Project Scope or the rights and entitlements of Project Co under this Project Agreement (including the Stage 2 Variations) or the DB Co Interface Agreement on the basis that Project Co is performing the Project Scope on behalf of the City and should have access to such entitlement on the same basis as if the City were performing the Project Scope on its own behalf (such entitlements being "**DB Co Direct Claim Entitlements**");
 - (ii) without prejudice to the right to claim DB Co Direct Claim Entitlements, certain entitlements of Project Co under this Project Agreement are triggered by the determination of breaches, acts or omissions of DB Co under the DB Co Works Agreement (or by parties for which DB Co is responsible under the DB Co Works Agreement) and that such entitlements shall be deemed to be subject to the operation of this Section 9.12, to the extent applicable (and subject in particular to Section 9.12(c)) (such entitlements being "**DB Co-Derived Project Co Entitlements**");
 - (iii) Project Co shall be entitled to receive the benefit of DB Co Direct Claim Entitlements and DB Co-Derived Project Co Entitlements (to the extent available to the City from DB Co, and in a such a way that avoids double counting) in accordance with and subject to the provisions of this Section 9.12, including, in the case of DB Co Direct Claim Entitlements, the benefit of any indemnification,

compensation, damages or other additional payment of any kind to the extent the City is entitled to indemnification, compensation, damages or other additional payment of any kind under the DB Co Works Agreement; and

- (iv) Project Co shall be entitled to make a claim under this Section 9.12 in addition to or instead of making a claim against DB Co under the DB Co Interface Agreement.

The City's entitlement under the DB Co Works Agreement in respect of the matters referred to in this Section 9.12 is referred to as "**Equivalent Project Relief**".

- (c) Notwithstanding Section 9.12(b) above, the Parties agree that:
 - (i) the relief and other rights provided to Project Co under Section 5.3 of Schedule 20 – Payment Mechanism shall not be subject to this Section 9.12, notwithstanding that the circumstances that gave rise to the delay in the occurrence of the Stage 2 East Revenue Service Commencement Date or Stage 2 West Revenue Service Commencement Date were caused or contributed to by DB Co, and such relief shall not be considered a DB Co-Derived Project Co Entitlement for the purposes of this Section 9.12;
 - (ii) the relief provided to Project Co under Section 42.1(a)(xix) shall not be subject to this Section 9.12;
 - (iii) to the extent any DB Co-Derived Project Co Entitlement under this Agreement does not consist of monetary compensation but relates to relief from the performance of obligations, Deductions or Failure Points under this Agreement that might flow from a breach, act or omission of DB Co or any DB Co Party:
 - (A) the existence and extent of such breach, act or omission shall be subject to provisions of this Section 9.12 (to the extent disputed by DB Co);
 - (B) to the extent such non-compliance, act or omission has been agreed by DB Co or determined against DB Co, the extent of the relief due to Project Co as a result of such agreed or determined matters shall not be dependent on any equivalent liability being established against DB Co and shall not be considered a DB Co-Derived Project Co Entitlement for the purposes of this Section 9.12; and
 - (C) Project Co's relief shall be applied retroactively to the date of the relevant breach, act or omission of DB Co or the DB Co Party and, to the extent this requires the City to reimburse Project Co for Deductions, Section 56.2(c) shall apply to such reimbursement on the basis that the payment was due at the time the relevant Deduction was incurred;
 - (iv) to the extent any DB Co-Derived Project Co Entitlement under this Agreement (not excluded by paragraphs (i) or (ii) above) consists of monetary compensation (whether expressed by way of Direct Losses, Direct Costs, indemnity,

reimbursement or otherwise), Project Co's entitlement to such compensation shall be subject to an agreement being reached with DB Co or a determination made in relation to DB Co which entitles the City to compensation in respect of the same facts or circumstances and shall be subject to the provisions of this Section 9.12.

- (d) If an event or circumstance occurs which gives rise to an entitlement on the part of Project Co to claim or receive the benefit of any Equivalent Project Relief, Project Co may upon the occurrence of such event or circumstance give notice (an "**EPR Claim Notice**") of the same to the City. Such EPR Claim Notice shall include full details of the relevant event or circumstance, having regard to the formal requirements set out in this Project Agreement and the DB Co Works Agreement, and such supporting documentation and information as the City may reasonably require.
- (e) Project Co shall give the relevant EPR Claim Notice to the City as soon as reasonably practicable after it becomes aware of the fact that an event or circumstance gives rise to a claim for Equivalent Project Relief (an "**EPR Claim**") (having regard to the extent possible to any time limit for submission of such EPR Claim by the City to DB Co under the DB Co Works Agreement).
- (f) If Project Co gives a EPR Claim Notice to the City, then, subject always to the provisions of Section 9.12(p):
 - (i) unless the City elects to inform Project Co under Section 9.12(f)(iii)(B) below, the City shall, promptly (having regard to the timeframe required for the determination under Section 9.12(f)(iii)(B) and the time limitations set out in the DB Co Works Agreement) following receipt of such notice, submit to DB Co an EPR Claim reflecting Project Co's EPR Claim Notice;
 - (ii) Project Co shall provide such additional details and/or information as may be reasonably requested by the City or by DB Co through the City in relation to the EPR Claim;
 - (iii) the City shall, at its option, either:
 - (A) use its reasonable commercial efforts to pursue the EPR Claim with DB Co, including taking all actions necessary to comply with any time limitations set out in the DB Co Works Agreement or applied by law, provided that Project Co shall: (i) provide all assistance which the City, acting reasonably, considers necessary to substantiate any EPR Claim, including the collection of information and details relating to the relevant EPR Claim and the making available of personnel as reasonably necessary to assist the City in the pursuit of the EPR Claim; and (ii) keep the City informed at all times (including providing copies of any relevant documentation reasonably requested) of any matter relevant to the pursuit of the EPR Claim of which Project Co becomes aware; or
 - (B) inform Project Co that the City does not wish to pursue such EPR Claim, but that the Project Co shall be entitled to recover from the City the full

benefit of the Equivalent Project Relief pursuant to the provisions of Section 9.12(p).

- (iv) if the City pursues the EPR Claim pursuant to Section 9.12(f)(iii)(A):
 - (A) Project Co and relevant Project Co Parties shall be entitled, and may be required by the City, to attend any meetings between the City and DB Co at which the EPR Claim is to be discussed and Project Co may, at its sole cost and expense, appoint counsel for such purpose;
 - (B) the City shall consult with and use reasonable efforts to agree with Project Co with respect to the appointment of counsel (other than counsel appointed by Project Co pursuant to Section 9.12(f)(iv)(A)) and other third party advisors, provided that (subject to paragraph (C) below) the City shall have sole discretion in such appointments after reasonable consultation and reasonable efforts to agree with Project Co;
 - (C) if such EPR Claim is solely for the benefit of Project Co or Project Co Parties, the City shall not be entitled to settle any EPR Claim, or waive any contractual right to an EPR Claim without the prior written consent of Project Co, and for such EPR Claims, Project Co's consent shall be required before the City shall appoint counsel pursuant to paragraph (B) above;
 - (D) in all other cases, the City shall not be entitled to settle any EPR Claim, or waive any contractual right to an EPR Claim if such settlement or waiver would adversely affect any right of Project Co, without the prior written consent of Project Co, such consent not to be unreasonably withheld or delayed; and if Project Co withholds its consent to settlement of a EPR Claim or waiver of a contractual right to a EPR Claim, so that the City is required to continue to pursue such EPR Claim, then, Project Co shall be liable for and shall indemnify and hold harmless the City from and against the value to the City of any lost settlement or agreement previously available to the City should the pursuit of such EPR Claim prove unsuccessful, provided always that the City shall not be entitled to double recovery; and
 - (E) if such EPR Claim is solely for the benefit of Project Co or Project Co Parties, the City shall be entitled reimbursement by Project Co of the City's reasonable costs and expenses properly incurred in pursuing such EPR Claim within 21 days of a written request from the City detailing such costs and expenses; or, if such EPR Claim is for the joint benefit of the City and Project Co or Project Co Parties, the City shall be entitled to reimbursement of a fair and reasonable proportion of the City's reasonable costs and expenses incurred in pursuing such EPR Claim, it being acknowledged between the City and Project Co that the party(ies) bearing the risks and costs associated with an entitlement shall be responsible for a

proportionate amount of the costs and expenses related to pursuing such entitlement. If the Parties are unable to agree on what is a fair and reasonable proportion of the City's reasonable costs and expenses within 21 days of a written request by the City, either Party may refer the matter to the Dispute Resolution Procedure.

- (g) Project Co shall be entitled to the benefit of any Equivalent Project Relief in relation to a DB Co-Derived Project Co Entitlement immediately following:
- (i) an agreement between the City and DB Co effected in accordance with Section 9.12(f)(iv)(C) or 9.12(f)(iv)(D) and subject to the provisions of Section 9.12(i); or
 - (ii) a determination made pursuant to the dispute resolution procedure under the DB Co Works Agreement which is binding upon the City and DB Co.
- (h) Project Co shall be entitled to the benefit of any Equivalent Project Relief in relation to a DB Co Direct Claim Entitlement to the extent that the City is or becomes entitled under the DB Co Works Agreement as provided in Section 9.12(b) and 9.12(i), but in any event to no greater extent than the City's entitlement under the DB Co Works Agreement determined pursuant to either:
- (i) an agreement between the City and DB Co effected in accordance with Section 9.12(f)(iv)(C) or 9.12(f)(iv)(D) and subject to the provisions of Section 9.12(i); or
 - (ii) a determination made pursuant to the dispute resolution procedure under the DB Co Works Agreement which is binding upon the City and DB Co.
- (i) Project Co's entitlement to the benefit of any Equivalent Project Relief in relation to a DB Co Direct Claim Entitlement shall:
- (i) where the agreement or determination referred to in Section 9.12(g)(i) expressly separately identifies the amount, nature or extent of the City's entitlement attributable to Project Co or the Project Scope or Stage 2 Variations, be the amount, nature or extent so identified; or
 - (ii) where the agreement or determination referred to in Section 9.12(g)(i) does not separately identify the amount, nature or extent of the City's entitlement attributable to Project Co or the Project Scope or Stage 2 Variations, be a fair and reasonable proportion of the City's entitlement, it being acknowledged between the City and Project Co that the party(ies) bearing the risks and costs associated with an entitlement shall be entitled to a proportionate amount of the benefit arising therefrom.
- (j) If the Parties are unable to agree, pursuant to Section 9.12(i)(ii) on what is a fair and reasonable proportion of such entitlement within 21 days of a written request by either

Party to agree on the same, either Party may refer the matter to the Dispute Resolution Procedure.

- (k) Without prejudice to the provisions of Section 9.13, following agreement or determination of the entitlement of Project Co under Sections 9.12(i) or 9.12(j), as the case may be, the City shall pay to Project Co the amount of such entitlement promptly, and in any event no later than three Business Days, after receipt of the corresponding amount (and in accordance with the provisions of Section 9.12(i)).
- (l) Without prejudice to the arrangements for interim relief under Section 42, pending the determination, agreement or resolution of Project Co's entitlement to Equivalent Project Relief, the Project Co shall continue to perform its obligations under this Project Agreement and shall take no steps to enforce any right under this Project Agreement whether by set-off against sums otherwise payable to the City, by commencing proceedings of any kind, by counterclaiming in any proceedings or otherwise howsoever, to the extent that, pursuant to the terms of this Project Agreement, such right depends upon or is related to the relevant agreement or determination of Equivalent Project Relief. Notwithstanding the foregoing, the Parties agree that nothing contained in this Section 9.12(l) will preclude Project Co from commencing legal proceedings in the Courts of Ontario if such proceedings are necessary to preserve any applicable limitation period.
- (m) Following the determination, agreement or resolution of Project Co's entitlement to the benefit of any Equivalent Project Relief, Project Co shall be conclusively deemed to have waived any rights under or in connection with this Project Agreement in excess of those arising from such determination, agreement or resolution, except insofar as such rights arise from or as a result of any failure on the part of the City to comply with its obligations to Project Co under this Project Agreement. Accordingly, except as provided in the preceding sentence, Project Co shall not take any steps, under the Dispute Resolution Procedure or otherwise, to argue that any entitlement of Project Co under Section 9.12(c) should be resolved other than by reference to the resolution of Project Co's entitlement to the benefit of any Equivalent Project Relief and Project Co hereby waives any right to do so.
- (n) If, in relation to any Equivalent Project Relief (for this purpose including any claim referred to in Section 9.12(c)(iii) or 9.12(c)(iv)), the City fails to comply with its obligations under this Project Agreement, including, without limitation, failure to comply with Sections 9.12(a) or 9.12(o), and as a consequence of such failure the entitlement of Project Co is likely to be reduced or lost, then, unless such failure was caused by any act or omission by Project Co or any Project Co Party, Project Co may give notice to the City specifying the failure and the likely reduction in or loss of the entitlement of Project Co and requiring the City to remedy the relevant failure.
- (o) If the City fails:
 - (i) to remedy such failure within 15 Business Days of the date of receipt of notice pursuant to Section 9.12(n);

- (ii) to provide Project Co with proposals for remedying such failure which are acceptable to Project Co, acting reasonably, within 15 Business Days of the date of receipt of notice pursuant to Section 9.12(n); or
- (iii) to fulfil the terms of an acceptable proposal provided to Project Co in accordance with Section 9.12(o)(ii),

Project Co may serve a further notice upon the City that Project Co is no longer bound by the provisions of Sections 9.12(f) to 9.12(m) in relation to the entitlement concerned.

- (p) If:
 - (i) the provisions of Sections 9.12(f) to 9.12(m) are disapplied in accordance with Section 9.12(o); or
 - (ii) the City has elected not to proceed with a EPR Claim pursuant to Section 9.12(f)(iii)(B),

then Project Co shall be entitled to recover from the City the full benefit of the Equivalent Project Relief it would have been entitled to claim as if the City had complied in full with its obligations under this Section 9.12 and as if the City had succeeded in obtaining the full entitlement from DB Co under the DB Co Works Agreement.

- (q) The provisions of Sections 9.12(b) to 9.12(p), inclusive, are without prejudice to any other express rights and remedies available to Project Co under this Project Agreement that are not subject to Equivalent Project Relief.
- (r) The Parties agree that EPR Claims made by Project Co under this Project Agreement:
 - (i) shall not, unless there is no other route of claim therefor, be made by the City as indemnity claims under section 46 of the DB Co Works Agreement (with a view to avoiding such claims counting towards the limit of liability of DB Co under section 47.4 of the DB Co Works Agreement) and the Parties shall consult in good faith on this matter prior to an EPR Claim being pursued with DB Co pursuant to this Section 9.12; and
 - (ii) shall not count towards or reduce the City's limit of liability to Project Co under Section 57.4.

9.13 Enforcement by City of DB Co claims

- (a) In the event that any amount is agreed or determined to be payable by DB Co:
 - (i) directly to Project Co under the DB Co Interface Agreement; or
 - (ii) to the City under the DB Co Works Agreement but which is payable to Project Co pursuant to the provisions of Section 9.12,

and which is not paid by DB Co within 30 days of the due date for payment in such agreement or determination, Project Co shall be entitled to request that the City shall, on its behalf, seek to recover such amounts from DB Co by way of set-off or through any performance security provided to the City under the DB Co Works Agreement.

- (b) Following a valid request by Project Co under Section 9.13(a), the City shall pay to Project Co (or procure that Project Co is paid) all such amounts:
- (i) where the City has a right of set off or liquid security from DB Co, within 10 days of such request; and
 - (ii) in all other circumstances, within 60 days of such request,

regardless in each case of whether the City has recovered the same from DB Co, provided that if the City receives any such sums from DB Co earlier than such date, it shall pass them over to Project Co within three Business Days of receipt. Following a request by Project Co, the method of recovery of such amounts shall be at the City's sole discretion.

- (c) The City's liability to Project Co under Section 9.13(b) shall not require it to compensate Project Co for any liability which is unrecoverable due to the application of the limit of liability referred to in Section 2.1(b)(ii) of the Performance Guarantee of Construction Guarantor (as defined in the DB Co Works Agreement).
- (d) In the event any determination referred to in Section 9.13(a) is overturned or varied pursuant to the DB Co Works Agreement or the DB Co Interface Agreement, and such amount is required to be repaid by the City to DB Co, the City shall immediately notify Project Co of such requirement and Project Co shall repay such amount directly to DB Co by the due date of such payment.

9.14 DB Co-derived Claims

- (a) If, in the performance of the Project Scope (and excluding, for the avoidance of doubt, for these purposes, the performance of activities under the Stage 2 Variation Schedules):
- (i) Project Co or any Project Co Party causes damage to the DB Co Works which entitles DB Co to additional compensation as a DB Co Compensation Event; or
 - (ii) Project Co's breach of this Project Agreement or the negligence or wilful misconduct of Project Co or any Project Co Party, entitles DB Co to additional compensation as a DB Co Compensation Event,

then Project Co shall be liable for, and indemnify the City from, any DB Co claim for additional compensation payable to DB Co as a result of such DB Co Compensation Event, provided that such liability shall count towards, and be subject to the availability of any capacity under, the limitation of liability under Section 2.4(a) of the DB Co Interface Agreement.

- (b) If, in the performance of the Project Scope (and excluding, for the avoidance of doubt, for these purposes, the performance of activities under the Stage 2 Variation Schedules):
- (i) Project Co or any Project Co Party causes damage to the DB Co Works which entitles DB Co to additional time as a DB Co Delay Event; or
 - (ii) Project Co's breach of this Project Agreement or the negligence or wilful misconduct of Project Co or any Project Co Party, entitles DB Co to additional time as a DB Co Delay Event,

then, notwithstanding anything herein to the contrary, Project Co shall not be entitled to a claim for Excusing Cause, Variation or other relief hereunder on account of the delay resulting from such DB Co Delay Event.

- (c) The provisions of Sections 9.14(a) and 9.14(b) shall not apply to the extent caused, or contributed to, by any of the matters set out in Sections 56.1(a)(A), (C) or (D).

10. REPRESENTATIVES

10.1 The City Representative

- (a) Subject to the limitations set out in Section 10.1(d), the City Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the City Representative and such other functions and powers of the City under this Project Agreement as the City may notify Project Co from time to time.
- (b) The City may, from time to time by written notice to Project Co, change the City Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no City Representative has been appointed, or when the City Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the City Representative's functions under this Project Agreement, the City shall perform or may, by written notice to Project Co, promptly appoint an alternative City Representative to perform the functions which would otherwise be performed by the City Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative City Representative which is permitted by this Project Agreement as being authorized by the City, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The City Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the City Representative which is authorized by this Project Agreement as being

authorized by the City, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of the City.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to the City, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek the City's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, the City and the City Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, the City and the City Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the City Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Design and Construction Works and the Highway Work are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Design and Construction Works and the Highway Work in the capacity set out in

Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Design and Construction Works or the Highway Work, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of the City such involvement would have a material adverse effect on the Design and Construction Works or the Highway Work.

- (b) The individuals who are critical to the performance of the Maintenance Services are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Maintenance Services in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Maintenance Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of the City, such involvement would have a material adverse effect on the Maintenance Services.
- (c) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of the City, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If the City determines, acting reasonably, that it is in the best interests of the City that any individual identified in Schedule 9 – Key Individuals be replaced, the City shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following the Design and Construction Works Commencement Date, establish a committee (the “Works Committee”) consisting of:
 - (i) the City Representative;
 - (ii) the City’s Project Manager;
 - (iii) 3 representatives appointed by the City from time to time;
 - (iv) the following 4 representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) 3 representatives of the Construction Contractor; and

- (v) 1 representative of IO appointed by the City.
- (b) The Independent Certifier and the Consultant shall be entitled, but not required, to attend meetings as a non voting member of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) 1 of the representatives of the City shall be the chairperson of the Works Committee.

11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Design and Construction Works and the Highway Work. The Works Committee shall interface with the Maintenance Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Design and Construction Works and the Highway Work, including:
 - (i) any design, construction and commissioning issues;
 - (ii) the Works Schedule and the Highway Construction Schedule;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier or the Consultant;
 - (iv) any quality assurance and safety and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by the City or Project Co;
 - (vii) any community and media relations issues in accordance with Schedule 18 – Communications and Public Consultation Protocol;
 - (viii) considering and making recommendations to the City to proceed or not to proceed with a Variation pursuant to Schedule 22 – Variation Procedure to address safety or security issues relating to, arising from, or having implications to the planning, implementation or performance of the Project Scope or the Operations, or any part; and
 - (ix) any other issues or matters pertaining to the Design and Construction Works and the Highway Work.

- (c) Subject to Section 11.2(d) any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
 - (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a Scheduled Milestone Acceptance Date, the Highway Scheduled Substantial Completion Date, Highway Scheduled Final Completion Date, the Required Revenue Service Availability Date or the Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co’s ability to achieve any Milestone Acceptance by the applicable Scheduled Milestone Acceptance Date, Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date, Highway Final Completion Date by the Highway Scheduled Final Completion Date, the Revenue Service Availability by the Required Revenue Service Availability Date or Final Completion by the Scheduled Final Completion Date; and
 - (v) any matter with respect to which the City has a right of consent or in respect of which the City may exercise discretion pursuant to this Project Agreement.

11.3 Term of Works Committee

- (a) Unless otherwise agreed, the Works Committee shall operate only until the Final Completion Date.

11.4 Replacement of Committee Members

- (a) The City shall be entitled to replace any of its representatives on the Works Committee by written notice to Project Co. The City will use commercially reasonable efforts to deliver prior written notice of any such replacements to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of the City.

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;

- (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee (other than members of the Works Committee) such persons as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from the Design and Construction Works Commencement Date until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
 - (c) Any one of the Project Co Representative and any of the City's representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
 - (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, the System, elsewhere in the City of Ottawa, Ontario or in any other location in Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
 - (e) 2 representatives of the City, the City Representative and the Project Co Representative shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
 - (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the City notifies Project Co within 5 Business Days of receipt of the minutes that the City disagrees with the contents of the minutes, the City and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by the City during regular business hours.

12. MAINTENANCE COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the Required Revenue Service Availability Date, establish a committee (the “**Maintenance Committee**”) to serve from the Revenue Service Commencement Date until the Termination Date consisting of:
- (i) the City Representative;
 - (ii) the City’s Project Manager;
 - (iii) 3 representatives appointed by the City from time to time; and
 - (iv) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative and the other shall be appointed by Project Co from time to time provided 1 of the 2 senior representatives shall be a representative of the Maintenance Contractor.
- (b) Members of the Maintenance Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Maintenance Committee.
- (c) 1 of the representatives of the City shall be the chairperson of the Maintenance Committee.

12.2 Function and Role

- (a) The Maintenance Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Scope, both prior to and during the Maintenance Term. The Maintenance Committee shall interface with the Works Committee as and when required.
- (b) The Maintenance Committee shall be responsible for receiving and reviewing all matters related to the Project Scope (excluding the Design and Construction Works, the Highway Work and the Stage 2 Project Co Delivery Scope), both prior to and during the Maintenance Term, including:
- (i) any joint review of the Maintenance Services and the Expanded Output Specifications;
 - (ii) any performance, quality assurance, safety, and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;
 - (iii) any special matter referred to the Maintenance Committee by the City or Project Co;

- (iv) any community and media relations issues in accordance with Schedule 18 – Communications and Public Consultation Protocol;
 - (v) considering and making recommendations to the City to proceed or not to proceed with a Variation pursuant to Schedule 22 – Variation Procedure to address safety or security issues relating to or arising from the Maintenance Services, including those that may arise from, be identified with, have implications to, or otherwise by having regard to, the Project Scope or the Operations; and
 - (vi) any other issues pertaining to the Project Scope (excluding the Design and Construction Works, the Highway Work and the Stage 2 Project Co Delivery Scope).
- (c) Subject to Section 12.2(d), any unanimous decision of the Maintenance Committee shall be final and binding on the Parties. If the Maintenance Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Maintenance Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co’s ability to perform the Maintenance Services or the performance by the relevant parties of any City Activities; or
 - (iv) any matter with respect to which the City has a right of consent or in respect of which the City may have discretion pursuant to this Project Agreement.

12.3 Replacement of Committee Members

- (a) The City shall be entitled to replace any of its representatives on the Maintenance Committee by written notice to Project Co. The City will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Maintenance Committee with the prior written consent of the City.

12.4 Procedures and Practices

- (a) The members of the Maintenance Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Maintenance Committee as they consider appropriate from time to time;

- (ii) invite to any meeting of the Maintenance Committee such other persons as the members of the Maintenance Committee may agree;
 - (iii) exclude from any meeting of the Maintenance Committee (other than members of the Maintenance Committee) such persons as the members of the Maintenance Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Maintenance Committee.
- (b) Once established, the Maintenance Committee shall meet at least once each month during the Maintenance Term, unless otherwise agreed by the members of the Maintenance Committee or the Parties.
- (c) Any member of the Maintenance Committee may convene a special meeting of the Maintenance Committee at any time. Special meetings of the Maintenance Committee may be convened on not less than 5 Business Days notice to all members of the Maintenance Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Maintenance Committee, the Maintenance Committee shall meet at the Site, the System, elsewhere in the City of Ottawa, Ontario or in any other location in Ontario. Meetings of the Maintenance Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Maintenance Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of the City and 1 representative of Project Co shall constitute a quorum at any meeting of the Maintenance Committee. A quorum of members may exercise all the powers of the Maintenance Committee. The members shall not transact business at a meeting of the Maintenance Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Maintenance Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the City notifies Project Co within 5 Business Days of receipt of the minutes that the City disagrees with the contents of the minutes, Project Co and the City shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Maintenance Committee and shall make such minutes available for inspection by the City during regular business hours.

13. QUALITY ASSURANCE

- (a) Project Co shall comply with the provisions of Schedule 11 – Quality Management.

14. LICENCE

14.1 Licence to Lands

- (a) Subject to this Section 14 and Section 4, and subject to the limits on the Real Property Interests, including commencement dates and durations of Temporary Construction Easements, described in the Real Property Schedule, effective from Commercial Close until the Termination Date, the City hereby grants or has caused to be granted and shall continuously from and after such grants until the Termination Date grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence, rights of use and access to, on and within the Lands and the System as are required by Project Co and Project Co Parties to allow Project Co and the Project Co Parties to perform the activities within the Project Scope, including Project Co's obligations pursuant to Sections 9.5 and 9.6. To the extent Project Co or any Project Co Party requires access to any part of the Lands or the System for the purposes of performing the Project Scope where that part of the Lands or the System would not otherwise fall within the definition of Lands or System due to the Timing Principle, the licence, rights of use and access granted under this Section 14.1 shall extend to those areas of the Lands and the System, subject to any restrictions set out in this Section 14 and/or in the DB Co Interface Agreement.
- (b) The City shall acquire the Real Property Interests in the After-Acquired Lands described in the Real Property Schedule on or prior to the possession dates set out in the said Schedule. The City shall provide written Notice of the possession of Real Property Interests in After-Acquired Lands to Project Co at which time such Real Property Interests shall be deemed to form part of the Lands and shall automatically be included in the Licence described in Section 14.1(a) above.
- (c) Subject to Project Co's obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands or accessing the System, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (d) In consideration for the licences granted pursuant to Sections 14.1(a) and 14.1(b) and Section 9.1 of Schedule 40 – Highway Work, Project Co shall perform the Project Scope subject to and in accordance with this Project Agreement.
- (e) Without derogating from any of the City's rights hereunder, the City acknowledges that, in respect of the Project Scope, Project Co and the Project Co Parties require, and the City shall provide access to the Lands and the After-Acquired Lands without material interference by the City or any City Party from the dates set forth in Sections 14.1(a) and 14.1(b) respectively, and subject to any limitation on any Real Property Interest in the Lands described in Appendix 2 to Schedule 1 – Definitions and Interpretation, until the Termination Date.
- (f) None of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Lands or exceed any limits on the Real Property Interests in the Lands

as more particularly described in Appendix 2 to Schedule 1 – Definitions and Interpretation, or to any lands other than the Lands, other than easements and similar interests of the City which benefit the Lands, obtained after Commercial Close, to the extent the same are necessary for carrying out the Project Scope.

- (g) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.
- (h) For greater certainty, the licence provided in this Section 14.1 shall not entitle Project Co or any Project Co Party to extract any mineral or other materials from the Lands for sale. Extracted materials, including minerals that can be sold remain property of the City. Subject to the City's rights in respect of extracted materials that can be sold, Project Co can use materials extracted from the Lands in carrying out the Project Scope.
- (i) Notwithstanding any other provisions of this Project Agreement, Project Co's obligations under this Project Agreement which require rights of use and access to the Lands in order to be carried out do not become effective until such rights of use and access have been granted by the City to Project Co pursuant to this Section 14.1. For greater certainty, Project Co shall have no obligation or authorization to commence the Design and Construction Works on the Site until the Design and Construction Works Commencement Date.

14.2 Non-exclusive Licence/Development of Lands

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that the City and any person authorized by the City may occupy and possess the Lands and the System without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works and including any occupation and possession contemplated by the DB Co Interface Agreement. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that the City may from time to time use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the Lands (including carrying out the Business Opportunities) other than that portion of the Lands contained within the footprint of the Alignment and those other portions of the Lands necessary for the performance of the activities within the Project Scope. To the extent that such use, development or disposition materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the activities within the Project Scope, such use, development or disposition shall, subject to and in accordance with Schedule 22 – Variation Procedure, subject to the provisions relating thereto in Section 4, result in a Variation.

14.3 Naming and Signage

- (a) Project Co acknowledges that the City reserves and retains (i) all rights to designate the name for the System and any part of the System; (ii) all rights to signage in relation to the Lands and the System; and (iii) all rights, Trade-Marks, naming or branding regarding the System or any part of the System. It is agreed, however, that, with the prior written consent of the City in its Discretion, which may take into consideration any applicable governmental guidelines, including guidelines set out in Schedule 18 – Communications and Public Consultation Protocol, Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Revenue Service Availability, erect and maintain signage at or on the Lands or System (which may include such parties' logos and trade names) identifying their respective roles in connection with the development and construction of the Project in a number and location and having a size and quality previously approved by the City.
- (b) Project Co acknowledges and agrees that the City may, in its Discretion, require the prompt removal of signage, including, for clarity, signage which has been approved in accordance with Section 14.3(a), at any time whatsoever. For greater clarity, Project Co acknowledges and agrees that the City may, in its Discretion, require prompt removal of any logo or trade name on any signage erected in relation to the Lands and the System that is contrary to any signage or sponsorship rights granted to third parties.
- (c) Project Co shall not use or display the logos of the City or IO or create any association therewith without the prior written consent of the City or IO, as the case may be, which consents will be in the Discretion of the City or IO, as the case may be.

14.4 No Interest in Land

- (a) Subject to Section 55.1, Project Co agrees that it acquires no estate, right, title or ownership interest in the Lands or the System or any other interest in land pursuant to this Project Agreement or otherwise, provided, that solely for the purposes of the obligation of Project Co to comply with the CLA, the licence granted to Project Co of use and access to, on and over the Lands and the System pursuant to Section 14.1 shall, for the duration of the performance of the Works, be an interest in the premises, and Project Co acknowledges and agrees that no disposition of an interest in the Lands and the System arises as a result of the aforesaid grant.

14.5 Non-Disturbance Agreement

- (a) If the City encumbers the Lands, the City shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the encumbrancer of the Lands permitting Project Co and the Lender's Agent to access and use the Lands under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from the encumbrancer or any person claiming by or through the encumbrancer so long as Project Co continues to abide by the terms and conditions of this Agreement. This Section 14.5 shall not apply in respect of any portion of the Lands used or developed

pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Scope pertain to such portion of the Lands.

14.6 References to Project Scope

- (a) Any reference to Project Scope in this Section 14 shall not apply to the Highway Work.

15. TITLE ENCUMBRANCES

15.1 Title Encumbrances

- (a) Project Co shall perform all obligations under all Encumbrances and Title Encumbrances for or on behalf of the City, other than:
- (i) obligations which Project Co is not legally capable of performing for or on behalf of the City;
 - (ii) obligations under any Encumbrance (which is not a Title Encumbrance) added after the date of this Project Agreement (or, in the case of the Stage 2 Lands, after the date of the DB Co Works Agreement) unless:
 - (A) such obligations are provided in the Output Specifications as obligations of Project Co; or
 - (B) the Parties agree, both acting reasonably, that such obligations are obligations of Project Co; or
 - (C) such Encumbrances are necessary or desirable for the City's purposes and do not materially interfere with the use of the Lands for purposes of the Project Scope.
- (b) All activities within the Project Scope performed by or on behalf of Project Co, whether before, during or after the completion of the Design and Construction Works, shall be performed in a manner which does not breach the Encumbrances, Title Encumbrances or any Development Approval.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Site or any part of it, except in accordance with the terms of this Project Agreement.

15.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Lands or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.

- (b) Project Co shall promptly notify the City of any Encumbrance which is not a Title Encumbrance as soon as it becomes aware thereof.
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party which has not been consented to in writing by the City, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, the City will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (d) In the event that the Lands or any part thereof or any interest therein is or becomes subject to any Encumbrance which is not a Title Encumbrance and which is not due to an act or omission of Project Co or any Project Co Party, prior to performing obligations under any such Encumbrance, Project Co shall notify the City of any such Encumbrance and the City shall:
- (i) cause the Encumbrance to be removed, vacated or discharged;
 - (ii) perform the required obligations thereunder; or
 - (iii) instruct Project Co to perform the required obligations thereunder.
- (e) If Section 15.2(d) requires Project Co to perform obligations under an Encumbrance which performance imposes costs or delays on performance of the activities within the Project Scope, such performance:
- (i) prior to Revenue Service Availability shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Revenue Service Availability shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

15.3 Construction Lien Act (Ontario)

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made upon or against the Lands and the Highway Site pursuant to the CLA and shall also apply to claims made against the City or the holdback under the CLA as though such a claim were an Encumbrance against the Lands or the Highway Site as referred to therein.
- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA and for the purposes of

the CLA, the contracts entered into by and between Project Co and any Subcontractor in relation to the performance of the Design and Construction Works and the Highway Work shall be considered a “contract” as defined in the CLA.

- (c) In furtherance of Section 15.3(b), Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law. For greater certainty, if a Subcontract has been certified complete in accordance with the requirements of the CLA, and if all liens in respect of that completed Subcontract have expired under the CLA or have been satisfied, discharged or provided for in accordance with the CLA, and all requirements of this Project Agreement have been complied with, then, the payer upon such Subcontract may make payment reducing holdbacks required by the CLA to the extent of the amount of holdback the payer has retained in respect of the completed Subcontract. Nothing in this Section 15.3(c) obligates the City to make any payment in respect of the completed Subcontract prior to the schedule for payments (including, but not limited to, any Milestone Payment, the Highway Milestone Payment and the Highway Final Payment) set out in this Project Agreement.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice (Works) and Good Industry Practice (Highway Work) for posting and advertising certificates of completion when issued.
- (e) The parties acknowledge and agree that Section 20(2) of the CLA applies and that all liens shall arise and expire on a lot-by-lot basis, which, in the context of this Project Agreement, shall mean on the System and Highway basis.
- (f) Project Co shall promptly provide the City with a copy of any materials which are provided to the Lenders to evidence compliance with the CLA.
- (g) Upon request by the City, Project Co shall perform and deliver to the City a subsearch of title on the Lands, the Highway Site or any part thereof. The City shall pay the reasonable costs of any such search except (i) a search that reveals Encumbrances that are not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands or the Highway Site, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from the Lands or the Highway Site.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2, 16.3, 16.4 and 16.5 Project Co acknowledges and agrees that it has investigated the Lands, the Other Existing Infrastructure and the Site Conditions, including the Background Information, prior to executing this Project Agreement and

agrees to accept the Lands, the Other Existing Infrastructure and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party on any grounds relating to the Lands, the Other Existing Infrastructure or the Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Lands, the Other Existing Infrastructure or the Site Conditions was given to it by any person, whether or not a City Party, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Lands, the Other Existing Infrastructure or the Site Conditions provided by such person to Project Co.

- (b) Subject to Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) received all design data, warranties and all other applicable information in relation to the Stage 1 System, (to the extent such information is available as of Commercial Close);
 - (ii) satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of the Other Existing Infrastructure;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Lands or migrating to or from the Lands;
 - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands;
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties and will comply and will ensure compliance by all Project Co Parties with all communication and record keeping obligations in respect thereof in accordance with Schedule 18 – Communications and Public Consultation Protocol and Schedule 26 – Record Provisions; and
 - (vii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate

that Project Co would be unable to perform the activities within the Project Scope in a lawful manner.

16.1A Highway Site Investigation - Concealed or Unknown Conditions

- (a) Project Co acknowledges that it has been provided with the Highway Site Background Reports and has reviewed and is familiar with the Highway Site Background Reports. If Project Co encounters conditions at the Highway Site which are not described in or are not properly inferable, readily apparent or readily discoverable from the documentation included in the Highway Site Information (including the Highway Site Background Reports), Project Co will promptly notify the Consultant who will promptly investigate such conditions and who will then report to City and Project Co with a finding as to whether such conditions were or were not described in or were or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Highway Site Information.
- (b) If the conditions were described in or were properly inferable, readily apparent or readily discoverable from the documentation included in the Highway Site Information, then Project Co shall not be entitled to any adjustment in the Highway Milestone Payment and the Highway Final Payment or an extension of the Highway Contract Time.
- (c) If the conditions were not described in or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Highway Site Information, and the conditions justify an increase in the Highway Milestone Payment and the Highway Final Payment or an extension of the Highway Contract Time, or both, the Consultant shall issue appropriate instructions for a Variation in the Scope of the Highway Work as provided in Schedule 22 – Variation Procedure.
- (d) Additional obligations and responsibilities of Project Co with respect to Contamination on the Highway Site are set out in Schedule 40 – Highway Work.

16.1B Acceptance of Stage 2 Site Condition

- (a) Subject to Sections 6.4, 6.6, 16.2, 16.3, 16.4 and 16.5 and Schedule 43 to this Project Agreement, Project Co acknowledges and agrees that it is deemed to have investigated the Stage 2 Lands and the Stage 2 Site Conditions, including the Stage 2 Background Information, prior to executing the Stage 2 Maintenance Services Variation and agrees to accept the Stage 2 Lands and the Stage 2 Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 6.6, 16.2, 16.3, 16.4 and 16.5 and Schedule 43 to this Project Agreement, Project Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party on any grounds relating to the Stage 2 Lands or the Stage 2 Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Stage 2 Lands or the Stage 2 Site Conditions was given to it by any person, whether or not a City Party, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Stage 2 Lands or the Stage 2 Site Conditions provided by such person to Project Co, provided that this Section 16.1B(a) shall not prevent Project Co from making a claim

against DB Co under the DB Co Interface Agreement or otherwise nor from pursuing a claim under Section 9.12 for Equivalent Project Relief.

- (b) Subject to Sections 6.4, 6.6, 16.2, 16.3, 16.4 and 16.5 and Schedule 43 to this Project Agreement, Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) received all design data, warranties and all other applicable information in relation to the Stage 2 System, to the extent such information is available at the date of the Stage 2 Maintenance Services Variation;
 - (ii) satisfied itself as to the presence of any Contamination on, in or under the Stage 2 Lands, in accordance with Good Industry Practice, taking into account all matters relating to the Stage 2 Lands, including any Stage 2 Existing Infrastructure, and any other buildings, structures and works, on, over and under the Stage 2 Lands existing on the date of the DB Co Works Agreement;
 - (iii) satisfied itself as to the adequacy of the rights of access to, from and through the Stage 2 Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (iv) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Stage 2 Lands; and
 - (v) in respect of the Stage 2 Lands and/or the Stage 2 System, satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties and will comply and will ensure compliance by all Project Co Parties with all communication and record keeping obligations in respect thereof in accordance with Schedule 18 – Communications and Public Consultation Protocol and Schedule 26 – Record Provisions.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the activities within the Project Scope in respect of the Stage 2 System in a lawful manner.

16.2 Contamination

- (a) At all times throughout the Project Term, Project Co shall be responsible for managing, remediating and/or removing, in accordance with Section 5.5(a) of Schedule 17 – Environmental Obligations, any Contamination located on, in or under, the Stage 1 Lands, at any time during the Project Term, which was described in, or was properly inferable, readily apparent or readily discoverable from, the Advanced Environmental Reports or the Geotechnical Data Reports (“**Existing Contamination**”).
- (a1) At all times throughout the Maintenance Term, taking into account the Timing Principle, Project Co shall be responsible for managing, remediating and/or removing, in

accordance with Section 5.5(a) of Schedule 17 – Environmental Obligations, any Contamination located on, in or under, the Stage 2 Lands, at any time during the Maintenance Term, which was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports or the Geotechnical Reports (as those terms are defined in each of the DB Co Works Agreement and the Belfast MSF Expansion Variation) and which has not been managed, remediated or removed as part of the DB Co Works or the Belfast MSF Expansion Works (“**Stage 2 Existing Contamination**”).

Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, and in particular so that Project Co is only responsible during the Maintenance Term, taking into account the Timing Principle:

- (A) Project Co shall have no responsibility or liability for any Contamination migrating to or from the Stage 2 Lands, other than:
 - (i) where DB Co was responsible for such migrating Contamination pursuant to the DB Co Works Agreement and then only to the extent that DB Co was so responsible; or
 - (ii) to the extent that Project Co or any Project Co Party Released such Contamination in a manner which does not comply with Applicable Law; or
 - (iii) to the extent that Project Co or any Project Co Party is causing the migration of Stage 2 Existing Contamination; and
- (B) Project Co shall have no responsibility for any Contamination which is or was located on, in or under the Stage 2 Lands at any time prior to the start of the Maintenance Term for the Stage 2 System, other than:
 - (i) any Contamination which DB Co was responsible for dealing with pursuant to the DB Co Works Agreement and then only to the extent that DB Co was so responsible; and
 - (ii) (without prejudice to paragraph (i) above) any Stage 2 Existing Contamination to which Section 16.2(b)(iii) applies.
- (b) Project Co shall be responsible for removing or remediating, in accordance with Section 5.5(b) of Schedule 17 – Environmental Obligations:
 - (i) any Contamination which Project Co or any Project Co Party causes or permits to be Released in a manner which does not comply with Applicable Law or which causes a Risk to Human Health or the Environment;
 - (ii) any Existing Contamination which was harmless or stored, contained or otherwise dealt with in accordance with Applicable Law which Project Co or any Project Co Party causes or permits to be Released in a manner which does not comply with Applicable Law or which causes a Risk to Human Health or the Environment; or

- (iii) during the Maintenance Term for the Stage 2 System (taking into account the Timing Principle), any Stage 2 Existing Contamination which was harmless or stored, contained or otherwise dealt with in accordance with Applicable Law which Project Co or any Project Co Party causes or permits to be Released in a manner which does not comply with Applicable Law or which causes a Risk to Human Health or the Environment.

In addition, and without limiting any other obligation of Project Co under the Project Agreement, Project Co shall be responsible for all Direct Losses associated with the Releases of Contamination, Existing Contamination or Stage 2 Existing Contamination described in Sections 16.2(b)(i), 16.2(b)(ii) or 16.2(b)(iii) above. For greater certainty, it is understood and agreed that Project Co shall be responsible for managing, remediating and/or removing, in accordance with Section 5.5 (a) of Schedule 17 – Environmental Obligations, any Contamination in the Scotiabank Building and if Project Co or any Project Co Party causes or permits any such Contamination to be Released in a manner that does not comply with Applicable Law or which causes a Risk to Human Health or the Environment, in addition to any other obligation of Project Co under the Project Agreement, Project Co shall be responsible for all Direct Losses associated with such Release.

- (c) Contamination which is not the responsibility of Project Co pursuant to Section 16.2(a), 16.2(a1) or Section 16.2(b) shall be the responsibility of the City.
- (d) Upon the discovery of any Contamination, Project Co shall immediately inform the City Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 17 – Environmental Obligations, as applicable, in respect thereof:
 - (i) at the City’s cost pursuant to Section 16.2(g), in respect of Contamination for which the City is responsible pursuant to Section 16.2(c); and,
 - (ii) at its own cost in respect of Contamination for which it is responsible pursuant to Section 16.2(a), 16.2(a1) or 16.2(b).
- (e) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 16.2(d) in respect of Contamination for which the City is responsible pursuant to Section 16.2(c) until the City Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (f) In the event that the City wishes Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 16.2(d), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City’s cost pursuant to Section 16.2(g).

- (g) If Sections 16.2(d), 16.2(e) or 16.2(f) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Scope as a result of Contamination for which the City is responsible pursuant to Section 16.2(c) or as a result of any instructions given by the City pursuant to Section 16.2(f) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
- (i) prior to Revenue Service Availability shall, subject to and in accordance with Section 40 be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Revenue Service Availability shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (h) In the event that the City and Project Co do not agree as to the nature or extent of Contamination, or in the event of a disagreement as to whether Project Co is responsible for Contamination pursuant to either Sections 16.2(a), 16.2(a1) or 16.2(b), or the actions to be performed by Project Co pursuant to Section 16.2(d) or Schedule 17 – Environmental Obligations, such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and the City, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person’s decision shall be final and binding on the Parties, except to the extent that either Party alleges that such decision would result in non compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

16.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands or Highway Site are or shall be the sole and absolute property of the City.
- (b) The City shall be responsible for items referred to in Section 16.3(a) except for any such items that were described in, or were properly inferable, readily apparent or readily discernable from the Background Information and any such items on the Stage 2 Lands that were described in, or were properly inferable, readily apparent or readily discernable from the Stage 2 Background Information, provided that the City shall be responsible for any such items which are notified to the City by DB Co or Project Co during the course of the DB Co Works (whether such items are the responsibility of the City or not) and where the City does not require their resolution prior to the completion of the DB Co Works.
- (c) Upon the discovery of any item referred to in Section 16.3(a) during the performance of the Project Scope, Project Co shall:

- (i) immediately inform the City Representative of such discovery;
- (ii) take all steps not to disturb the item and, if necessary, cease any activities within the Project Scope in so far as performing such Project Scope would endanger the item or prevent or impede its excavation, take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found, and comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 17 – Environmental Obligations, Part 7:
 - (A) at the City’s cost pursuant to Section 16.3(e), in respect of any such discovery for which the City is responsible pursuant to Section 16.3(b) and
 - (B) at its own cost in respect of such discovery for which it is responsible pursuant to Section 16.3(b).
- (d) In the event that the City wishes Project Co to perform actions in respect of any discovery of any item referred to in Section 16.3(a) which are in addition to any required pursuant to Section 16.3(c), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City’s cost pursuant to Section 16.3(e).
- (e) If Section 16.3(c) or 16.3(d) require Project Co to perform any alteration, addition, demolition, extension or variation in the activities within the Project Scope as a result of any such discovery for which the City is responsible pursuant to Section 16.3(b) or as a result of any instructions given by the City pursuant to Section 16.3(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation (but only to the extent it directly results in the interruption of the performance of the Project Scope or the Highway Work during a continuous period of 5 Business Days or more with respect to each such discovery) shall subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.
- (f) In the event that the City and Project Co do not agree as to the nature or extent of the actions required to be performed by Project Co pursuant to Section 16.3(c)(ii), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and the City, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person’s decision shall be final and binding on the Parties except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

16.4 Species-at-Risk

- (a) The City shall be responsible for any Species-at-Risk which may be found on, in or at the Lands or the Highway Site, except for any Species-at-Risk the occurrence of which, in the location in which it is found, was described in the Environmental Assessments.
- (a1) The City shall be responsible for any Species-at-Risk which may be found on, in or at the Stage 2 Lands, except for any Species-at-Risk the occurrence of which, in the location in which it is found, was described in the Stage 2 Environmental Assessments.
- (b) In respect of Species-at-Risk for which Project Co is responsible pursuant to Sections 16.4(a) or 16.4(a1), Project Co shall, at its own cost, comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 17 – Environmental Obligations. Upon the discovery of any Species-at-Risk for which the City is responsible pursuant to Sections 16.4(a) or 16.4(a1), Project Co shall:
- (i) immediately inform the City Representative of such discovery; and
 - (ii) comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 17 – Environmental Obligations in respect thereof, including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk at the City’s cost pursuant to Section 16.4(d).
- (c) In the event that the City wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.4(b), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City’s cost pursuant to Section 16.4(d).
- (d) If Section 16.4(b) or 16.4(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Scope as a result of the discovery of any Species-at-Risk for which the City is responsible pursuant to Sections 16.4(a) or 16.4(a1) or as a result of any instructions given by the City pursuant to Section 16.4(c) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
- (i) prior to Revenue Service Availability shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Revenue Service Availability shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

16.5 Latent Defects

- (a) With respect to Other Existing Infrastructure to be included in the Design and Construction Works and the Highway Work, the City shall be responsible for Latent Defects, except for any such Latent Defects:
- (i) that were described in or were properly inferable, apparent or discoverable from the Background Information;
 - (ii) that are attributable to the failure by Project Co to perform the Project Scope in accordance with the Project Agreement;
 - (iii) that are caused by Project Co or any Project Co Party; or
 - (iv) that are attributable to Project Co's design or construction means and methods but only to the extent that Section 16.5(a)(i) also applies.
- (a1) The City shall be responsible for defects in the Stage 2 Major Existing Third Party Infrastructure (“**Stage 2 Latent Defects**”) provided that the defect,
- (i) was not within the actual knowledge of Project Co or a Project Co Party as of the date of the DB Co Works Agreement;
 - (ii) was not referenced or described in, or was not properly inferable, readily apparent or readily discoverable from, the Stage 2 Background Information;
 - (iii) was not properly attributable to the result of the aging of the Stage 2 Major Existing Third Party Infrastructure; or
 - (iv) was not caused or contributed to by Project Co or a Project Co Party.
- (b) Upon the discovery of a Latent Defect affecting the System or the Highway Site or a Stage 2 Latent Defect affecting the System, Project Co shall immediately inform the City Representative and shall proceed to remedy the Latent Defect or Stage 2 Latent Defect promptly and diligently in compliance with such instructions as the City may issue in the circumstances.
- (c) The costs to remedy any Latent Defect or Stage 2 Latent Defect which is agreed or determined to be the responsibility of Project Co shall be borne by Project Co.
- (d) In the event that Project Co claims the discovery of a Latent Defect is a Delay Event, any dispute as to whether the Latent Defect is the responsibility of the City or Project Co shall be deemed to be a dispute as to whether a Delay Event has occurred and shall be resolved, together with any other matters requiring determination in connection with such Delay Event, in accordance with the provisions of Section 40.2(i).
- (e) In the event that a Latent Defect is discovered prior to or at Revenue Service Availability, and Project Co does not claim that the discovery constitutes a Delay Event, but there is

none the less a dispute as to whether the Latent Defect is the responsibility of the City or Project Co, then the dispute as to responsibility for the Latent Defect shall be referred to the Independent Certifier for a determination as to whether the Latent Defect is the responsibility of the City or the responsibility of Project Co on the basis set out in Section 16.5(a). A Party may dispute the determination of the Independent Certifier by delivery of a Notice of Dispute and such Dispute may be resolved in accordance with the provisions of Schedule 27 – Dispute Resolution Procedure.

- (f) In the event that a Latent Defect or Stage 2 Latent Defect is discovered after Revenue Service Availability, any dispute as to whether the Latent Defect or Stage 2 Latent Defect is the responsibility of the City or Project Co shall be resolved in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) If Section 16.5(b) requires Project Co to undertake any action in accordance with the instructions of the City to remedy a Latent Defect or Stage 2 Latent Defect for which the City is responsible, then any such additional work:
 - (i) shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) which occurs following Revenue Service Availability shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (h) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 – Insurance Trust Agreement are available to remedy the Latent Defect, Stage 2 Latent Defect or any resultant damage therefrom, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispersed in accordance with the provisions of the Insurance Trust Agreement to remedy the Latent Defect or Stage 2 Latent Defect.
- (i) The City shall, on Financial Close, assign to Project Co all warranties remaining in existence and all other rights under the contracts relating to the Other Existing Infrastructure to the extent that they are assignable.

17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 Governmental, Railway and Utility Company Fees

- (a) Project Co shall be responsible for all Financial Obligations under or in respect of all Project Co Permits, Licences and Approvals and the City shall be responsible for all Financial Obligations under or in respect of all City Permits, Licences and Approvals, including, any Utility Company, any Railway Company, any Governmental Authority or any third party in respect of the Project Scope, including:
 - (i) any development charges relating to the Works, the Highway Work, the System, the Highway, the Site or the Highway Site;

- (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (iii) any security deposits required under any Permits, Licences and Approvals; and
 - (iv) any other amounts payable under any Permits, Licences and Approvals.
- (b) The Parties agree that any refund, partial rebate or credit granted by any applicable Utility Company, any applicable Railway Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of the City to the extent such Financial Obligations were paid by the City and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

18. CHANGE IN STANDARDS

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction aspects of the Project Scope, and that standard has changed between Commercial Close and the date that such compliance is required, then Project Co shall give notice to the City of such change. If, after such notice, the City requires compliance with the changed standard (rather than the standard applicable as of the date of Commercial Close), then, to the extent such change impacts the design and construction aspects of the Project Scope and would not have otherwise been taken into account by compliance with Good Industry Practice (Works) or Good Industry Practice (Highway Work), such changed standard shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. If the City does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of Commercial Close, without a Variation therefor. This Section 18 shall not apply where a change in a technical standard is also a Change in Law.

19. COORDINATION AND NO DISRUPTION

- (a) Project Co shall carry out the Project Scope so as to coordinate with:
- (i) subject to and in accordance with Section 9.7 (to the extent applicable), the operations of the City, any City Party (and in the context of DB Co and any DB Co Party, this obligation shall be subject to any specific coordination arrangements agreed between Project Co and DB Co under the DB Co Interface Agreement), any Governmental Authority or Other Contractor engaged in activities on or about the Lands; and
 - (ii) the construction, operation, maintenance and expansion and additional phases of the existing transit system, namely, the DB Co Works (subject to, and in accordance with, the DB Co Interface Agreement), OC Transpo operations, the Société de transport de l'Outaouais operations and in accordance with Schedule 38 – Extension and Additional Phases; and comply with the City of Ottawa's Transportation Master Plan generally.

- (b) Project Co shall use commercially reasonable efforts to minimize:
- (i) any interference with the operations of the City, any City Party (and in the context of DB Co and any DB Co Party, this obligation shall be subject to any specific obligations agreed between Project Co and DB Co under the DB Co Interface Agreement to minimize such interference), any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works;
 - (ii) any interference with the construction, operation, maintenance and rehabilitation of the transit system and the Highway; and
 - (iii) any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System and the Highway.

20. DESIGN AND CONSTRUCTION OBLIGATIONS

20.1 Overall Responsibility

- (a) Project Co shall perform and complete the Design and Construction Works:
- (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with the Design Data;
 - (iv) in accordance with the Works Schedule; and
 - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 20.1(a), but subject to Section 16.5 and to the provisions of the Maintenance and Rehabilitation Requirements, Schedule 20 – Payment Mechanism and Schedule 24 – Expiry Transition Procedure, if, at any time during the Project Term, any of the Design and Construction Works, the System or any parts thereof do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts), Project Co shall, at its own cost and expense, rectify the Design and Construction Works, the System and any part thereof so that:
- (i) the Design and Construction Works, the System and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and
 - (ii) the Design and Construction Works, the System and all parts thereof will, at all times, be able to meet all safety and performance standards and other

requirements set out in Schedule 15-3 – Maintenance and Rehabilitation Requirements.

20.2 Completion of the System

- (a) Project Co shall design, engineer, construct and commission the System so as to provide to the City a complete and operational System in accordance with the Output Specifications and the Project Co Proposal Extracts, and that will allow Project Co to perform the Maintenance Services, all in accordance with and subject to the terms of this Project Agreement and allow the City to perform the Operations.
- (b) All of the Contracts collectively shall be sufficient to create the entire System and accomplish Integration on or before the Revenue Service Availability Date.
- (c) Project Co shall cause 2017 Readiness to occur on or before the 2017 Readiness Date.

20.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the System and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 20.3.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the System, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 – Environmental Obligations) and the City Representative and the City Design Team in an interactive process. If the result of any consultation with Stakeholders, is a change to the scope, configuration or size of any New System Infrastructure or a change in the Construction Activities, or a change in the Maintenance Services, which change has been approved by the City in its Discretion, then such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include (to a scale required by the City Representative):
 - (i) design development drawings, reports, schedules and specifications progressed from Commercial Close with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawing documentation, submitted at 60% completion (the “Pre-final Design Development Submittals”) and at 100% completion (the “Final Design Development Submittals”) of the development of the working drawings (collectively, the “Design Development Submittals”);

- (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement, submitted at 60% completion (the “Pre-final Construction Document Submittals”) and 100% completion (the “Final Construction Document Submittals”) of the construction drawings (collectively, the “Construction Document Submittals”); and
- (iii) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) The Final Design Development Submittals and the final Construction Document Submittals shall each be accompanied by a Technical Appraisal Form.
- (f) Project Co shall submit to the City Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Sections 20.3(c) and 20.3(e).
- (g) The Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 – Review Procedure.
- (h) The Design Data and other items listed in Section 20.3(c) must contain, at a minimum, the following additional information:
 - (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the City Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (i) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the System prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (j) Neither the City nor any City Party will have any liability:
 - (i) if a document submitted by Project Co and reviewed by the City, the City Representative or the City Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and the City will cooperate with each other in the design review process. Notwithstanding such cooperation by the City, such review shall not constitute acceptance of the Design and Construction Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the City Representative and the City Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the City Representative and/or City Design Team, as applicable, as soon as practicable following receipt of a written request from the City Representative.

20.4 Start-Up Meeting

- (a) Within 10 Business Days after Financial Close, Project Co and the Design Team shall attend a start up meeting (the “**Start-Up Meeting**”) with the City to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
 - (i) Project Co’s plan to develop a successful long-term partnership with the City for the purpose of supporting the City in achieving its vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Design and Construction Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co’s process to ensure optimum design quality;
 - (iv) Project Co’s approach to ensure that all Project Co Parties perform the Design and Construction Works, as applicable, as a fully integrated team;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the City Representative to allow sufficient time for review of each Works Submittal by the City Representative, and taking into account both the resources available to the City Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future

anticipated Works Submittals and the Design and Construction Works in accordance with the Works Schedule;

- (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the City Design Team;
- (vii) Project Co's approach to timing, construction, and adjustment; and
- (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation.

20.5 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings (the "Design Review Meetings") with the City and the City Design Team upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the City Representative;
 - (ii) all Design Review Meetings shall be held in Ottawa, Ontario unless the City agrees otherwise in writing;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the Works Schedule;
 - (iv) Project Co shall circulate to the City and the City Design Team an agenda for each of the Design Review Meetings no later than 5 Business Days prior to the relevant Design Review Meeting;
 - (v) in advance of a Design Review Meeting, Project Co may submit to the City Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform the City on the development of System design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. For greater certainty, interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 – Review Procedure;
 - (vi) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (vii) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within 5 Business Days after each Design Review Meeting, Project Co shall provide to the City and the City Design Team a copy of the minutes, together with a copy of any notes, comments,

sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and

- (viii) the City and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 10 – Review Procedure applies, and that the City shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the City Design Team, hold Design Review Meetings prior to:
 - (i) each of the Design Development Submittals; and
 - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of the City input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 – Review Procedure.

20.6 Testing

- (a) To the extent and in the manner provided by the Quality Documentation and other terms of this Project Agreement, including satisfaction of all requirements of Revenue Service Availability, all testing shall be carried out by a duly accredited and certified testing facility and organization. Any self-certification/testing carried out by Project Co, and any subsequent test results, shall be reviewed by the Independent Certifier as defined in Schedule 6 – Independent Certifier Agreement. The City Representative shall be given timely advance notice (being not less than 2 Business Days) of the date of such tests, except for categories of tests (if any) in respect of which the City Representative gives written notice to Project Co that it does not require such notice. The City Representative and any other City Party at the City’s option shall be entitled to attend at any test. Any materials or plant which fail such tests shall be rejected.
- (b) Project Co shall develop a test recording system which shall permit ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology and test readings to the City Representative on request.
- (c) With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and bituminous material quality), Project Co shall provide to the City Representative at regular intervals (not to exceed weekly unless otherwise agreed) test summary sheets and statistical analyses indicating strength and quality trends.

20.7 System Design Functionality

- (a) The City confirms that it has reviewed the Design Data submitted to the City by Project Co for review as at the date of this Project Agreement and that, subject to any qualifications or comments noted thereon, the City has not identified any deficiencies that

would preclude Project Co from satisfying the Output Specifications in respect of System Design Functionality, so far as can reasonably be determined given the level of detail in the submittals.

- (b) With each of the Design Development Submittals, Project Co shall submit to the City, for its review pursuant to Schedule 10 – Review Procedure, a draft report (each a “System Design Functionality Report”) to specifically identify, with reference to the Output Specifications, such matters of System Design Functionality that Project Co wishes the City Design Team to review and consider as part of the Design Development Submittals. Each System Design Functionality Report shall demonstrate how the Output Specifications are satisfied in respect of System Design Functionality.
- (c) With the Construction Document Submittals, Project Co shall submit to the City for review by the City, pursuant to Schedule 10 – Review Procedure, a final System Design Functionality Report, and the City shall confirm that, subject to any qualifications or comments noted thereon, the City has not identified any deficiencies that would preclude Project Co from satisfying the Output Specifications in respect of System Design Functionality, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.
- (d) Each System Design Functionality Report must be prepared in accordance with the technical submission requirements to be provided by the City to Project Co and must address the way in which the Design Data meets the requirements of System Design Functionality.
- (e) System Design Functionality is a salient factor of importance to the City at all stages of development of the System and shall be taken into account in the review of all Submittals submitted in accordance with the Review Procedure.
- (f) Notwithstanding anything contained in this Section 20.7 to the contrary, the review by the City or the City Representative of any Design Data and any future review by the City or the City Representative of any Design Data, including Design Development Submittals or Construction Document Submittals shall not relieve Project Co of the risk and responsibility for satisfying System Design Functionality and the Output Specifications and for meeting all of its obligations under and the requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for the City. Without limiting the generality of the foregoing, any and all errors or omissions in the review and comment or confirmation by the City or the City Representative shall not create any obligations or liabilities for the City nor exclude or limit Project Co’s obligations or liabilities with respect to System Design Functionality and satisfaction of the Output Specifications or exclude or limit the City’s rights with respect thereto or with respect to the Design and Construction Works under this Project Agreement.

20.8 Performance of Design Obligations

- (a) In the design and engineering of the System, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised

by licensed or registered professional engineering and architectural personnel and other licensed or registered professionals, as applicable, having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.

- (b) Project Co shall ensure that all parts of the Design and Construction Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

20.9 General Construction Obligations

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Design and Construction Works and must provide everything (including labour, equipment and materials and electricity and other utilities) necessary for the construction and commissioning of the System, and other performance of the Design and Construction Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
- (i) construct the Design and Construction Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Quality Management;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Design and Construction Works from all of the elements, casualty and damage;
 - (iv) in respect of plant, equipment and materials incorporated in the Design and Construction Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice (Works) with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with the City’s prior written consent in accordance with Section 20.10.

- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or 9.6 or Project Co's indemnity pursuant to Section 56.1, Project Co shall, at all times throughout the progress of the Design and Construction Works, be responsible for maintaining and securing the Site to prevent access onto the Site of any persons not entitled to be there, as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.

20.10 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of the City, in its Discretion.

20.11 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Design and Construction Works to be submitted to, reviewed or otherwise processed by the City prior to Revenue Service Availability, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by the City pursuant to Schedule 10 – Review Procedure. The first document to be submitted by Project Co for review by the City pursuant to Schedule 10 – Review Procedure shall be the draft document control and security protocol described in Section 52.5(f).

20.12 Construction Period and Maintenance Term

- (a) Commencing on the Revenue Service Commencement Date, Project Co shall provide the maintenance services described in Sections 1.1(a)(ii) and 1.1(b) of Schedule 15-3 – Maintenance and Rehabilitation Requirements.

20.13 Cash Allowance – Civic Works

- (a) Project Co shall perform and complete the Civic Works:
- (i) so as to satisfy the Output Specifications;
 - (ii) so as to satisfy the Civic Works Specifications;
 - (iii) in accordance with the Works Schedule; and
 - (iv) in accordance with the other terms and conditions of this Project Agreement.

- (b) Subject to Section 20.13(c), the City shall provide the following final Civic Works Specifications to Project Co by the following dates:
- (i) Queen Street Work by 120 days following Financial Close;
 - (ii) Albert Street Work by 180 days following Financial Close;
 - (iii) Rock Stabilization Work by 90 days following Financial Close;
 - (iv) Coventry Bridge Work by 90 days following Financial Close; and
 - (v) CSST Work by 90 days following Financial Close.
- (c) The City reserves the right at its Discretion to reduce some or all of the scope of the Civic Works Specifications upon: (i) delivery of the applicable Civic Works Specifications pursuant to Section 20.13(b) or (ii) upon 60 days prior written notice to Project Co; and in either case the applicable Civic Works shall be deemed herein to have been so reduced in scope.
- (d) Project Co shall complete each of the Civic Works by the Required Revenue Service Availability Date or the New Required Revenue Service Availability Date, as applicable, except for the Coventry Bridge Work which shall be completed by March 31, 2014.
- (e) Project Co shall be solely responsible for coordinating the Civic Works with its activities in respect of the Project Scope and shall not be entitled to an extension of time or additional compensation in respect of the remainder of the Project Scope as a result of the Civic Works or any matter relating thereto except as provided for in this Section 20.13.
- (f) Notwithstanding any other provision in this Project Agreement, Project Co's sole compensation in respect of the Civic Works shall be made in accordance with this Section 20.13 and Project Co shall only be entitled to compensation for:
- (i) the Direct Costs incurred by Project Co or any Subcontractor, as applicable in respect of the Civic Works, where "Direct Costs" as defined in Schedule 22 – Variation Procedure are deemed for purposes of this Section 20.13 to refer to "Civic Works" and not "Variation";
 - (ii) Project Co and any Subcontractors shall charge only the margins for overhead and profit as set out in Appendix B to Schedule 22 – Variation Procedure (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or any Subcontractor is calculated on any other margin of Project Co or any Subcontractor), and no other margins or mark ups; and
 - (iii) subject to the above, the margins for overhead and profit as set out in Appendix B to Schedule 22 – Variation Procedure shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by any Subcontractor.

- (g) Project Co will (and will oblige any Subcontractor to) use commercially reasonable efforts to obtain the best value for money when procuring (including the use of competitive quotes or tenders) any work, services, supplies, materials or equipment required by the Civic Works and will comply with all Good Industry Practice (Works) in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to the City, including using commercially reasonable efforts to mitigate such costs. If the City would be required by Applicable Law or any policy applicable to the City to competitively tender any contract in relation to the Civic Works, the City may require Project Co to seek and evaluate competitive tenders for the Civic Works in accordance with such Applicable Law or policy.
- (h) Project Co shall not be required to obtain financing for the Civic Works.
- (i) The City shall pay for the Civic Works, plus applicable HST and in accordance with Applicable Law, on a monthly progress basis out of the Cash Allowance Account which shall be established and administered by Project Co in accordance with this Section 20.13.
- (j) The cash flow process applicable to the Cash Allowance Account will be as follows:
- (i) the City shall deposit from time to time into the Cash Allowance Account such monies to satisfy any approved Request for Civic Works Payment Approvals up to the Cash Allowance Amount (or upon such different terms or dates as the Parties may mutually agree in writing);
- (ii) Project Co will hold and manage all monies in the Cash Allowance Account in trust, pending payment in accordance with this Project Agreement, and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that is quoted or published by Schedule I Banks in Canada as payable on interest bearing Canadian dollar demand deposit accounts;
- (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
- (iv) the City shall make deposits into the Cash Allowance Account in the event that the payment requirements, including applicable HST, for Request for Civic Works Payment Approvals approved by the City for completed Civic Works exceed the then balance of the Cash Allowance Account (for clarity, determined on an aggregate basis across all remaining Civic Works) prior to approving any such Request for Civic Works Payment Approvals. Notwithstanding the foregoing, Project Co shall not perform any Civic Works that would cause the total amount paid by the City in respect of the Civic Works to exceed the Cash Allowance Amount without the prior written approval of the City;
- (v) if, on the earlier of (i) the final applicable Civic Works Completion Date and (ii) the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance will be paid by Project Co to the City or as the City directs;

- (vi) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation; and
- (vii) within the Cash Allowance Account, the Cash Allowance Amount shall be allocated among the Civic Works such that no more than the maximum dollar amount below set out beside such specified Civic Works shall be committed to or spent in respect of such work:
 - (A) \$ in respect of the Queen Street Work;
 - (B) \$ in respect of the Albert Street Work;
 - (C) \$ in respect of the Rock Stabilization Work;
 - (D) \$ in respect of the Coventry Bridge Work;
 - (E) \$ in respect of the Utilities Work; and
 - (F) \$ in respect of the CSST Work.
- (k) Project Co shall provide a reconciliation of the Cash Allowance Account to the City each month including the following information:
 - (i) itemized and aggregate amounts committed to date for each of the Civic Works;
 - (ii) itemized and aggregate amounts spent and/or committed to date for each of the Civic Works; and
 - (iii) the projected cost of each remaining Civic Works and the projected effect of such costs on the Cash Allowance Account and the Cash Allowance Amount.
- (l) Project Co shall include with each Request for Civic Works Payment Approval the certification of (i) the Independent Certifier (including for greater certainty as provided for pursuant to the Independent Certifier Agreement) in respect of the Queen Street Work, the Albert Street Work, the Rock Stabilization Work and/or the Utilities Work or (ii) the Consultant in respect of the Coventry Bridge Work, that the relevant Civic Works described in such Request for Payment Approval is complete in accordance with this Section 20.13.
- (m) In addition to the monthly reconciliation described in Section 20.13(k), Project Co shall, on a monthly basis, provide to the City and the Independent Certifier a request for payment approval (each, a “Request for Civic Works Payment Approval”) that includes an itemized breakdown of the applicable Civic Works completed in the month by Project Co and any Subcontractors and the Direct Costs (as defined in this Section 20.13) incurred in respect thereof. Project Co shall include with each Request for Civic Works Payment Approval such supporting documentation as City may reasonably require in connection with the claimed base progress payments, including the Direct

Costs incurred in the relevant month, the cost to complete the Civic Works, any cumulative projected variance from the Cash Allowance Amount and any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Subcontractor in connection with the Civic Works. Each Request for Civic Works Payment Approval submitted to City shall be in a form stipulated by the City, acting reasonably, and shall include either at the time of submittal or be provided by the end of the next quarter as may be necessary to confirm the achievement of the claimed base progress payments: (i) such true copies of invoices (with originals to be provided within two (2) months of Substantial Completion of the Civic Works), purchase orders or other documentation in each case marked paid so as to support an “open-book” pricing approach and (ii) the details of the applicable Project Co margins for overhead and profit in respect thereof.

- (n) Within 10 Business Days of receipt of a Request for Civic Works Payment Approval, the City shall, in consultation with the Independent Certifier and/or the Consultant, advise Project Co, in writing, whether or not it agrees with the particulars set out in the Request for Civic Works Payment Approval. The City shall only be permitted to withhold its approval if either the City, the Independent Certifier or the Consultant determine that the Request for Civic Works Payment Approval does not contain the information that the City, the Independent Certifier or the Consultant require, acting reasonably, to discharge their obligations under this Section 20.13. If the City withholds its approval pursuant to this Section 20.13(n) and subsequently receives the information that the City requires, acting reasonably, to discharge its obligations under this Section 20.13, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, the City’s approval for the payment of the amount set out in the aforementioned Request for Civic Works Payment Approval. Any Disputes with respect to determinations made under this Section 20.13 shall be resolved in accordance with the Dispute Resolution Procedure.
- (o) If the City approves in writing the payment of the amount set out in a Request for Civic Works Payment Approval, Project Co shall be entitled to withdraw the approved payment from the Cash Allowance Account for its own benefit or make payment to the relevant vendors or Subcontractors in accordance with this Section 20.13.
- (p) Project Co acknowledges and agrees that:
- (i) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Civic Works Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account;
- (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Subcontractor in connection with the Civic Works shall be attributed solely to and shall benefit the pricing of the Civic Works and shall be credited to the Cash Allowance Account; and

- (iii) after such portions of the Cash Allowance Amount are deposited into the Cash Allowance Account from time to time, such Cash Allowance Amount and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expenses or delays related to managing the Cash Allowance Account are the responsibility of Project Co.

21. ACCESS AND MONITORING

21.1 Access for City Parties

- (a) Subject to Section 21.1(b), but without limiting any of the City's rights in respect of the Site, the Highway Site, the System or the Highway, Project Co:
 - (i) acknowledges and agrees that throughout the Project Term, without any prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, the City, the City Parties (provided that for the purposes of this section, access rights for DB Co or any DB Co Party shall be as set out in the DB Co Interface Agreement), the Consultant, a Police Service and their respective representatives shall have unrestricted access to the Site, the Highway Site, the System and the Highway (including without limitation, the MSFs) and any workshop where materials, or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works and the Highway Work, or to fulfill any statutory, public or other duties or functions.
- (b) In exercising their access rights under Section 21.1(a), the City, the City Parties, a Police Service and the Consultant and their respective representatives shall:
 - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site and the Highway Site for the use of the City and/or City Parties and the Consultant); and
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time.
- (c) If the Highway Work is designated for tests, inspections, or approvals in the Contract Documents, or by the Consultant's instructions, or pursuant to Applicable Law, Project Co shall give the Consultant reasonable notice of when the Highway Work will be ready for review and inspection. Project Co shall arrange for and shall give the Consultant reasonable notice of the date and time of inspections by other authorities.
- (d) Project Co shall furnish promptly to the Consultant 2 copies of certificates and inspection reports relating to the Highway Work.

21.2 Increased Monitoring

- (a) Subject to Section 16.5, at any time during the Project Term, if the City is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), the City may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as the City considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to the City's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Project Agreement. Project Co will compensate the City for any reasonable costs incurred as a result of such increased monitoring.

21.3 Right to Uncover

- (a) Subject to Section 16.5, Project Co shall ensure that the City is afforded advance notice of, and that the City is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such notice and opportunity, Project Co shall at the request of the City uncover any relevant part of the Civic Works, the Works and Highway Work which have been covered up or otherwise put out of view or remove any relevant part of the Civic Works, the Works and the Highway Work that have been proceeded with in order to permit the City to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Civic Works, the Works and Highway Work.
- (b) The City, or the Consultant in respect of the Highway Work only, shall have the right, (i) in respect of the Civic Works and the Works at any time during the Project Term and (ii) in respect of the Highway Work at any time prior to the Highway Final Completion Date, to request Project Co to uncover and inspect (or allow the City to inspect) any part or parts of the Civic Works, the Works and the Highway Work, or to require testing of any part or parts of the Civic Works, the Works and the Highway Work, where the City, or the Consultant, as applicable, reasonably believes that such part or parts of the Civic Works, the Works or Highway Work is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Civic Works, the Works or the Highway Work, and Project Co shall comply with such request. When the City makes such a request, the City shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Civic Works, the Works or the Highway Work is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Civic Works, the Works or the Highway Work, Project Co shall rectify all such defects

and non-compliance diligently and at no cost to the City and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.

- (d) If an inspection shows that the relevant part or parts of the Civic Works, the Works or the Highway Work is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Civic Works, the Works or the Highway Work, the exercise by the City or the Consultant of its rights pursuant to this Section 21.3:
- (i) (A) prior to Revenue Service Availability in respect of the Civic Works or the Works or (B) prior to the Highway Final Completion Date in respect of the Highway Work shall, in either case, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
- (ii) following Revenue Service Availability in respect of the Civic Works or the Works shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

21.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by the City, the Consultant or the City Representative of the rights under this Section 21 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 21.

21.5 Access by Others

- (a) Subject to Section 21.5(b) and Section 14.1 of Schedule 40 – Highway Work, in respect of the Highway Work only, and subject to and in accordance with Section 9.7 (to the extent applicable), Project Co shall ensure that throughout the Project Term (taking into account the Timing Principle), without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law:
- (i) any contractors, consultants or other persons authorized by the City Representative or the City, including the Other Contractors, have access to those parts of the Site, the Highway Site, the System and the Highway and as is necessary for the purpose of carrying out the Other Works;
- (ii) the Independent Certifier has access to the Site and the System to the extent required to perform its obligations pursuant to Schedule 6 – Independent Certifier Agreement;
- (iii) the inspectors and other persons authorized to act on behalf of the City have access to the Site and the Highway Site for inspection and acceptance purposes;
- (iv) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents, have access to the Site, the Highway Site, the System

and the Highway at all reasonable times to perform Third Party Works and where applicable, in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Orders or encroachment permits, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any activities within the Project Scope;

- (v) all Governmental Authorities and Emergency Service Providers have access to the Site, the Highway Site, the System and the Highway in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Scope;
 - (vi) any City Party (provided that for the purposes of this section, access rights for DB Co or any DB Co Party shall be as set out in the DB Co Interface Agreement), Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies, and Railway Companies are permitted to enter upon the Site, the Highway Site, the System and the Highway for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Site, the Highway Site, the System and the Highway owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Scope; and
 - (vii) with the prior authorization of the City, any of the Contribution Agreement Parties have access to the Site and/or the System.
- (b) In exercising their access rights under Section 21.5(a), each person referred to therein (except for Other Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 9.7) shall (except in the case of access rights described in Section 21.5(a) for the purpose of responding to an Emergency (for the purposes of this clause (b), references in the definition of “Emergency” to the City or the City Representative shall be deemed to be references to the applicable Governmental Authority or Emergency Service Provider) and except to the extent inconsistent with the applicable requirements of such Governmental Authority or Emergency Service Provider):
- (i) provide reasonable prior notice appropriate to the circumstances;

- (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
- (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

21.6 Public Use

- (a) It is the City and not Project Co that grants to the general public the right to use the System. Project Co shall use commercially reasonable efforts to keep open for public use the existing transit system at all times during the Construction Period in accordance with the requirements provided for in Schedule 15-2 – Output Specifications – Design and Construction Requirements, except for lane closures or diversions of traffic flow:

- (i) by Project Co in accordance with the provisions of the Traffic and Transit Management Plan; or as otherwise permitted under this Project Agreement or the DB Co Interface Agreement; or
- (ii) of a type contemplated by Schedule 37 – Mobility Matters,

and, except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against the City, any City Party, Emergency Service Providers or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section or as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority affecting all or any part of the Site or the System at any time.

- (b) Subject to closures or diversions of traffic flow with respect to the System permitted by Section 21.6(a)(i) to Section 21.6(a)(ii), Project Co shall cause all Design and Construction Works and Maintenance Services to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure other than the System, whether under the control or in the possession of the City or any other person.

22. WORKS SCHEDULE AND WORKS REPORT

22.1 Completion of Design and Construction Works

- (a) Project Co shall complete the Design and Construction Works in accordance with this Project Agreement and achieve:
 - (i) each Milestone Acceptance by the applicable Scheduled Milestone Acceptance Date;
 - (ii) Substantial Completion by the Scheduled Substantial Completion Date;

- (iii) Revenue Service Availability by the Required Revenue Service Availability Date; and
- (iv) Final Completion by the Scheduled Final Completion Date.

22.2 The Works Schedule

- (a) Project Co shall prepare and submit to the City and the Independent Certifier:
 - (i) within 30 days after Financial Close, a detailed 6-Month Works Schedule;
 - (ii) within 120 days after Financial Close, a detailed draft of the Works Schedule; and
 - (iii) every month in accordance with Schedule 33, an updated, and progressed, Works Schedule, each using Oracle Primavera P6 Project Management software, that supports the completion of the Design and Construction Works in accordance with Section 22.1.
- (b) Project Co shall develop its Works Schedule in close co-ordination with the City to ensure City related input into the design, as well as City obligations under the Project Agreement are included in the Works Schedule with sufficient detail and understanding by both Project Co and the City such that both parties have a clear expectation of their respective obligations and input and the timing required for such.
- (c) The City shall provide Project Co with comments on the 6-Month Works Schedule and the draft of the Works Schedule in accordance with Schedule 10 – Review Procedure, provided that the period for review of the draft of the 6-Month Works Schedule and the Works Schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 – Review Procedure. Project Co shall revise the 6-Month Works Schedule and the draft of the Works Schedule to the extent required by Schedule 10 – Review Procedure within 15 days of receipt of any comments from the City.
- (d) When agreed by the Parties, the draft of the Works Schedule shall become the Works Schedule.
- (e) The 6-Month Works Schedule and the Works Schedule shall be prepared in accordance with Good Industry Practice (Works) for a light rail transit project of similar scale, scope, type and complexity and shall be in sufficient detail so as to enable the City and the Independent Certifier, to monitor the progress of the Design and Construction Works, including all commissioning activities, and the likely future progress of the Design and Construction Works. For purposes of these schedules, Good Industry Practice (Works) includes, but is not limited to, the following Project Management Institute (PMI) publications:
 - (i) *A Guide to the Project Management Body of Knowledge (PMBOK® Guide);*
 - (ii) *Construction Extension to the PMBOK® Guide 3rd Edition;*

- (iii) The Practice Standard for Scheduling;
 - (iv) The Practice Standard for Work Breakdown Structures; and
 - (v) The Practice Standard for Earned Value Management.
- (f) Without limiting the generality of Section 22.2(e), the 6-Month Works Schedule shall include the requirements below, at a minimum, in respect of the 6-month period beginning at Financial Close:
- (i) all elements in the Works Schedule pursuant to Schedule 3, Part 1 of the Request for Proposals;
 - (ii) information based upon a detailed Work Breakdown Structure (WBS). The WBS and associate dictionary shall be provided to the City;
 - (iii) information structured with valid network logic and in sufficient detail so as to enable the City to analyze the schedule model using statistical techniques such as Monte Carlo schedule risk analysis;
 - (iv) three-point duration estimates (optimistic, most likely, and pessimistic) for all activities. These estimates shall identify the uncertainty inherent with executing each activity;
 - (v) major milestone events;
 - (vi) constraints;
 - (vii) the dates that key decisions must be made by the City, or key meetings where the City is to be present, to support the progress of the Design and Construction Works;
 - (viii) the proposed dates for all plans, all Work Submittals and all Maintenance Submittals required to be submitted under this Project Agreement and any Schedule by Project Co pursuant to the Review Procedure;
 - (ix) all activities related to the environmental process, proposed Stakeholder consultations, and Environmental Approvals, including review periods by Governmental Authorities and third parties pursuant to Project Co Permits, Licences and Approvals showing in sufficient detail how these dates affect the critical path of the Schedule, as well as how these dates affect the commencement date of Construction Clearing and Grubbing;
 - (x) all design related activities;
 - (xi) all field and construction activities, including construction staging, subcontract work and cash allowance work, both on and off the Site;

- (xii) all activities leading up to Construction Clearing and Grubbing;
- (xiii) projected Construction Contract cash flows; and
- (xiv) a narrative that describes, in sufficient detail, the rationale behind the items identified in this Section 22.2(f).
- (g) Without limiting the generality of Section 22.2(e), the Works Schedule shall include, at a minimum, in respect of the period from 6 months following Financial Close until the Revenue Service Availability Date:
 - (i) subject to Section 22.2(g)(ii), all elements to be included in the 6-Month Works Schedule pursuant to Section 22.2(f);
 - (ii) the proposed dates for all plans, all Works Submittals and all Maintenance Submittals, except for the proposed dates for plans under Subsection (viii) of Section 22.2(f);
 - (iii) the process and schedule of Facility Acceptance Tests, Reliability Acceptance Tests and System Acceptance Tests;
 - (iv) all Project Co Commissioning activities;
 - (v) the manpower requirements for each activity, including subcontract work;
 - (vi) a manpower histogram, with descriptions of overall manpower as well as by trade and manpower sourced locally (including both direct engagement and subcontract work); and
 - (vii) a cumulative “S” curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date.
- (h) Works Budget and Cost Control System
 - (i) The project budget and cost control system implemented by Project Co shall include the following parameters:
 - (A) A detailed WBS based cost structure that is the overall project budget baseline;
 - (B) Tracking of cost issues and factors that create changes to the budget baseline;
 - (C) Managing the actual cost changes when and as they occur;
 - (D) Managing cost estimates to ensure they do not exceed budgets available;
 - (E) Monitoring cost performance trends to detect cost variances and track budget-cost variances;

- (F) Risk management including contingencies, allowances and uncertainty funds;
 - (G) Scope/Cost Change Control System;
 - (H) Scope changes and associated cost estimates against the budget baseline; and
 - (I) Reporting to the City regarding all pending and approved scope changes.
- (ii) Project Co shall use an Earned Value Management (EVM) methodology to track performance of the work using the following key performance factors:
- (A) Schedule Performance Index (SPI);
 - (B) Cost Performance Index (CPI);
 - (C) Schedule Variance (SV);
 - (D) Cost Variance (CV);
 - (E) Planned Value (PV);
 - (F) Earned Value (EV);
 - (G) Actual Cost (AC);
 - (H) Estimate to Complete (ETC); and
 - (I) Estimate at Completion (EAC).
- (iii) EVM budget, and cost performance, shall be reported monthly in accordance with Section 22.5 Works Report.

22.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 40, if, at any time:
- (i) the actual progress of the Design and Construction Works, including, without limitation, the Milestones, the 2017 Readiness Work or the Highway Work has significantly fallen behind the Works Schedule or Highway Construction Schedule, respectively; or
 - (ii) the City is of the opinion that:
 - (A) the actual progress of the Design and Construction Works, including, without limitation, the 2017 Readiness Work has significantly fallen behind the Works Schedule; or

- (B) Project Co will not achieve 2017 Readiness by the 2017 Readiness Date, Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date, Revenue Service Availability by the Required Revenue Service Availability Date or Revenue Service Availability by the Longstop Date;

Project Co shall be required:

- (iii) within 5 Business Days of receipt of notice from the City, to produce and deliver to each of the City Representative and the Independent Certifier:
- (A) a report identifying the reasons for the delay; and
- (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
- (I) achieve 2017 Readiness by the 2017 Readiness Date, Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date or Revenue Service Availability by the Required Revenue Service Availability Date, as applicable; or
- (II) if Revenue Service Availability will not be achieved by the Required Revenue Service Availability Date, achieve Revenue Service Availability by the Longstop Date; and
- (iv) to bring the progress of the Design and Construction Works, including, without limitation, the 2017 Readiness Work or the Highway Work, as applicable, back on schedule in accordance with the plan delivered under Section 22.3(a)(iii)(B) and approved by the City Representative.
- (b) Project Co shall notify the City Representative if, at any time, the actual progress of the Design and Construction Works, including, without limitation, the 2017 Readiness Work or the Highway Work is significantly ahead of the Works Schedule or the Highway Construction Schedule, respectively.
- (c) Provided that Project Co has complied with this Section 22.3 and is not in default under Section 45.1(a)(iii), for greater certainty, the failure to achieve: (i) 2017 Readiness by the 2017 Readiness Date; (ii) Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date; (iii) Revenue Service Availability by the Required Revenue Service Availability Date; (iv) Milestone Acceptance by the relevant Scheduled Milestone Acceptance Date; (v) Substantial Completion by the Scheduled Substantial Completion Date; or (vi) Final Completion by the Scheduled Final Completion Date shall not be a Project Co Event of Default for the purposes of Section 45.1(a)(v).
- (d) Without limiting the generality of the foregoing, the City shall be entitled to make inspections 1 year, 9 months, 6 months, 3 months and 1 month prior to the 2017

Readiness Date to determine the actual progress of Project Co in respect of the completion of the 2017 Readiness Work.

22.3A Acceleration of the 2017 Readiness Work

- (a) If it has been determined by the Independent Certifier that completion of the 2017 Readiness work will not occur by the 2017 Readiness Date, Project Co agrees that it shall comply, and shall cause all relevant Project Co Parties to comply with all directions issued by the City from time to time in respect of the 2017 Readiness Work requiring acceleration and/or execution of a mitigation strategy approved by the City at Project Co's expense if it is determined by the Independent Certifier that an act or acts and/or an omission or omissions of Project Co caused the delay in achieving completion of the 2017 Readiness Work by the 2017 Readiness Date, notwithstanding Section 39.1(b). Otherwise, Project Co's expenses incurred in complying with directions issued by the City from time to time shall be dealt with as a Variation, subject to and in accordance with Schedule 22 – Variation Procedure. The City may, at its Discretion, waive any requirement of Project Co in respect of the 2017 Readiness Work.
- (b) Any dispute in relation to the Independent Certifier's decision that completion of the 2017 Readiness Work will or will not occur by the 2017 Readiness Date may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (c) Project Co shall work collaboratively with the City to identify, develop and implement opportunities for the public to appreciate elements of the System and the Highway Work by the 2017 Readiness Date that include:
- (i) ground breaking ceremonies in respect of the Tunnel, the MSF and the Highway Work and the provision of a Vehicle "mock-up" for public inspection;
 - (ii) ground breaking ceremonies, ribbon cutting ceremonies, artwork unveiling and a Vehicle at the platform for public inspection at the Rideau station, the St-Laurent station and the LeBreton station;
 - (iii) events in respect of the delivery of the first Vehicle;
 - (iv) a guided train ride between the St-Laurent station and the Cyrville station; and
 - (v) a ribbon cutting ceremony at completion and an open house at the MSF.

Project Co and the City shall cooperate and Project Co shall take commercially reasonable steps to seek to arrange for such other opportunities as may be mutually agreed on with the City for the public to appreciate elements of the System and the Highway Work by the 2017 Readiness Date.

22.4 Notification of Early Milestone Acceptance, Highway Substantial Completion or Revenue Service Availability

- (a) Unless Project Co obtains the prior written consent of the City, in its Discretion, Project Co shall not be entitled to:
- (i) a Milestone Acceptance Certificate prior to, a Milestone Acceptance Date and a Milestone Payment Date shall not be earlier than, the relevant Scheduled Milestone Acceptance Date;
 - (ii) the Highway Substantial Completion Certificate prior to, the Highway Substantial Completion Date and the Highway Milestone Payment shall not be earlier than, the Highway Scheduled Substantial Completion Date; or
 - (iii) the Revenue Service Availability Certificate prior to, the Revenue Service Availability Date and the Revenue Service Availability Payment Date shall not be earlier than, the Required Revenue Service Availability Date.
- (b) If Project Co advises the City that it expects to be able to achieve a Milestone Acceptance, Revenue Service Availability, or Substantial Completion of the Highway Work prior to the relevant Scheduled Milestone Acceptance Date, the Required Revenue Service Availability Date or the Highway Scheduled Substantial Completion Date, as applicable, the City Representative shall be entitled to require Project Co to produce and submit to the City Representative a revised Works Schedule or Highway Construction Schedule as applicable showing the manner and the periods in which the Design and Construction Works or the Highway Work, as applicable, shall be performed and what the revised date for that Milestone Acceptance, Revenue Service Availability or Substantial Completion of the Highway Work would be so as to enable the City to consider at its Discretion:
- (i) whether to agree to an earlier Milestone Acceptance Date, Required Revenue Service Availability Date or Highway Substantial Completion Date, as applicable; and
 - (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Milestone Acceptance Date, Required Revenue Service Availability Date or Highway Substantial Completion Date.

22.5 Works Report

- (a) Project Co shall continuously monitor the progress of the Design and Construction Works, including, without limitation, the 2017 Readiness Work and the Highway Work in relation to the Works Schedule and, within 10 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the City Representative and the Independent Certifier and the Consultant a works report (each, a “**Works Report**”), which will include:

- (i) an executive summary describing the general status of the Design and Construction Works, including, without limitation, the 2017 Readiness Work and the Highway Work and progress made over the relevant month;
- (ii) an updated Works Schedule, printed in both summary and detailed formats (PDF), and in native P6 format (XER);
- (iii) a narrative description of any Disputes related to the Design and Construction Works, including, without limitation, the 2017 Readiness Work and the Highway Work, including any action that has taken place over the relevant month to resolve such Disputes;
- (iv) an update on those matters set out in Schedule 33 – Works Report Requirements; and
- (v) a progress report comparing Project Co’s actual Construction Activities and procurement activities relating to the System with LEED rating requirements,

all in form and substance satisfactory to the City, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.

- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by the City.

23. OPERATIONS MATTERS

23.1 Operations Provision

- (a) Project Co and the City shall comply with the provisions of Schedule 39 – Operations Matters. In respect of the Stage 2 System, the City shall issue a Variation Enquiry in good time prior to each of the Stage 2 East Substantial Completion Date and the Stage 2 West Substantial Completion Date to clarify (i) whether the City intends to extend the scope of Schedule 39 – Operations Matters to the Stage 2 System, and if so, on what terms, or to delete Schedule 39 – Operations Matters in its entirety; and (ii) any consequential changes the City’s decision (either way) will have on Project Co’s existing obligations under this Project Agreement. The relevant provisions of Schedule 22 - Variation Procedure shall apply except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree. The City acknowledges that the ability of Project Co to manage any such obligations in respect of the Stage 2 System shall be contingent on Project Co having access to an appropriate remedy in respect of the design and construction of the Stage 2 System through an amendment to this Agreement, the DB Co Works Agreement and/or the DB Co Interface Agreement.

24. ENERGY AND ENVIRONMENTAL REQUIREMENTS**24.1 Environmental Management / Contamination and Hazardous Substances**

- (a) Project Co shall comply with the provisions of Schedule 17 – Environmental Obligations.

24.2 Greenhouse Gas Credits

- (a) Any carbon or other greenhouse gas credits (including but not limited to allowances, offset credits and any other credits that may be recognized in any provincial, regional, national, international or other emissions trading system from time to time) which may be contracted for or otherwise guaranteed as a result of the Project shall be owned by the City and Project Co shall have no entitlement to any of such credits whatsoever.

24.3 Energy Matters

- (a) Each of Project Co and the City shall comply with the provisions of Schedule 8 – Energy Matters. In respect of the Stage 2 System, the City shall issue a Variation Enquiry in good time prior to each of the Stage 2 East Substantial Completion Date and the Stage 2 West Substantial Completion Date to clarify (i) how the City intends to extend the scope of Schedule 8 – Energy Matters to the Stage 2 System and on what terms; and (ii) any consequential changes the City’s decision will have on Project Co’s existing obligations under Schedule 8 – Energy Matters. The relevant provisions of Schedule 22 - Variation Procedure shall apply except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree. The City acknowledges that the ability of Project Co to manage any such obligations in respect of the Stage 2 System shall be contingent on Project Co having access to an appropriate remedy in respect of the design and construction of the Stage 2 System through an amendment to this Agreement, the DB Co Works Agreement and/or the DB Co Interface Agreement.

24.4 LEED Design and Construction Obligations

- (a) Subject to Section 24.7 below, Project Co shall perform the Works so as to achieve the prerequisites, credits and points required to achieve LEED Certification for the MSF administration building and the MSF maintenance building and, may, in its discretion, determine which prerequisites, credits and points to pursue.

24.5 LEED Rating System

- (a) Project Co shall:
- (i) register the Project with CaGBC within 60 days following Financial Close; and
 - (ii) prepare and submit to CaGBC the Project documentation required to apply for a rating assessment for the Project under the LEED Rating System as soon as Project Co has completed the relevant Works or parts thereof required to facilitate preparation of the applicable Project documentation.

- (b) If, after application for registration of the Project is made in accordance with Section 24.5(a)(i), there is a change in the requirements for achievement of LEED Certification under the LEED Rating System, and Project Co is required by CaGBC to comply with such change, then Project Co shall notify the City of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) If Project Co fails to obtain LEED Certification, or deliver a LEED Compliance Certificate in accordance with Section 24.5(d) within 24 months after the Revenue Service Availability Date, other than as a direct result of any act or omission of the City the amount payable by Project Co to the City as liquidated damages shall be equal to \$. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of a failure by Project Co to achieve LEED Certification or deliver a LEED Compliance Certificate and it would be difficult or impossible to quantify such damages upon the happening of such event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of a failure by Project Co to achieve LEED Certification or deliver a LEED Compliance Certificate and, for greater certainty, a failure by Project Co to achieve LEED Certification or deliver a LEED Compliance Certificate shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall not have any obligation to mitigate any such damages.
- (d) Notwithstanding that an application to CaGBC by Project Co for LEED Certification has been made but such LEED Certification has not been received from CaGBC, Project Co shall be deemed to have met the obligations under Section 24.4 if it has delivered a certificate (the “**LEED Compliance Certificate**”), certified by an Expert appointed pursuant to Schedule 27 – Dispute Resolution Procedure, that Project Co has performed and completed the relevant Works in the manner required to obtain all necessary prerequisites, credits and points under the LEED Rating System in order for Project Co to achieve LEED Certification.

24.6 LEED Progress Reports

- (a) As part of each report provided in accordance with Section 22.5, Project Co shall submit a progress report comparing its actual Construction Activities and procurement activities with LEED rating requirements.

24.7 Belfast MSF Expansion Works Impacts on LEED Certification

- (a) In connection with any Belfast MSF Expansion Works Submittals submitted in accordance with Appendix 10 of Schedule 45, Project Co shall concurrently with such submission identify with reasonable specificity any impacts that any such submittal shall have on the ability of Project Co to achieve LEED Certification in accordance with this Article 24 (such impacts, a “**Belfast MSF Expansion LEED Impact**”). Within 10 days of the delivery of the relevant Submittal, the City and Project Co shall meet to discuss the applicable Belfast MSF Expansion LEED Impact and use reasonable commercial efforts

to agree on any appropriate mitigation measures that may be taken to preserve LEED Certification in accordance with this Article 24 and whether a Variation is required as a result of such mitigation measures or to remove the obligation to achieve LEED Certification. To the extent the City and Project Co cannot agree on appropriate mitigation measures in connection with such applicable Belfast MSF Expansion LEED Impact or whether a Variation is required as a result of such mitigation measures or to remove the obligation to achieve LEED Certification, either Party may refer the question of whether a Variation is required as a result of such Belfast MSF Expansion LEED Impact for resolution in accordance with Schedule 27 - Dispute Resolution Procedure. The City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply, except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree.

25. INDEPENDENT CERTIFIER

25.1 Appointment

- (a) On or prior to Financial Close, the Parties shall appoint an independent, suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 25.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

25.2 Role of Independent Certifier

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 – Independent Certifier Agreement (subject to the amendments agreed to such agreement pursuant to the Belfast MSF Expansion Variation).

25.3 Changes to Terms of Appointment

- (a) Neither the City nor Project Co shall without the other's prior written approval:
 - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.

- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

25.4 Right to Change Appointment

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project Agreement unless agreed to in writing by both Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days notice to the Independent Certifier. If such notice is given, then, pursuant to Section 25.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

25.5 Cooperation

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

25.6 Payment of Independent Certifier

- (a) Project Co and the City shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

25.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
- (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one

common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and

- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

26. COMMISSIONING AND COMPLETION

26.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning, and shall support and facilitate the performance of all required commissioning by the City, as set forth in this Section 26 and in Schedule 14 – Commissioning in respect of Milestone Acceptance, Substantial Completion, Revenue Service Availability and Final Completion, as applicable.
- (b) Project Co shall perform or cause to be performed all matters to ensure that Revenue Service Availability is achieved by the Required Revenue Service Availability Date.

26.2 Milestone Acceptance Certificate, Substantial Completion Certificate and Revenue Service Availability Certificate

- (a) Project Co shall give the Independent Certifier and the City Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for a Milestone Acceptance, Substantial Completion or Revenue Service Availability, as applicable, shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the City Representative notice:
 - (i) (the “Milestone Acceptance Notice”) upon the satisfaction of all requirements for a Milestone Acceptance;
 - (ii) (the “Substantial Completion Notice”) upon the satisfaction of all requirements for Substantial Completion; or
 - (iii) (the “Revenue Service Availability Notice”) upon the satisfaction of all requirements for Revenue Service Availability,

which Milestone Acceptance Notice, Substantial Completion Notice, or Revenue Service Availability Notice, as applicable, shall describe, in reasonable detail, the satisfaction of the requirements for the relevant Milestone Acceptance, Substantial Completion, or Revenue Service Availability, together with Project Co’s opinion as to whether the conditions for issuance of the Milestone Acceptance Certificate, Substantial Completion Certificate, or Revenue Service Availability Certificate have been satisfied.

- (c) The City shall, within 5 Business Days after receipt of a Milestone Acceptance Notice, Substantial Completion Notice or Revenue Service Availability Notice provide the Independent Certifier and Project Co with the City's opinion as to whether the conditions for issuance of the Milestone Acceptance Certificate, Substantial Completion Certificate or Revenue Service Availability Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Milestone Acceptance Certificate, Substantial Completion Certificate, or Revenue Service Availability Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of the City's opinion pursuant to Section 26.2(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Milestone Acceptance Certificate, Substantial Completion Certificate, or Revenue Service Availability Certificate have been satisfied, having regard for the opinions of both Project Co and the City, and in the case of Milestone Acceptance or Substantial Completion to determine whether any Minor Deficiencies exist, if applicable, and to issue to the City and to Project Co either:
- (i) the relevant Milestone Acceptance Certificate, the Substantial Completion Certificate or the Revenue Service Availability Certificate setting out in such certificate the relevant Milestone Acceptance Date, the Substantial Completion Date or the Revenue Service Availability Date, as applicable, and the Minor Deficiencies List (if applicable) in accordance with Section 26.4; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Milestone Acceptance Certificate, the Substantial Completion Certificate, or the Revenue Service Availability Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 26.2(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the City Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions, and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Milestone Acceptance Notice, a further Substantial Completion Notice, or a further Revenue Service Availability Certificate and Sections 26.2(c) to (e), inclusive, shall be repeated until the Milestone Acceptance Certificate, the Substantial Completion Certificate, or the Revenue Service Availability Certificate has been issued.

- (f) The Independent Certifier's decision to issue or not to issue a Milestone Acceptance Certificate, or the Revenue Service Availability Certificate shall be final and binding on the Parties solely in respect of determining the relevant payment date, and a Dispute in relation to a Milestone Payment Date, or the Revenue Service Availability Payment Date shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue a Milestone Acceptance Certificate, the 2017 Readiness Certificate, the Substantial Completion Certificate, the Revenue Service Availability Certificate or the Final Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

26.3 Countdown Notice for Milestones and Substantial Completion

- (a) Project Co shall deliver a notice (a “**Countdown Notice**”) to the City and the Independent Certifier specifying the date with respect to each Milestone on which Project Co anticipates the Milestone Acceptance to occur (the “**Anticipated Milestone Acceptance Date**”) in relation to the Scheduled Milestone Acceptance Date for such Milestone.
- (b) Project Co shall also deliver a Countdown Notice to the City and the Independent Certifier specifying the date on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”) in relation to the Scheduled Substantial Completion Date.
- (c) The Countdown Notice with respect to subparagraph (a) or subparagraph (b) shall be delivered not less than 60 days prior to the Anticipated Milestone Acceptance Date or the Anticipated Substantial Completion Date, as the case may be. If Project Co fails to deliver the Countdown Notice not less than 60 days prior to the Scheduled Milestone Acceptance Date or the Scheduled Substantial Completion Date, as the case may be, the Anticipated Milestone Acceptance Date or the Anticipated Substantial Completion Date, as the case may be, shall be deemed to be the same date as the Scheduled Milestone Acceptance Date or the Scheduled Substantial Completion Date, as applicable.
- (d) In accordance with Section 22.4(a), any Anticipated Milestone Acceptance Date shall not be earlier than the Scheduled Milestone Acceptance Date of the relevant Milestone, without the prior written consent of the City, in its Discretion.

26.4 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and the City, shall, within 15 Business Days of Project Co's application, prepare a list of all Minor Deficiencies (a “**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor

Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System or the relevant portion thereof, or disruption of the Project Scope or of the operations of the City, any City Party, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan.

- (c) The Independent Certifier must prepare the Minor Deficiencies List before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) The City may, in its Discretion, waive any requirement for Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.

26.5 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the City Representative and so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System or any portion thereof or disruption of the Project Scope or of the activities of the City, any City Party, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan, complete and rectify all Minor Deficiencies within 180 days of the issuance of the applicable Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the System or any portion thereof and to ensure compliance with the Traffic and Transit Management Plan.

26.6 Failure to Rectify Minor Deficiencies

- (a) If Project Co has failed to complete and rectify any Minor Deficiency specified in any Minor Deficiencies List:
 - (i) within 60 days of the issuance of the applicable Minor Deficiencies List for the related Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
 - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such a time has been specified in applicable Minor Deficiencies List by the Independent Certifier,

the City may:

- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is 200% of the amount estimated by the Independent Certifier for the City to complete and rectify all such Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
- (iv) engage others to perform the work necessary to complete and rectify any such Minor Deficiency, at the risk and cost of Project Co, and the City may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Minor Deficiency, the City shall release to Project Co the amount of the holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, the City shall release to Project Co the then remaining amount of the holdback, together with all interest accrued thereon. If the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse the City for all such excess cost.

26.7 Revenue Service Availability

- (a) Project Co shall deliver Revenue Service Availability Notice to the City and the Independent Certifier on or before 180 days prior to the Revenue Service Availability Date (the “**Required Notification Date**”) confirming whether or not Revenue Service Availability shall occur by the Required Revenue Service Availability Date. If Project Co fails to deliver Revenue Service Availability Notice on or before the Required Notification Date, it shall be deemed to be a notification that Revenue Service Availability will not be achieved by the Required Revenue Service Availability Date. In the event that Project Co shall provide Revenue Service Availability Notice to the City on or before the Required Notification Date that Revenue Service Availability shall occur by the Required Revenue Service Availability Date, but Project Co shall determine following such notification that Revenue Service Availability shall not occur on or before the Required Revenue Service Availability Date, Project Co shall notify the City in writing in respect thereof (the “**Subsequent Notice**”).
- (b) In the event that Project Co provided the Revenue Service Availability Notice to the City on or before the Required Notification Date that Revenue Service Availability shall occur by the Required Revenue Service Availability Date but Revenue Service Availability does not occur by the Required Revenue Service Availability Date (whether or not Project Co sent a Subsequent Notice to the City), the City shall be entitled to an amount of \$ on account of Liquidated Damages and Project Co shall pay such Liquidated Damages to the City. Such amount of Liquidated Damages shall constitute the City’s sole recourse against Project Co in respect of a failure to achieve Revenue Service Availability by the Required Revenue Service Availability Date.
- (c) If the Revenue Service Availability Notice (or a deemed notification or a Subsequent Notice pursuant to Section 26.7(a)) is provided that Revenue Service Availability will not

be achieved by the Required Revenue Service Availability Date, Project Co shall deliver a Notice to the City as soon as possible thereafter and in any event before the end of the second month following the Required Notification Date as to the date on, which Revenue Service Availability shall occur (the “Proposed Date”), which Proposed Date shall be at least one month plus the number of days to the first Monday after such one month period (the “Minimum Subsequent Time”) following the Required Revenue Service Availability Date (or such earlier date as shall be approved by the City in its Discretion) and which Proposed Date shall require the approval of the City within a period of 10 Business Days thereafter. Failure by the City to provide a response, either positive or negative, shall imply approval by the City. In the event that the City does not approve the Proposed Date, the Proposed Date shall be as mutually agreed upon between Project Co and the City, each acting reasonably, as soon as possible thereafter, and failing agreement within a period of 10 Business Days, the Proposed Date shall be determined by the Dispute Resolution Procedure outlined in Schedule 27 – Dispute Resolution Procedure (which Proposed Date shall in any event be at least the Minimum Subsequent Time following the Required Revenue Service Availability Date) and take into account the City’s operating booking and scheduling requirements. A Proposed Date determined in accordance with this Section 26.7 is herein referred to as the “New Required Revenue Service Availability Date”.

- (d) In the event that Revenue Service Availability is not achieved on or before the New Required Revenue Service Availability Date (as may be extended by a Delay Event) the procedure set out in Section 26.7(c) respecting the resetting of a New Required Revenue Service Availability Date shall be repeated (and such procedure shall continue to be repeated, if necessary). The Independent Certifier shall not withhold issuance of the Revenue Service Availability Certificate by reason solely that there are Minor Deficiencies.
- (e) In the event that Revenue Service Availability is not achieved on or before the New Required Revenue Service Availability Date, the Liquidated Damages to which the City shall be entitled shall be the sum of \$ following the New Required Revenue Service Availability Date to and including the reset New Required Revenue Service Availability Date, provided that Revenue Service Availability is achieved by such reset New Required Revenue Service Availability Date. Such amount of Liquidated Damages shall constitute the City’s sole recourse against Project Co in respect of a failure to achieve Revenue Service Availability by the New Required Revenue Service Availability Date.
- (f) In the event that there is a Dispute concerning Revenue Service Availability and such Dispute is ongoing, the City shall not be entitled to payment of Liquidated Damages unless and until such Dispute is resolved in accordance with the Dispute Resolution Procedure outlined in Schedule 27 – Dispute Resolution Procedure and, if resolved in favour of the City, the provisions, respecting Liquidated Damages contained in this Section 26.7 shall apply with retroactive effect, except that there shall be added to the amount payable by Project Co on account of Liquidated Damages, interest at the rate of 2 percent per annum from the date the Liquidated Damages were required to be paid in the absence of the Dispute to the date of payment.

- (g) The payment of any amount of Liquidated Damages pursuant to Section 26.7 shall not reduce the maximum amount of liability of Project Co as provided for in Section 57.4.

26.8 **Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the City Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the City Representative notice (a "Final Completion Notice") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, the time required for completion of all outstanding seasonal work, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) The City shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with the City's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of the City's opinion pursuant to Section 26.8(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and the City, and to issue to the City and to Project Co either:
- (i) the Final Completion Certificate, setting out in such certificate the Final Completion Date, as applicable; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate, including any items on the Minor Deficiencies List which remain outstanding.
- (e) Where the Independent Certifier has issued a report in accordance with Section 26.8(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the City Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions;

- (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions, and
- (iv) and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 26.8(c) to 26.8(e), inclusive, shall be repeated until the Final Completion Certificate, has been issued.
- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, the City may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to the City the costs incurred by the City to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

26.9 Effect of Certificates/Use

- (a) The issue of a Milestone Acceptance Certificate, the Substantial Completion Certificate, the Revenue Service Availability Certificate or the Final Completion Certificate, the commencement of use by the City or the public of any part of the System under the terms of this Project Agreement or the commencement of any Governmental Activities shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or
 - (ii) be construed as an approval by the City of the Design and Construction Works or the way in which they have been carried out.

26.10 [Intentionally deleted]

26.11 Post-Completion Survey

- (a) Not more than 90 days after the Final Completion Date, Project Co shall cause an up-to-date topographical and an up-to-date legal survey of the Lands to be completed by a duly qualified surveyor to be delivered to the City.

27. MAINTENANCE SERVICES

27.1 Overall Responsibility

- (a) During the Maintenance Term, Project Co shall perform the Maintenance Services in respect of the System:
 - (i) so as to satisfy the Output Specifications; and
 - (ii) in accordance with the other terms of this Project Agreement.
- (b) Subject to Section 33.1(b), one or more Maintenance Contractors may perform the Maintenance Services in respect of the System. Project Co may itself or through Subcontracts perform minor aspects of the Maintenance Services or such greater portion of the Maintenance Services as the City shall approve in its Discretion.

27.2 Commencement of Maintenance Services

- (a) Project Co shall commence the Maintenance Services on the Revenue Service Commencement Date and shall perform the Maintenance Services until the end of the Maintenance Term, taking into account the Timing Principle.

27.3 Equipment for Maintenance Services

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to perform the Maintenance Services.

27.4 Price adjustment for Maintenance Services arising from Stage 2 Variations and Stage 2 Integration Activities

- (a) If, as a result of the activities carried out by Project Co under the Procurement Support Services Variation and/or the Stage 2 Interface and Design Management Variation, Project Co has notified the City in accordance with the terms of either such Variation that an adjustment to the Fixed Price (as defined in the Stage 2 MOU) is justified under the terms of the Stage 2 MOU and/or a change to the risk allocation under this Agreement is required to leave Project Co in the same commercial position contemplated by the Stage 2 MOU, and such an adjustment or change is either agreed or determined pursuant to the dispute resolution procedures set out in the Stage 2 MOU and/or the relevant Stage 2 Variations, the City shall promptly issue a Variation Enquiry to give effect to such adjustment under this Agreement and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree.
- (b) In connection with the integration of the Stage 1 System with the Stage 2 System, including any trial running of any part of the System (the “**Stage 2 Integration Activities**”), the City shall issue a Variation Enquiry:

- (i) to the extent that any support is required from Project Co beyond the performance of its obligations under this Agreement;
- (ii) to the extent that any other change is required to, or any interference will occur to, the performance by Project Co of its obligations under this Agreement as a result of such activities; or
- (iii) to the extent the proposed methodology for testing, commissioning and certification of such activities differs from the arrangements set out in Schedule 14 – Testing and Commissioning of the DB Co Works Agreement,

and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree.

27.5 Impact of Trial Running

- (a) In this Section, the “**Variation Trigger Date**” is each of:
 - (i) the date falling sixteen weeks after the Stage 2 East Substantial Completion Date (the “**East Trigger Date**”); and
 - (ii) the date falling sixteen weeks after the Stage 2 West Substantial Completion Date (the “**West Trigger Date**”).
- (b) If the Stage 2 East Revenue Service Commencement Date occurs after the East Trigger Date or the Stage 2 West Revenue Service Commencement Date occurs after the West Trigger Date (and in each case, to the extent the delay has not been caused by Project Co or any Project Co Party, other than as a result of any act or omission of Project Co or a Project Co Party that forms part of the performance of any Stage 2 Integration Activities instructed pursuant to a Variation Enquiry under Section 27.4(b)), the City will issue a Variation Enquiry to ensure that Project Co is left in a no better and no worse position than it would have been had the DBF Warranty Period (as defined in the DB Co Interface Agreement) been for a period of two years from the Stage 2 East Revenue Service Commencement Date or the Stage 2 West Revenue Service Commencement Date, as the case may be, less a period of 16 weeks, and the relevant provisions of Schedule 22 - Variation Procedure shall apply, except that the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree.
- (c) The City agrees that it will ensure that the Stage 2 East Revenue Service Commencement Date and the Stage 2 West Revenue Service Commencement Date start within 6 weeks of the completion of Trial Running (as defined in the DB Co Works Agreement) on the Stage 2 East System or the Stage 2 West System, as the case may be.

28. HUMAN RESOURCES**28.1 Subcontractors**

- (a) Project Co shall defend and indemnify the City from all claims, loss or damages arising out of or in connection with Project Co's contracts with any and all Subcontractor(s) and any related Subcontractor labour agreements in accordance with the provisions of the Project Agreement.

28.2 Admittance of Personnel

- (a) The City shall have the right to order the removal from the Lands, the Highway Site, the System and/or the Highway of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of the City is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of the City is not a fit and proper person to be at the Lands, the Highway Site, the System and/or the Highway for any reason, including a failure to comply with any of the City's policies or any immediate obligation of the City to ensure the safety and well being of persons at the Highway Site, the System and/or the Highway.

28.3 Confirmation of Action

- (a) Any action taken under Section 28.2 shall promptly be confirmed by the City to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

28.4 Finality as to Admission

- (a) Any decision of the City made pursuant to Section 28.2 shall be final and conclusive.

28.5 Staff Competency

- (a) Project Co shall ensure that:
 - (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the activities within the Project Scope with the requisite level of skill and experience to perform the activities within the Project Scope in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to complete the Works and the Highway Work in accordance with the Works Schedule and the Highway Construction Schedule and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the Maintenance Services;

- (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the activities within the Project Scope receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirement;
 - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the activities within the Project Scope to ensure the proper performance of this Project Agreement.
- (b) Project Co shall ensure all Project Co Parties establish and provide formal training programs and certification for the staff of Project Co and of all Project Co Parties required to be certified to perform specific tasks related to the Maintenance Services as required by any provincial or federal regulatory body including but not limited to training of Maintenance personnel regarding the Maintenance and repair of the Vehicles. All training programs and activities will be designed, developed, and implemented in accordance with established professional standards for performance based development. Project Co shall ensure all Project Co Parties consider all suggestions provided by the City to improve the training by Project Co and all Project Co Parties; however, the final decision on any training program is the responsibility of Project Co and the relevant Project Co Parties. Project Co shall ensure the relevant Project Co Parties, upon the City's request, provide training program materials to the City for filing with regulatory agencies as and when required. All such training program materials or other documentation provided by Project Co and the relevant Project Co Parties shall be provided in both paper and digital formats, and shall be written in English.
- (c) Project Co and all Project Co Parties shall be responsible for the cost of all training and certification for Employees.

28.6 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Project Scope (including, for example, health and safety). Project Co and all Project Co Parties shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirement and Good Industry Practice (Works) and Good Industry Practice (Highway Work) and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to the City on a timely basis.

28.7 Governmental Authority

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with any regulations, policies or directions set by any Governmental Authority related to labour, employment and/or human resources.

28.8 City Human Resources Policies

- (a) The City may, by written notice, require that Project Co or any Project Co Party comply with a specified Human Resources Policy of the City.
- (b) Project Co may, within 90 days of receiving such notice, notify the City, in writing, that compliance with such City Policy necessitates a change in the Expanded Output Specifications or increases the Direct Costs to Project Co of providing the Maintenance Services. Within 30 Business Days of receipt of such notice, the City shall respond to Project Co indicating whether or not it agrees that compliance with the Policy necessitates a change in the Expanded Output Specifications or increases the Direct Costs to Project Co of providing the Maintenance Services. If it does agree, the City shall initiate the procedure set out in Schedule 22 – Variation Procedure as soon as reasonably practicable. If it does not agree, the matter may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

28.9 Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall cause each Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Maintenance Services:
 - (i) are questioned concerning their Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.

28.10 Effect of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a criminal records search, or of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Site and/or the System to perform any of the Maintenance Services, without the prior written consent of the City, in its Discretion.

28.11 Notification of Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that the City is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Maintenance Services who, subsequent to the commencement of such employment or engagement, receives a Relevant Conviction of

which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to the City as contemplated in this Section 28.

28.12 Disciplinary Action

- (a) The City, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Lands or at work is otherwise considered by the City to be undesirable, or to constitute a threat to the health and/or safety of any of the users of the Lands and/or the System Users or which the City considers may potentially compromise the reputation or integrity of the City and/or any City Party or the nature of the City or the Project, so as to negatively affect public perception of the City or the Project. Upon investigation, Project Co shall institute, or cause the relevant Project Co Party to institute, appropriate disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise the City in writing of the outcome of any disciplinary action taken in respect of such person.

28.13 Additional Employment Obligations

- (a) Project Co shall ensure all Project Co Parties comply with all other employment obligations as specified in Schedule 15-3 – Maintenance and Rehabilitation Requirements, including, and in particular, the obligations set out in Article 5, Security.

28.14 Maintenance Services

- (a) Project Co will initially recognize, or cause the relevant Project Co Party to recognize, the Amalgamated Transit Union as the bargaining agent for those employees engaged in the Light Rail Transit Vehicle Maintenance Services (as defined in Appendix B of the City's collective agreement with the Union).
- (b) Project Co or the relevant Project Co Party will negotiate in an effort to fix the terms and conditions of employment for those employees engaged in the Light Rail Transit Vehicle Maintenance Services with the Amalgamated Transit Union.
- (c) All collective agreements applicable to Project Co or the relevant Project Co Party, engaged in the Light Rail Transit Vehicle Maintenance Services, will be resolved via final and binding interest arbitration.
- (d) Within sixty (60) days of Financial Close, Project Co shall ensure that the Maintenance Contractor will make application to become an “**Associated Municipal Employer**” for the purposes of allowing members of the contractor's bargaining unit to participate in the pension plan established pursuant to the *Ontario Municipal Employees Retirement System Act*, R.S.O., c.029. The City agrees to support any such application for Associated Municipal Employer status.

28.15 Management Organization

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to the City, as required to keep such information current, the names of the management teams responsible for the performance of the activities within the Project Scope.

29. VEHICLE COMPONENT, CONSUMABLES AND MATERIALS

29.1 Standards

- (a) Project Co shall cause the Vehicle Component, consumables and materials used or supplied by it or any Contractor or Subcontractor in connection with the Project Scope to be:
 - (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice (Works);
 - (ii) of the type specified in the Output Specifications, if applicable; and
 - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the City Representative, supply to the City Representative evidence to demonstrate its compliance with this Section 29.1(a).

29.2 Stocks

- (a) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials including those in connection with the Vehicles to be held in compliance with its obligations under this Project Agreement.

29.3 Vehicle Working Drawings

- (a) Subject to Schedule 15 – Output Specifications, commencing on Financial Close, Project Co shall proceed to prepare detailed plans and specifications sufficient to obtain all permits required by all Relevant Authorities necessary to Construct the Vehicle Component:
 - (i) in conformity with the Vehicle Drawings; and
 - (ii) in accordance with and as more particularly described in the Output Specifications, and as may be amended from time to time in accordance with this Project Agreement;

(the “**Vehicle Working Drawings**”).

29.4 Vehicle Construction

- (a) Upon the completion of the Vehicle Working Drawings Project Co shall construct the Stage 1 Vehicles and the Vehicle Equipment for the Stage 1 Vehicles in accordance with the Vehicle Working Drawings and the Project Scope and Output Specifications.

29.5 Bill of Sale and Warranties for Vehicles

- (a) Project Co shall execute and deliver to the City a bill of sale for the Vehicles, in form and content satisfactory to the City (the “Bill of Sale”) on the Milestone Acceptance Date of a Vehicle Milestone, and where Project Co does not select a Vehicle Milestone, on the Substantial Completion of the Vehicle Component, in which Project Co:
- (i) represents and warrants that:
- (A) Project Co is at the time of the delivery of such Bill of Sale rightfully and absolutely entitled to the Vehicles;
- (B) Project Co at such time has good right, title and authority to grant, bargain, sell, assign, transfer, convey and set over to the City the Vehicles; and
- (C) the City shall immediately on the execution and delivery of such Bill of Sale have possession of and peaceably and quietly have, hold, possess and enjoy the Vehicles to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by Project Co or any person whomsoever and with good title thereto, free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and encumbrances of any nature or kind whatsoever;
- (ii) grants, bargains, sells, assigns, transfers, conveys and sets over to the City absolutely, all of Project Co’s right, title and interest in and to the Vehicles, subject to the provisions of Schedule 41 – Intellectual Property; and
- (iii) covenants and agrees with the City that it will from time to time and at all times at Project Co’s expense, on every reasonable request of the City make, do and execute or cause and procure to be made, done and executed all further acts, deeds or assurances as may be reasonably required by the City, whether for more effectually and completely vesting in the City the Vehicles in accordance with the terms of such Bill of Sale or for the purpose of registration or otherwise.
- (b) On the Milestone Acceptance Date of a Vehicle Milestone, and where Project Co does not select a Vehicle Milestone, on the Substantial Completion of the Vehicle Component, Project Co shall provide the City with access to and copies of the Vehicle manuals, certificates, log books and other applicable records relating to the relevant Vehicles in the possession or control of Project Co. All such manuals, certificates, log books and records will be maintained by Project Co at the MSF administration building.

- (c) On the Milestone Acceptance Date of a Vehicle Milestone, and where Project Co does not select a Vehicle Milestone, on the Substantial Completion of the Vehicle Component, Project Co shall obtain the warranties with respect to the relevant Vehicles contained in Schedule 34 - Vehicle and Fixed Equipment Warranties.

29.6 Vehicle Canadian Content Certification

- (a) On the Milestone Acceptance Date of a Vehicle Milestone and where Project Co does not select a Vehicle Milestone, on the Substantial Completion of the Vehicle Component if not delivered pursuant to Section 34.1(e), Project Co shall deliver to the City the Canadian Content Certificate updated with effect as of the Milestone Acceptance Date, which shall:
- (i) demonstrate that the Vehicles meet the Canadian Content Requirements;
 - (ii) include any necessary or desirable back-up information reasonably necessary to support the contents thereof and to address the requirements of the Canadian Content Policy;
 - (iii) be true and correct in all material respects; and
 - (iv) be in form and content satisfactory to the City.

29.7 Vehicle Option

- (a) Project Co and the City shall comply with the provisions of Schedule 35 – Additional Vehicles.

29.8 Extension and Additional Phases

- (a) Project Co and the City shall comply with the provisions of Schedule 38 – Extension and Additional Phases.

30. DAMAGE AND DESTRUCTION

30.1 Restoration and Reinstatement of Damage or Destruction

- (a) Unless this Project Agreement is terminated in accordance with its terms (including under Section 45.3, Section 47.1, Section 47.2 or Section 47.3), if all or any part of the System is damaged or destroyed, Project Co shall, at its own cost and expense, repair or replace, as applicable, the System or such part of the System, as applicable (the “**Reinstatement Work**”) promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the System shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from the City.

30.2 Reinstatement Plan

- (a) If the Reinstatement Work is reasonably estimated to cost more than \$10,000,000 (index linked) or in any other case where the City Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the City Representative acting reasonably considers that the continued application of the Design and Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the City Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the City Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the City Representative pursuant to Schedule 10 – Review Procedure a plan (a “**Reinstatement Plan**”) prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:
- (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
 - (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
 - (iii) the information required pursuant to Schedule 22 – Variation Procedure as if such plan were an Estimate;

and the Reinstatement Work must not be commenced until the City Representative consents thereto in accordance with Schedule 10 – Review Procedure except to the extent necessary to address any emergency or public safety needs.

30.3 Conduct of Reinstatement Work

- (a) Project Co shall cause the Reinstatement Work to be carried out in accordance with the relevant part of the Expanded Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the City Representative in accordance with Schedule 10 – Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Certification Procedure. If requested by the City Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to the City) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with the City in substantially the same forms as the Construction Contract and the Contractor’s Direct Agreement.

- (b) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 – Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work

30.4 Clarification concerning Insurance Trust Agreement

- (a) For the purposes of the Insurance Trust Agreement, the City and Project Co agree that, to the extent the Insurance Trust Agreement contains terms that are defined by reference to this Project Agreement, this shall be taken to refer to such terms as they may be updated from time to time in accordance with this Project Agreement. The City and Project Co shall procure that the Lenders' Agent and the Account Trustee acknowledge and give effect to this agreement in their dealings under the Insurance Trust Agreement.

31. MONITORING

31.1 Monitoring of Performance

- (a) Project Co shall monitor the performance of the Maintenance Services in the manner and at the frequencies set out in the Output Specifications and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations as set out in the Output Specifications and the Payment Mechanism, Project Co shall, as reasonably requested by the City, provide the City Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) The City may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

31.2 Failure Points

- (a) In each Contract Month, Project Co shall measure the performance of the Maintenance Services, and based on the performance of the Maintenance Services in the applicable Contract Month, Failure Points may be awarded in respect of the Maintenance Services in accordance with the Payment Mechanism.

31.3 Warning Notices

- (a) Without prejudice to the City's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues more than the following number of Failure Points in any one Contract Month, then the City may give written notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "**Warning Notice**":
- (i) 120 Failure Points in respect of Vehicle and System Availability Failures;

- (ii) 120 Failure Points in respect of Station Availability Failures; or
- (iii) 50 Failure Points in respect of Quality Failures and Service Failures, combined.

31.4 Monitoring Notices

- (a) Without prejudice to the City's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues more than the following number of Failure Points in any rolling 3 Contract Months, the City may, by notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement until such time as Project Co shall have demonstrated to the reasonable satisfaction of the City that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Maintenance Services:
 - (i) 240 Failure Points in respect of Vehicle and System Availability Failures;
 - (ii) 240 Failure Points in respect of Station Availability Failures; or
 - (iii) 75 Failure Points in respect of Quality Failures and Service Failures, combined.
- (b) The City may give a Warning Notice pursuant to Section 31.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
 - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
 - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that the City was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify the City in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
 - (iii) if Project Co gives the City a notice under Section 31.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of the City's receipt of such notice, may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, the City may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 31.4(c)(iii);

- (v) if it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that the City was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse the City for any reasonable costs and expenses incurred by or on behalf of the City in relation to the giving of such Monitoring Notice; and
 - (vi) if it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that the City was not entitled to give the applicable Monitoring Notice, the City shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of the City that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Maintenance Services, Project Co may apply for the withdrawal of such Monitoring Notice. If the City is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that the City was not entitled to give any Monitoring Notice, the City shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

32. CITY’S REMEDIAL RIGHTS

32.1 Exercise of Remedial Rights

- (a) The City may exercise all rights set out in this Section 32 at any time and from time to time if:
- (i) the City, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
 - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any System User, City Party or City Third Party Beneficiary;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the Maintenance Services or the availability of the System to System Users;
 - (C) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or

- (D) may potentially compromise the reputation or integrity of the City or any City Party or the nature of the City or the Project, so as to negatively affect public perception of the City or the Project,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C), the City shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from the City or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C) actually occur; and
 - (F) in respect of Section 32.1(a)(i)(D), the City shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from the City or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co accrues, in any Contract Month, more than:
 - (A) 300 Failure Points in respect of Vehicle and System Availability Failures;
 - (B) 300 Failure Points in respect of Station Availability Failures; or
 - (C) 150 Failure Points in respect of Quality Failures and Service Failures, combined;
 - (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Maintenance Services;
 - (iv) if, pursuant to Part 5 of Schedule 11 – Quality Management, a Quality Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Services as provided in the Output Specifications;

- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Scope, the Governmental Activities or the availability of the System to System Users;
- (vi) the City has received a notice under any Maintenance Contractor's Direct Agreement, if applicable, that entitles the City to exercise step-in rights thereunder; or
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of the City.

32.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, the City may exercise all of the rights set out in this Section 32 at any time and from time to time during the Maintenance Term if the City, acting reasonably, considers the circumstances to constitute an Emergency.

32.3 Rectification

- (a) Without prejudice to the City's rights under Section 45 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 32.1 or 32.2, the City may, by written notice, require Project Co to take such steps as the City, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with the City's requirements as soon as reasonably practicable.
- (b) If the City gives notice to Project Co pursuant to Section 32.3(a) and either:
 - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or, if applicable, in the event the City is entitled to exercise step-in rights under the Maintenance Contractor's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to the City to mitigate, rectify and protect against such circumstances that the City may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as the City, acting reasonably, shall think fit,

then the City may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Maintenance Contractor's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Maintenance Services to the standards required by this Project Agreement, and the provisions of Section 42 including Section 42.1(a)(iv) and Section 42.2, shall apply. For greater certainty Maintenance

Services performed by Project Co and by Subcontractors from time to time pursuant to the provisions of Section 27.1(b) do not require Project Co or such Subcontractors to enter into a Maintenance Contractor's Direct Agreement in respect of the Maintenance Services that they perform.

- (c) Notwithstanding the foregoing provisions of this Section 32.3, in the event of an Emergency, the notice under Section 32.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and the City may, prior to Project Co's confirmation under Section 32.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where the City considers it to be necessary to do so, the steps which the City may take pursuant to this Section 32.3 subsequent to the provision of the notice under Section 32.3(a) unless the notice is given at a later time as provided in Section 32.3(c), may, at the City's option, include the partial or total suspension of Project Co's right and obligation to perform any Maintenance Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Maintenance Services, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply, but such suspension shall be only for so long as, as applicable:
 - (i) the circumstances referred to in Section 32.1 or 32.2 subsist; or
 - (ii) in respect of any such circumstances relating to Project Co's performance of the Maintenance Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of the City that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 32.3 and as are necessary to be capable of performing its obligations in respect of the relevant Maintenance Services to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

32.4 Costs and Expenses

- (a) Subject to the City's obligations pursuant to Sections 32.5 and 32.6:
 - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of the City's rights pursuant to this Section 32; and
 - (ii) Project Co shall reimburse the City for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights pursuant to this Section 32.

32.5 Reimbursement Events

- (a) In this Section 32.5, a "**Reimbursement Event**" means:

- (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a City Party or City Third Party Beneficiary;
 - (ii) a labour dispute involving employees of any City Party or City Third Party Beneficiary that materially affects or can reasonably be expected to materially affect the Project Scope; or
 - (iii) an Emergency not resulting from Project Co's breach of its obligations under this Project Agreement.
- (b) If the City either takes steps itself or requires Project Co to take steps in accordance with this Section 32 as a result of a Reimbursement Event:
- (i) the City shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of the City's rights pursuant to this Section 32 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) subject to Section 32.5(c), the City shall bear all costs and expenses incurred by the City in relation to the exercise of the City's rights pursuant to this Section 32.
- (c) If, in exercising its rights pursuant to this Section 32, the City performs any part of the Maintenance Services either itself or by engaging others, the City shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Maintenance Services. If the City makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 32.4(a)(ii) up to the amount equal to the deduction.

32.6 Reimbursement if Improper Exercise of Rights

- (a) If the City exercises its rights pursuant to this Section 32, but the City was not entitled to do so, the City shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of the City issued as a result of the City having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not the City is entitled to exercise its rights pursuant to this Section 32 before taking any such action that the City may require and Project Co shall comply with all of the City's requirements. Only concurrently with or after complying with the City's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

33. ALLOCATION OF RESPONSIBILITY

33.1 Responsibility among Contractors

- (a) Without prejudice to the rights and priorities of the Lenders pursuant to Schedule 4 – Lenders’ Direct Agreement or the rights of Project Co pursuant to the Contracts without derogation of the provisions respecting Integration contained in Section 9.2, in the event of a default by Project Co with respect to the activities within the Project Scope (the “**Work Default**”), if there is a dispute amongst the Contractors relating to which of the Contractors (or Subcontractor) has responsibility for the Work Default (the “**Responsibility Dispute**”):
- (i) the City shall be entitled to send Notice to Project Co requiring an acknowledgment from Project Co as to the Contractor responsible for the Work Default (the “**Responsibility Notice**”);
 - (ii) if Project Co has not sent notice in writing to the City within 30 days from receipt of the Responsibility Notice advising of the resolution of the Responsibility Dispute and identifying the Contractor responsible for the Work Default (the “**Responsible Contractor**”), the City shall have the right to send a further notice to Project Co determining the Responsible Contractor and the determination by the City shall be binding on Project Co and all of the Contractors.
- (b) In the event of more than one Maintenance Contractor, the Maintenance Contractors shall be collectively responsible for the integration of the Maintenance Services and the relevant Contractor’s Direct Agreement shall so provide. Project Co shall ensure that the Maintenance Contractor or one designate of the Maintenance Contractors shall at all times provide a nominated individual with whom the City may correspond or communicate with respect to all matters relating to Maintenance Services regardless of which of the Maintenance Contractors is responsible for any relevant matters. Project Co shall ensure that during the Maintenance Term one individual who is critical to the performance of the Maintenance Services is identified in Schedule 9 – Key Individuals and the provisions of Section 10.4 shall apply in respect of such individual. The City shall be entitled, but not required, to raise any issues in respect of the Maintenance Services with such individual who shall have full authority to act on behalf of Project Co for all purposes related to the Maintenance Services subject to the limitation that such individual shall not be entitled to modify or waive any provision of this Project Agreement. Notwithstanding the integration responsibilities in this Section 33.1(b), there will be no joint and several liability created amongst the Maintenance Contractors by virtue of anything in this Project Agreement.

33.2 [Intentionally Deleted]**34. PAYMENT****34.1 Milestone and Revenue Service Availability Payments**

- (a) The City shall pay to Project Co the Milestone Payment due and payable in respect of the relevant Milestone plus, for clarity, applicable HST on the Milestone Payment Date.
- (b) Subject to Section 11.6(h) of Schedule 40 – Highway Work, the City shall pay to Project Co the Highway Milestone Payment, as adjusted by the Net Highway Payment Adjustment and less the Highway Minor Deficiencies Holdback, due and payable plus applicable HST on the Highway Milestone Payment Date. The Highway Milestone Payment, as adjusted by the Net Highway Payment Adjustment and less the Highway Minor Deficiencies Holdback, shall be paid to Project Co in accordance with and subject to Applicable Law.
- (c) The City shall pay to Project Co the Highway Final Payment plus applicable HST on the Highway Final Payment Date. The Highway Final Payment shall be paid to Project Co in accordance with and subject to Applicable Law.
- (d) The Parties agree that the Highway Milestone Payment and the Highway Final Payment will not be subject to adjustment in favour of Project Co despite changes in the Highway Work, unless such changes in the Highway Work constitute a Variation in the Scope of the Highway Work. The Parties further agree that the Highway Milestone Payment and the Highway Final Payment will only be adjusted where the Contract Documents specifically and expressly refer to an adjustment to the Highway Milestone Payment and the Highway Final Payment, and no claim for an adjustment to the Highway Milestone Payment and the Highway Final Payment on any legal or equitable basis outside of the specific and express rights to an adjustment of the Highway Milestone Payment and the Highway Final Payment set out in the Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Highway Milestone Payment and the Highway Final Payment must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure. The provisions of this Section 34.1(d) are subject to the adjustments contemplated pursuant to the Net Highway Payment Adjustment.
- (e) There will be no payment in respect of a Vehicle Milestone unless and until Project Co delivers to the City the Canadian Content Certificate updated with effect as of the date of payment, which shall:
- (i) demonstrate that the Vehicles meet the Canadian Content Requirements as of the date of the payment;
 - (ii) include any necessary or desirable back-up information reasonably necessary to support the contents thereof and to address the requirements of the Canadian Content Policy;
 - (iii) be true and correct in all material respects; and

- (iv) be in form and content satisfactory to the City.
- (f) The City shall pay to Project Co the Revenue Service Availability Payment due and payable in respect of Revenue Service Availability plus, for clarity, applicable HST less all Mobility Matters Deductions, on the Revenue Service Availability Payment Date.
- (g) The City shall pay to Project Co the amount of \$, as such amount is adjusted by the Net Highway Maintenance Adjustment, due and payable in respect of the Highway Post Substantial Completion Maintenance plus applicable HST within 3 Business Days of the expiry of the Highway Warranty provided, however, that such payment shall not be made in the event that the specifications in Annex G of Schedule 40 – Highway Work in respect of the Highway Post Substantial Completion Maintenance have not been complied with as of the expiry of the Highway Warranty.

34.2 Monthly Service Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 34.2, Schedule 20 – Payment Mechanism and Schedule 39 – Operations Matters, the City shall pay to Project Co the all inclusive Monthly Service Payments.

34.3 Payment Adjustments

- (a) Project Co acknowledges and agrees that:
 - (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 20 – Payment Mechanism;
 - (ii) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 39 – Operations Matters; and
 - (iii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 20 – Payment Mechanism or Schedule 39 – Operations Matters is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the City to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits the City to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

34.4 Monthly Service Payment Commencement

- (a) Subject to and in accordance with this Project Agreement, the City shall pay Project Co the Monthly Service Payments calculated as being due to Project Co in respect of each Contract Month following the Revenue Service Commencement Date in accordance with Schedule 20 – Payment Mechanism and Schedule 39 – Operations Matters.

- (b) Project Co shall not be entitled to any Monthly Service Payments for any period prior to the Revenue Service Commencement Date.

34.5 Adjustments to Monthly Service Payment Periods

- (a) The Annual Service Payment payable in respect of each of the first Contract Year and the last Contract Year shall be adjusted in accordance with Schedule 20 – Payment Mechanism.

34.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Contract Month, Project Co shall issue to the City an invoice for the amount of the Monthly Service Payment owing by the City to Project Co for such Contract Month, with such adjustments as provided in the Payment Adjustment Report issued in the previous Contract Month.
- (b) Project Co shall comply with all requirements of Schedule 20 – Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as the City may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
- (i) the Monthly Service Payment payable in respect of the applicable Contract Month;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Contract Month that have been approved by the City;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 – Dispute Resolution Procedure;
 - (iv) any amount owing to the City under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement;
 - (vi) the net amount owing by the City to Project Co, or by Project Co to the City, as applicable; and
 - (vii) a statutory declaration in form and in substance satisfactory to the City with respect to CLA compliance and payment to all lien claimants:
 - (A) from Project Co, and
 - (B) upon request by the City, from any Project Co Party.

- (d) The invoices issued to the City in respect of the first Monthly Service Payment following the Revenue Service Commencement Date shall include up to date copies of the parcel registers for all of the Stage 1 Lands, which subsearches of title in support thereof shall not be performed earlier than 45 days following the Revenue Service Availability Date.
- (e) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The City Representative shall review each invoice submitted in accordance with this Section 34.6. The City shall pay the amount stated in such invoice on the first Business Day of the Contract Month next following the Contract Month in which the invoice is received. Any such payment shall be subject to adjustment pursuant to Section 34.6(k).
- (h) The City shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, the City shall not be obligated to pay an invoice delivered by Project Co after the second Contract Month following the Revenue Service Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 34.6(i) for the previous Contract Month. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 34.6(i), the City's obligation to pay the invoice issued by Project Co for the immediately following Contract Month shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to the City.
- (i) Within 5 Business Days following the end of each Contract Month, Project Co shall also submit to the City:
 - (i) a Performance Monitoring Report in respect of the Contract Month just ended (as further described in Part 8 of Schedule 11 – Quality Management); and
 - (ii) a report (a "**Payment Adjustment Report**") setting out any adjustments required between the actual Monthly Service Payments determined by Project Co to be owing by the City to Project Co in respect of the Contract Month just ended and the amount that was paid by the City during such Contract Month, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures;
 - (C) all Deductions in relation to Service Failures; and
 - (D) any Gainshare Adjustment or Painshare Adjustment.

- (j) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) Within 10 Business Days of receipt by the City of the Payment Adjustment Report, the City Representative shall:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by the City, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (ii) if the City disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the City shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 34.9.

34.7 Electronic Invoicing

- (a) Project Co shall cooperate with the reasonable requirements of the City, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with the City's information systems.

34.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Contract Months immediately prior to the Expiry Date, the City shall estimate, acting reasonably, the adjustments to the Monthly Service Payments for each such Contract Month. The City may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Contract Months.
- (b) Within 10 Business Days of receipt by the City of the applicable Payment Adjustment Report for each of the final 3 Contract Months, the City Representative shall either:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by the City and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount the City previously paid in respect of the applicable Contract Month. Based on such reconciliation, either the City or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if the City disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably

required to substantiate and confirm such claim. In such event, the City Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount the City previously paid in respect of the applicable Contract Month. Based on such reconciliation, either the City or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that the City shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 34.9.

34.9 Disputes

- (a) If the City, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by the City that is determined not to have been payable shall be paid forthwith by Project Co to the City and Project Co shall indemnify and hold harmless the City from and against any damages suffered or incurred resulting from such overpayment by the City as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by the City. Following resolution of the Dispute, any amount which has been withheld by the City that is determined to have been payable shall be paid forthwith by the City to Project Co and the City shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such withholding by the City as provided for at Section 56.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

34.10 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Project Co shall maintain or cause to be maintained all holdbacks required pursuant to the CLA and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

34.11 Manner of Payment

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which

payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.

- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

34.12 [Intentionally deleted]

34.13 Set Off

- (a) The Parties agree that their rights of set off at law or in equity are limited to the right of:
 - (i) the City to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 56 and Section 20.13) which are due to the City by Project Co pursuant to the terms of this Project Agreement; and
 - (ii) Project Co to set off against any amounts otherwise due to the City pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 56 and Section 20.13) which are due to Project Co by the City pursuant to the terms of this Project Agreement.

34.14 Effect of Payment

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

34.15 Audit of Performance and Payment

- (a) Without limiting the City's rights and Project Co's obligations pursuant to Section 37.2, at any time and from time to time until the later of: (i) December 1, 2026, and (ii) three hundred and sixty-five (365) days after the Termination Date, the City may give notice to Project Co requiring an audit of any matter relating to performance of the activities within the Project Scope and payments by or to the City, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.
- (b) The City shall appoint an auditor to perform and complete such audit at the City's cost and expense and pursuant to terms of reference determined by the City.
- (c) Within a reasonable time following receipt of a notice referred to in Section 34.15(a), Project Co shall make available to the City's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.

- (d) The City shall notify Project Co of the results of the audit, and if the City's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 – Dispute Resolution Procedure:
- (i) Project Co shall:
 - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
 - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by the City, reimburse the City for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
 - (I) the actual costs relating to the auditor and audit; or
 - (II) an amount equal to the amount of any overpayment;
 - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by the City, Project Co shall reimburse the City for the amount of such overpayment and, further, shall indemnify and hold harmless the City from and against any damages suffered or incurred resulting from such overpayment by the City as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by the City; and
 - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by the City, whether or not material, the City shall pay Project Co the amount of such underpayment and, further, shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such underpayment by the City as provided for at Section 56.2(c) from the date of each such underpayment.

34.16 No Other Entitlement

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

35. TAXES

35.1 Taxes

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST but inclusive of all other Taxes. Except as specified in Section 35.1(c), applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination.

- (b) The City shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or System or Highway.
- (c) Within 3 weeks of the end of the month in which a supply is completed for the purposes of paragraph 168(3) of the *Excise Tax Act* (Canada) (an “**HST Acceleration Event**”), the City shall pay to Project Co all HST payable in accordance with paragraph 168(3) of the *Excise Tax Act* (Canada) in respect of such supply for remittance to the Canada Revenue Agency, which amount, if any, shall be set out in an invoice issued by Project Co to the City upon the occurrence of the HST Acceleration Event and shall reflect the capital cost of such supply as set out in the Financial Model, which shall serve as a reasonable estimate of the full consideration for such supply. For clarity, the amount of each payment made by the City to Project Co pursuant to paragraph 168(3) of the *Excise Tax Act* (Canada) does not include any HST amounts already paid by the City to Project Co.
- (d) Subject to Section 35.1(e), in each Monthly Service Payment invoice provided by Project Co to the City, Project Co shall show on a distinct line of the invoice the Previously Paid Monthly HST Amount used to determine the amount of unpaid HST payable by the City on such Monthly Service Payment. For clarity, a Previously Paid Monthly HST Amount must be credited to the City on each Monthly Service Payment invoice.
- (e) The City shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by the City upon and in connection with payments by the City to Project Co under this Project Agreement.

35.2 Changes in Recoverability of Tax Credits

- (a) The City will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. In the event an Irrecoverable Tax becomes a Recoverable Tax as a result of a Change in Law, Project Co will pay to the City from time to time, as the same is recovered by Project Co, amounts equal to such Recoverable Tax.
- (b) For the purposes of this Section 35.2, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Legislative Assembly of Ontario in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or Highway Work or otherwise performing the activities within the Project Scope to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST, or after obtaining an input tax credit, is required to pay an additional amount to the Canada Revenue Agency equal to all or part of the input tax credit claimed.
- (c) For the purposes of this Section 35.2, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by

Project Co in the course of carrying out the Works or Highway Work or otherwise performing the activities within the Project Scope to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

35.3 Information and Assistance Provided by Project Co

- (a) Project Co shall, at the City's request and cost, assist the City in applying for and obtaining all remissions and credits of HST to which the City is entitled.
- (b) The City may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at the City's cost, assist the City in making any applications for such global or general exemption, waiver, remission or refund and shall provide the City with such documentation as the City may reasonably require to support such application and, in any event, shall provide such consent as the City may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by the City through such application shall accrue to the sole benefit of the City.
- (c) Project Co will provide the City with any information reasonably requested by the City from time to time in relation to the HST chargeable in accordance with this Project Agreement and payable by the City to Project Co from time to time.

35.4 Residency – *Income Tax Act (Canada)*

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co ceasing to be a partnership for purposes of the *Income Tax Act (Canada)* or any Partner becoming a Non-Resident without the City's prior written consent, which consent may be withheld in the City's Discretion.

35.5 Taxes – General

- (a) Project Co shall not, without the prior written consent of the City (which consent may be withheld in its Discretion), undertake any action or transaction that, if undertaken, would cause the City or any City Party (for the purposes of this section, not including DB Co or any DB Co Party) to have (or result in the City or any such City Party having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

35.6 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) the City or any City Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City or any City Party under this Project Agreement or under any of the Project Documents, then the City or any City Party shall be entitled to make any applicable deductions or withholdings from any amount paid or credited or to be paid or credited to Project Co or

a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) the City or any City Party is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by the City or any City Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) the City or any City Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City or any City Party under this Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless the City and the City Parties for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by the City or any City Party in respect of any amounts paid or credited by the City or any City Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by the City or any City Party (as applicable) in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date the City makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the City shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the City. The City shall be entitled to exercise its rights of set-off under Section 34.13 against any amounts owing under this indemnification. Notwithstanding the foregoing, this Section 35.6 shall not apply to DB Co or any DB Co Party, and each instance where the defined term “City Party” is used in this Section 35.6 shall be read so as to exclude DB Co and each DB Co Party from such definition.

36. FINANCIAL MODEL

36.1 Appointment of Custodian

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced person to act as the custodian for the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 – Custody Agreement.

36.2 Delivery and Use of Financial Model

- (a) In accordance with Schedule 2 – Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom) to the City and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by the City of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to the City and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to the City an irrevocable, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that the City shall not be liable to Project Co for, and Project Co shall not seek to recover from the City or any City Party any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

37. RECORDS, INFORMATION AND AUDIT**37.1 Records Provisions**

- (a) Project Co shall comply with Schedule 26 – Record Provisions.
- (b) Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Article 37 and all Project Data and Drawings in accordance with Good Industry Practice. Project Co shall submit to the City Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and the City shall be entitled to object if the same is not in accordance with Good Industry Practice, Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the City Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the City Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 37.1(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

37.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Subcontractor to provide to the City all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as the

City may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to the Contractors shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.

- (b) Project Co shall also provide to the City, and shall require each Subcontractor, including the Contractors, to provide to the City (at the City's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 37.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as the City may reasonably require from time to time to enable the City to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the System or the Highway, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide the City with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Scope or the System or the Highway, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify the City of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to the City hereunder, shall be subject and open to inspection and audit by the City at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless the City and Project Co otherwise agree. The City shall also have the right to monitor and audit the performance of any and all the activities within the Project Scope wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of the City monitoring and auditing the Project Scope, including providing them with access and copies (at the City's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of the activities within the Project Scope. Except as otherwise provided herein, all of the City's costs for the inspections, audits and monitoring shall be borne by the City.

- (f) In conducting an audit of Project Co under Section 37.2(e) or as otherwise provided under this Project Agreement, the City shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the City's reasonable cost) of all books and records of Project Co required to be provided to or available to the City hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with the City and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with the City all matters arising from such audits, including the refunding of monies to the City where applicable. At the reasonable request of the City's auditors, Project Co shall provide such information, reports, documents and records as the City's auditors may reasonably require, other than Sensitive Information.
- (g) The City's rights pursuant to this Section 37.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) The City's rights pursuant to this Section 37.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. Upon notice to Project Co, the City's right pursuant to this Section 37.2 may also be exercised by HMQ, the Auditor General of Ontario, Her Majesty the Queen in Right of Canada, the Auditor General of Canada and anyone acting on their behalf without the requirement for further action on the part of the City.
- (i) Project Co shall use its best efforts and co-operate with the City to assist the City in interpreting and assessing the performance of the Project in the context of the Financial Model.

37.3 Delivery of Reports to the City

- (a) During the Maintenance Term, in addition to Project Co's obligations pursuant to this Section 37, Project Co shall provide the City with a copy of all reports required pursuant to the Project Agreement including, but not limited to, the Performance Monitoring Report, the Payment Adjustment Report, the Energy Analysis Report, the Joint Insurance Cost Report and any other reports which are required to be delivered to the City pursuant to this Project Agreement and which are requested by the City.

38. CHANGES IN LAW

38.1 Performance after Change in Law

- (a) Following any and all Changes in Law, Project Co shall carry out the activities within the Project Scope in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

38.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:

- (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
- (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iii) the City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
 - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

38.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the activities within the Project Scope so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 38.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;

- (ii) the Parties and the Consultant shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iii) the City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
 - (F) any entitlement to compensation payable shall be in accordance with this Section 38.3, and any calculation of compensation shall take into consideration, *inter alia*:
 - (I) any failure by a Party to comply with Section 38.3(b)(iii)(E);

- (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Within 10 Business Days of agreement or determination that a Variation is required in respect of the Highway Work, the Consultant shall issue a Variation Confirmation and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that the same exceptions set out in Section 38.3(b)(iii) shall be applied.
- (d) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 40 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 38.3, and Section 41 shall be construed accordingly.
- (e) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the activities within the Project Scope, taking into consideration, *inter alia*, Section 38.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$10,000 (index linked) in that Contract Year, neither the City nor Project Co shall be entitled to any payment or compensation pursuant to this Section 38.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 40 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

38.4 Changes to OLRT Regulations

For greater certainty, a change to OLRT Regulations, including the adoption of a supplemental or new OLRT Regulation shall be considered to be a Discriminatory Change in Law if Project Co objects in writing to the change unless the City can demonstrate (with a supporting declaration from the City Representative) that:

- (a) the change to the OLRT Regulations was: (i) caused by or the result of a Change in Law emanating from a Governmental Authority other than the City and without prior

consultation regarding the change by that Governmental Authority with the City and (ii) not a System Specific Change in Law; or

- (b) the change to the OLRT Regulations: (i) was caused by or the result or outcome of a Change in Law emanating from a department or division of the City having no direct authority or responsibility over the Project or System; (ii) involved no prior consultation by that City department or division with, or direction from, a City employee or City Party (for the purposes of this section, not including DB Co or any DB Co Party) who has responsibility or authority in respect of the Project or the System; and (iii) is not a System Specific Change in Law.

38.5 City Rights, Powers and Authority

Nothing in this Project Agreement fetters or otherwise interferes with, limits or compromises the rights, powers, and authority of the City to:

- (a) adopt, enact, implement, amend, repeal or replace any enactment, law or regulation, including the OLRT Regulations;
- (b) exercise or refrain from exercising any discretion conferred upon the City under Applicable Laws and the Delegation Agreement; or
- (c) administer, apply and enforce Applicable Laws, including the OLRT Regulations.

39. VARIATIONS

39.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of the City to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Scope, including in relation to the whole or any part of the Works, the Highway Work or the Maintenance Services.
- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of the Works, the Highway Work or Maintenance Services.

39.2 Innovation and Value Engineering

- (a) Project Co acknowledges that the City at all times desires to reduce the Monthly Service Payments and the overall cost to the City of the System, the Works and the Maintenance

- Services, and Project Co agrees to cooperate, explore and work with the City in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to the City.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
- (i) any Variation Enquiry initiated by the City;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the City Activities.
- (d) The Innovation Proposal must:
- (i) set out sufficient detail to enable the City to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request the City to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the City requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and the City;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by the City must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by the City to fully evaluate and consider the Innovation Proposal.
- (e) The City shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) a change in the Monthly Service Payments will occur;

- (ii) the Innovation Proposal affects the quality of the Works, the System or the Maintenance Services, or the likelihood of successful completion of the Works or performance of the Maintenance Services;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the System;
 - (iv) the Innovation Proposal will interfere with the relationship between the City and third parties;
 - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Maintenance Services, as applicable;
 - (vi) the residual value of the System is affected;
 - (vii) the Innovation Proposal will change the Rehabilitation Payment;
 - (viii) the Innovation Proposal materially affects the risks or costs to which the City is exposed; or
 - (ix) any other matter the City considers relevant.
- (f) The City may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) The City may, in its Discretion, accept or reject any Innovation Proposal.
- (h) If the City accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless the City specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 39.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and the City, and the City's share of the net savings shall, as agreed by the Parties, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of the City to decrease, the net savings in the costs of the City will be shared as follows:

- (i) equally by Project Co and the City for the first 5 years following the implementation of the Innovation Proposal;
- (ii) thereafter, the City shall be entitled to the full benefit of the net savings in costs (if applicable); and
- (iii) Project Co's share of the net savings shall, at the City's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

40. DELAY EVENTS

40.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that: (1) it affects the Highway Work so as to cause a delay in achieving the Highway Scheduled Substantial Completion Date; (2) it affects the Design and Construction Works so as to cause a delay in achieving a Milestone Acceptance by the relevant Scheduled Milestone Acceptance Date or in achieving Revenue Service Availability by the Required Revenue Service Availability Date or the New Required Revenue Service Availability Date, as applicable; or (3) it affects the Civic Works so as to cause a delay in achieving the Civic Works Completion Dates by the applicable dates set out in Section 20.13(d):
 - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by the City of any of the City's obligations under this Project Agreement (including any delay by the City in giving access to: (A) the Lands and System pursuant to Section 14.1 or (B) the Highway Site and Highway Work pursuant to Section 9.1 of Schedule 40 – Highway Work, any obstruction of the rights afforded to Project Co under Section 14.1 or under Section 9.1 of Schedule 40 – Highway Work, any delay by the City in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) an uncovering of the Civic Works, the Works or Highway Work pursuant to Section 21.3 where such Civic Works, Works or Highway Work are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such uncovering of the Civic Works, the Works or Highway Work was reasonable in the light of other defects or non-compliance previously discovered by the City in respect of the same or a similar component of the Civic Works, the Works or Highway Work or subset of the Civic Works or Highway Work;

- (iv) a requirement pursuant to Section 16.2(d)(i), 16.2(e) or 16.2(f) for Project Co to perform any alteration, addition, demolition, extension or variation in the Design and Construction Works, the Civic Works or the Highway Work, or to suspend or delay performance of the Design and Construction Works, the Civic Works or the Highway Work, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Design and Construction Works, the Civic Works or the Highway Work, or suspension or delay in the performance of the Design and Construction Works, the Civic Works or the Highway Work, would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Section 16.3(c)(ii)(A) or 16.3(d) for Project Co to perform any alteration, addition, demolition, extension or variation in the Design and Construction Works, the Civic Works or the Highway Work, or to suspend or delay performance of the Design and Construction Works, the Civic Works or the Highway Work, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Design and Construction Works, the Civic Works or the Highway Work, or suspension or delay in the performance of the Design and Construction Works, the Civic Works or the Highway Work, would not otherwise be required under this Project Agreement; provided, however, that the foregoing shall not apply to the extent that any item referred to in Section 16.3(a) was disclosed in or properly inferable, readily apparent or readily discoverable from the Highway Site Information;
- (vi) a requirement pursuant to Section 16.4(a) or 16.4(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Design and Construction Works, the Civic Works or the Highway Work, or to suspend or delay performance of the Design and Construction Works, the Civic Works or the Highway Work, upon the discovery of Species-at-Risk for which the City is responsible, which alteration, addition, demolition, extension, or variation in the Design and Construction Works, the Civic Works or the Highway Work, or suspension or delay in the performance of the Design and Construction Works, the Civic Works or the Highway Work, would not otherwise be required under this Project Agreement;
- (vii) subject to compliance by Project Co with the provisions of Section 9.7, damage, costs or delays from the execution of Additional Works or Third Party Works on the Lands or Highway Site by Additional Contractors or Third Party Contractors, as applicable, in the circumstances described in Section 9.7(e);
- (viii) a requirement pursuant to Section 13.1 of Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of the City during the pendency of a Dispute, which Dispute is subsequently determined in Project Co’s favour;
- (ix) an event of Force Majeure;

- (x) a Relief Event;
- (xi) a Relevant Change in Law;
- (xii) any change to the terms, conditions or requirements of the Environmental Assessments, except in each case to the extent resulting from any change by Project Co in the design of the Project or from any other act or omission on the part of Project Co;
- (xiii) the discovery of any Latent Defect for which the City is responsible pursuant to Section 16.5, including a requirement pursuant to Section 16.5(b) for Project Co to undertake any action in accordance with the instructions of the City to remedy a Latent Defect for which the City is responsible pursuant to Section 16.5(a);
- (xiv) a failure by the City to provide for the attendance of at least the minimum number of employees for the employee training at all sessions of Project Co's training programs to be provided by Project Co in accordance with the requirements of Schedule 15-2 – Design and Construction Requirements;
- (xv) a stop work order issued by a Governmental Authority in respect of the System, the Civic Works or the Highway Work, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure or as a result of an act, omission or fault of Project Co or a Project Co Party;
- (xvi) a requirement pursuant to Section 14.1(e) of Schedule 40 – Highway Work for Project Co to take any steps upon the discovery of Contamination, which steps would not otherwise be required under this Project Agreement;
- (xvii) a failure by the City to obtain a requirement pursuant to Section 8.2(c) provided Project Co has fulfilled its obligations pursuant to Section 8.2(c);
- (xviii) **[Intentionally deleted]**
- (xix) a Delay Event in respect of the Highway Work which Delay Event affects the Design and Construction Works so as to cause a delay in achieving a Milestone Acceptance by the relevant Scheduled Milestone Acceptance Date or in achieving Revenue Service Availability by the Required Revenue Service Availability Date provided the Delay Event in respect of the Highway Work is not caused or contributed to by Project Co; or
- (xx) any Variation in respect of the FLUA pursuant to Section 9.4(e)(ii) of this Project Agreement, provided such Variation is not caused or contributed to by Project Co or a Project Co Party; or
- (xxi) the proposed OLRT Regulations are or the Support Documentation is consistent with the requirements of Section 2(a) of Schedule 15-4 – Regulatory Standards and the City's refusal to approve the OLRT Regulations or Support Documentation has resulted or will result in a delay or incremental expense or

liability to Project Co in the performance of activities within the Project Scope that cannot be reasonably mitigated by Project Co.

40.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the City Representative and the Independent Certifier and the Consultant within 5 Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the City Representative and the Independent Certifier and the Consultant which shall include:
- (i) a statement of which Delay Event the claim is based upon;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon any Civic Works Completion Date, any relevant Scheduled Milestone Acceptance Date, the Highway Scheduled Substantial Completion Date or the Required Revenue Service Availability Date, as applicable; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the City Representative and the Independent Certifier and the Consultant.
- (c) The City Representative shall, after receipt of written details under Section 40.2(a), or of further particulars under Section 40.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the City Representative may reasonably consider necessary. Project Co shall afford the City Representative and the Independent Certifier and the Consultant reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 40, the City Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix one or more revised Scheduled Milestone Acceptance Dates, a revised Highway Scheduled Substantial Completion Date or New Highway Scheduled Substantial Completion Date, as applicable, a new completion date for the Coventry Bridge Work or a revised Required Revenue Service Availability Date or a New Required Revenue Service Availability Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:

- (i) the date of receipt by the City Representative of Project Co's notice given in accordance with Section 40.2(a) and the date of receipt of any further particulars (if such are required under Section 40.2(c)), whichever is later; and
 - (ii) the date of receipt by the City Representative of any supplemental information supplied by Project Co in accordance with Section 40.2(b) and the date of receipt of any further particulars (if such are required under Section 40.2(c)), whichever is later.
- (e) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (f) Project Co acknowledges and agrees that the Highway Contract Time includes a Schedule Cushion in the Highway Construction Schedule at no additional cost to City. Project Co shall separately identify the extent of the Schedule Cushion in the Highway Construction Schedule.
- (g) Project Co acknowledges and agrees that in the event that an extension of the Highway Contract Time is allowed under any provision of this Project Agreement, the City may, in its Discretion, elect to apply any portion of the Schedule Cushion with the result that such extension of the Highway Contract Time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion the City has elected to apply.
- (h) Notwithstanding any other provision in this Project Agreement, including Section 40.2(d), where City elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion, except as otherwise provided in Schedule 22 – Variation Procedure.
- (i) If:
- (i) the City Representative declines to fix a revised Scheduled Milestone Acceptance Date, Highway Scheduled Substantial Completion Date, date for completion of the Coventry Bridge Work or New Required Revenue Service Availability Date, as applicable;
 - (ii) Project Co considers that a different Scheduled Milestone Acceptance Date, Highway Scheduled Substantial Completion Date, date for completion of the Coventry Bridge Work or New Required Revenue Service Availability Date, as applicable should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,

then Project Co shall be entitled to refer the matter for determination by the Consultant, to the extent that the matter is in respect of Highway Work or the Coventry Bridge Work, and otherwise to the Independent Certifier. The decision of the Consultant and the Independent Certifier, as applicable, may be disputed by either Party and referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

40.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 40.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 40.

40.4 MTO Winter Maintenance Work

- (a) Notwithstanding any other provision in this Project Agreement, Project Co acknowledges and agrees that the snow, ice and frost control winter maintenance activities carried out by Additional Contractors or other contractors of the MTO on the Highway (the "**MTO Winter Maintenance Work**") shall not give rise to a Delay Event nor a claim by Project Co for additional compensation. Project Co shall be responsible for the coordination and scheduling of the Highway Work in such a manner as to not interfere with the MTO Winter Maintenance Work and acknowledges that the contractors performing the MTO Winter Maintenance Work will be recognized as the senior contractors on the Highway Site such that any conflicts in the activities of the contractors performing the Highway Work and the contractors performing the MTO Winter Maintenance Work will be resolved in the favour of the contractors performing the MTO Winter Maintenance Work.

41. COMPENSATION EVENTS

41.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means:
- (i) any event referred to in Sections 40.1(a)(ii), 40.1(a)(iii), 40.1(a)(iv), 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(viii), 40.1(a)(xii), 40.1(a)(xiii), 40.1(a)(xiv), 40.1(a)(xv), 40.1(a)(xvi), 40.1(a)(xvii), 40.1(a)(xix), 40.1(a)(xx) and 40.1(a)(xxi) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay;
 - (ii) without prejudice to the terms of the Belfast MSF Expansion Variation, any event which constitutes a Compensation Event under either (i) the Belfast MSF Expansion Variation; or (ii) the DB Co Works Agreement, as a result of which Project Co has incurred loss or expense, save in each case, to the extent any such

Compensation Event is caused, or contributed to, by Project Co or any Project Co Party acting in connection with the Project Scope; and

41.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 41. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 40.1(a)(i);
 - (ii) Section 44, in the case of a Delay Event referred to in Section 40.1(a)(ix);
 - (iii) Section 43, in the case of a Delay Event referred to in Section 40.1(a)(x); and
 - (iv) Section 38, in the case of a Delay Event referred to in Section 40.1(a)(xi).
- (b) Subject to Sections 41.3 and 41.4, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by the City to Project Co. Project Co shall promptly provide the City Representative with any information the City Representative may require in order to determine the amount of such compensation.
- (c) If the City is required to compensate Project Co pursuant to this Section 41.2, then the City may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, the City may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 – Variation Procedure shall apply.
- (d) Notwithstanding any other provision in this Project Agreement, including Section 41.2(b), where City elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion, except as otherwise provided in Schedule 22 – Variation Procedure. For the avoidance of doubt, this Section 41.2(d) shall not apply to the Compensation Event set out in Section 41.1(a)(ii).

41.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable

steps to minimize the amount of compensation due in accordance with this Section 41 in relation to any Compensation Event.

- (b) To the extent that Project Co does not comply with its obligations under this Section 41.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 41.

41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

42. EXCUSING CAUSES

42.1 Definition

- (a) For the purposes of this Project Agreement, "**Excusing Cause**" means any of the following events or circumstances if it occurs after the Revenue Service Availability Date to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Maintenance Services:
 - (i) the implementation of a Variation to the extent Project Co has identified any impact on the Maintenance Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by the City of any of the City's obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any City Party or any failure by any City Party (having regard to the interactive nature of the activities of such City Party and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co's performance of the Maintenance Services, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the City Party is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;

- (C) any such act, omission or failure was contemplated in Schedule 15 – Output Specifications or was otherwise provided for in this Project Agreement; or
 - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co’s obligations under this Project Agreement;
- (iv) the implementation of any action taken by the City, or any suspension of Project Co’s obligation to deliver all or any part of the Maintenance Services, or the compliance by Project Co with instructions given by the City, in each case in the circumstances referred to in Section 32;
 - (v) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between the City and Project Co;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any City Party;
 - (vii) the occurrence of any Contamination for which the City is responsible pursuant to Section 16.2;
 - (viii) the discovery of any Species-at-Risk for which the City is responsible pursuant to Section 16.4;
 - (ix) the discovery of any Latent Defect for which the City is responsible pursuant to Section 16.5;
 - (x) the outbreak or the effects of any outbreak of Medical Contamination, except to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused, or contributed to, by Project Co or any Project Co Party, including any failure by Project Co or any Project Co Party to comply with procedures or instructions relating to control of infection or to take commercially reasonable steps to mitigate the effects of such Medical Contamination, provided that neither Project Co nor any Project Co Party shall be deemed to have caused, or contributed to, an outbreak of Medical Contamination if such Medical Contamination was caused, or contributed to, by any employee of Project Co or any Project Co Party who was unaware of his or her condition;
 - (xi) any act or omission with respect to the operation of the Vehicles by any Driver or any failure by any Driver employed in the operation of the Vehicles that materially adversely affects Project Co’s ability to maintain the Vehicles provided such act, omission or failure is not caused or contributed to by Project Co and does not relate to any failures or deficiencies in the E&M or the Tracks;
 - (xii) the proposed OLRT Regulations are or the Support Documentation is consistent with the requirements of Section 2(a) of Schedule 15-4 – Regulatory Standards and the City’s refusal to approve the OLRT Regulations or Support

Documentation has resulted or will result in a delay or incremental expense or liability to Project Co in the performance of the activities within the Project Scope that cannot be reasonably mitigated by Project Co;

- (xiii) the DB Co Works Agreement is terminated;
- (xiv) DB Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of DB Co with respect to DB Co or any of the property, assets or undertaking of DB Co, or any creditor of DB Co takes control, or takes steps to take control, of DB Co or any of DB Co's assets, or any proceedings are instituted against DB Co that result in DB Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by DB Co seeking any such result, or any such proceedings are instituted by a person other than DB Co, the City, a City Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the DB Co Works Agreement or of the City activities under the DB Co Works Agreement (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days after being instituted), under any Applicable Law (including the Bankruptcy and Insolvency Act (Canada) and the Companies' Creditors Arrangement Act (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of DB Co are taken to authorize any of the actions set forth in this Section 42.1(a)(xiv);
- (xv) any breach by DB Co of the DB Co Works Agreement (other than the occurrence of a DBF Defect, to which Section 42.1(a)(xix) applies) which is notified to the City, and which shall be an Excusing Cause from the date the breach is notified to the City or the City is otherwise aware of the breach (or, where such notification is issued no later than the day following the discovery of the breach by Project Co, from the date of the breach) until such time breach is rectified. The determination of whether a breach has occurred shall be determined pursuant to Section 9.12(c)(iii)(A);
- (xvi) subject to Section 9.12, any damage to the Stage 1 System at any time or to the Stage 2 East System after the Stage 2 East Substantial Completion Date or the Stage 2 West System after the Stage 2 West Substantial Completion Date caused by DB Co or any DB Co Party which was not authorised by Project Co or any

Project Co Party or which does not arise as a result of DB Co or any DB Co Party complying with any instructions on the part of Project Co or any Project Co Party;

- (xvii) the performance of the Stage 2 Integration Activities, whether carried out by Project Co, a Project Co Party or any third party and including any work carried out by any person to rectify any defect in the Stage 2 Integration Activities, including any DBF Defect;
- (xviii) the Compensation Event set out in Section 41.1(a)(ii); or
- (xix) DBF Defects as follows:
 - (A) the existence of a DBF Defect which is notified as a Warranty Request and which is agreed by DB Co to be its responsibility shall be an Excusing Cause from the date the DBF Defect is notified as a Warranty Request (or, where such Warranty Request is issued no later than the day following the occurrence of the DBF Defect, from the date the DBF Defect occurs) until such time as the DBF Defect is rectified;
 - (B) an alleged DBF Defect which is notified as a Warranty Request and for which DB Co considers the alleged DBF Defect not to be a DBF Defect or disputes the nature or extent of DB Co's liability for the alleged DBF Defect, but for which DB Co agrees to take corrective action, shall be an Excusing Cause from the date such DBF Defect is notified as a Warranty Request until such time as the DBF Defect is rectified;
 - (C) an alleged DBF Defect which is notified as a Warranty Request, but where DB Co considers the alleged DBF Defect not to be a DBF Defect or disputes the nature or extent of DB Co's liability for the alleged DBF Defect and does not agree to take corrective action:
 - (1) where Project Co can establish *prima facie* proof, to the City's reasonable satisfaction, that the alleged DBF Defect is the responsibility of DB Co, the City will act in good faith and treat the matter as an Excusing Cause (that is, as if it had been determined to be a DBF Defect) pending resolution of the matter under the DB Co Interface Agreement, provided that to the extent Project Co is not ultimately successful in establishing that the matter is a DBF Defect under the terms of the DB Co Interface Agreement, the Excusing Cause shall to such extent be retrospectively disapplied;
 - (2) in all other cases, the alleged DBF Defect shall not be treated as an Excusing Cause until it is determined under the DB Co Interface Agreement to be a DBF Defect, in which case it shall be retrospectively treated as a DBF Defect from the date the DBF Defect is notified as a Warranty Request (or, where such Warranty Request is issued no later than the day following the occurrence of

the DBF Defect, from the date the DBF Defect occurs) until such time as the DBF Defect is rectified,

provided that: (i) where Project Co has agreed with DB Co to rectify any DBF Defect on DB Co's behalf, or (ii) where Project Co is instructed by the City to rectify the DBF Defect through a Variation Enquiry and a Variation Confirmation or Variation Directive is issued, the Excusing Cause under this Section 42.1(a)(xix) shall not extend beyond such time as is reasonably necessary for Project Co to rectify the DBF Defect in question.

- (xx) during any Post-Warranty Delay Period, the discovery of a DBF Defect for which DB Co would have been contractually responsible under the DB Co Interface Agreement if such DBF Defect had been notified to DB Co within the DBF Warranty Period (as defined in the DB Co Interface Agreement), and the Excusing Cause shall apply from the date the DBF Defect is notified to the City during the Post-Warranty Delay Period until such time as the DBF Defect is rectified, provided that the Excusing Cause shall not extend beyond such time as is reasonably necessary for Project Co to rectify the DBF Defect in question.

For the purpose of this Excusing Cause, "**Post-Warranty Delay Period**" shall mean a period equivalent to the length of the East Trial Running Period, or as the case may be, the West Trial Running Period, in each case, commencing on the expiry of the DBF Warranty Period (as defined in the DB Co Interface Agreement) in respect of the Stage 2 East System or as the case may be the Stage 2 West System.

- (b) Without prejudice to the terms of the Belfast MSF Expansion Variation, for the purposes of determining whether a Delay Event has occurred pursuant to Section 40.1(a)(ii), a Compensation Event has occurred pursuant to Section 41.1 in respect of Section 40.1(a)(ii), an Excusing Cause has occurred pursuant to paragraphs (a)(ii), (iii) and (x) of this Section 42.1, a Relief Event has occurred in applying the proviso to Section 43.1, any breaches, acts or omissions of Project Co or any Project Co Party under the Belfast MSF Expansion Variation shall be treated as breaches, acts or omissions of the City and not Project Co or a Project Co Party.

42.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 42.3 and 42.4):
- (i) any failure by Project Co to perform, and any poor performance of, any affected Maintenance Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Maintenance Services for the duration and to the extent prevented by such Excusing Cause;

- (ii) any interference shall be taken into account in measuring the performance of any affected Maintenance Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Maintenance Services had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Service Failure, Availability Failure or Quality Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Maintenance Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
 - (iv) this Section 42.2 shall not limit the City's entitlement to reimbursement pursuant to Section 32.4;
 - (v) the City shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 42.1(a)(ii), 42.1(a)(iii), 42.1(a)(vi), 42.1(a)(vii), 42.1(a)(viii), 42.1(a)(ix), 42.1(a)(x), 42.1(a)(xi), 42.1(a)(xii), 42.1(a)(xiii), 42.1(a)(xiv), 42.1(a)(xvi) or 42.1(a)(xvii) including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure; and
 - (vi) the Monthly Service Payments payable by the City shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Maintenance Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure.
- (b) In the case of the Excusing Cause referred to in Section 42.1(a)(xix):
- (i) if Project Co is retroactively awarded relief from Deductions, Section 56.2(c) shall apply to such retroactive relief on the basis that the payment under that section was due at the time the relevant Deduction was incurred;
 - (ii) the Parties agree that provided that:
 - (A) Project Co is prosecuting the relevant DBF Defect allegation(s) against DB Co in a timely manner (and in accordance with the dispute resolution procedures in the DB Co Interface Agreement, where appropriate); and
 - (B) Project Co keeps the City regularly apprised of such claim(s) (and notifying the City as to the Failure Points which it believes will be

excused following the establishment of the DBF Defect allegation(s) in question),

the City shall not use any such Failure Points to terminate this Project Agreement on grounds of a Project Co Event of Default and shall not take any action under Sections 31.3, 31.4, 32 or 45.5 in respect of such Failure Points, unless and to the extent that the City can demonstrate that:

- (1) the DBF Defect allegation(s) has/have no reasonable prospect of success; and/or
 - (2) the Failure Points in question were not caused by the alleged DBF Defect(s);
- (iii) if the City terminates this Project Agreement on grounds of a Project Co Event of Default in reliance of any Failure Points which are the subject of a notification in Section 42.2(b)(ii)(B) above, and it is subsequently determined that Project Co would have been entitled to an Excusing Cause in respect of the DBF Defect(s) in question (such that the City would not have had a right to terminate for a Project Co Event of Default at the date of the termination notice in question), the Project Agreement shall be deemed to have terminated on grounds of a City Event of Default as of such date.

42.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 42.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 42.

42.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy

of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

43. RELIEF EVENTS

43.1 Definition

- (a) For the purposes of this Project Agreement, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, Railway Company, local authority or other like body to perform works or provide services, provided, however, that a failure by any Utility Company to perform works or provide services in connection with the construction, installation or relocation of Utility Infrastructure in connection with the Design and Construction Works and Highway Work shall not, in any event, be cause for a Relief Event, unless Project Co:
 - (A) has performed its obligations under any applicable Utility Agreement and the relevant Utility Company has failed to meet its obligations thereunder; and
 - (B) has made all, and is continuing to make any, commercially reasonable efforts to diligently enforce its legal rights under any applicable Utility Agreement and otherwise cause the Utility Company to perform those works or services;
 - (iii) accidental loss or damage to the Civic Works, the Works and/or the System, the Highway Work and/or the Highway or any roads servicing the Site or the Highway Site;
 - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
 - (v) blockade or embargo falling short of Force Majeure;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the System, the Highway, the construction industry (or a significant sector of the industry), the facilities maintenance industry, transit systems or public highways in the Province of Ontario;

- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Scope or the construction and/or operation of transit systems or public highways in general, provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.6;
- (viii) with respect to Tunnel Work only, bursting or overflowing of water tanks, apparatus or pipes if such events are not attributable to the actions or omissions of Project Co or any Project Co Parties and are not properly inferable, readily apparent or readily discoverable from the Background Information;
- (ix) the occurrence of a Belfast MSF Expansion Relief Event (as defined in the Belfast MSF Expansion Variation), provided for the purposes of the proviso below only, any acts of omissions of Project Co or a Project Co Party under the terms of the Belfast MSF Variation shall be disregarded; or
- (x) the event described in Section 1.5(f)(i) of Schedule 15-3 - Maintenance and Rehabilitation Requirements.

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party or (ii) in the case of the City claiming relief, as a result of any act or omission of any City Party.

43.2 Consequences of a Relief Event

- (a) Subject to Section 43.3:
 - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 47.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, the City shall be entitled to make Deductions in accordance with Schedule 20 – Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 43.2(a)(ii). Any Deduction to Project Co as a result of Relief Events referred to in Section 43.1(a)(v), 43.1(a)(vi), 43.1(a)(vii), 43.1(a)(viii) or 43.1(a)(ix) shall not exceed, in the aggregate, the amount that

would be necessary to reduce payments to Project Co to an amount below the Senior Debt Service Amount.

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 40.1(a)(ix):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 40; and
 - (ii) in respect of a Relief Event occurring prior to a Milestone Acceptance Date or the Highway Substantial Completion Date or the Revenue Service Availability Date which Milestone, Substantial Completion of the Highway Work or Revenue Service Availability is affected by that Delay Event and referred to in Section 43.1(a)(ii), 43.1(a)(iv), 43.1(a)(v), 43.1(a)(vi), 43.1(a)(vii), or 43.1(a)(viii) on the earlier of: (A) the relevant Milestone Acceptance Date, (B) Highway Substantial Completion Date, (C) the Revenue Service Availability Date; and (D) the date of payment of the City Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, the City shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would have been paid by the City to Project Co in respect of Revenue Service Availability.
- (c) If a Relief Event occurs prior to the Revenue Service Availability Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 43.2(b)(ii) and 49.
- (d) During a Relief Event which occurs on or after the Revenue Service Availability Date, the provisions of Schedule 20 – Payment Mechanism will continue to be in full force and effect, subject to Section 43.2(a).
- (e) Subject to Section 49, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 43.

43.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 43.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 43.

- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 43.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If following the issue of any notice referred to in Section 43.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

43.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 43 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

44. FORCE MAJEURE

44.1 Definition

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Civic Works, the Design and Construction Works, the System and/or the Site, or the Highway, the Highway Work and/or the Highway Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Civic Works, the Design and Construction Works, the System and/or the Site or the Highway, the Highway Work and/or the Highway Site, from any event referred to in Section 44.1(a)(i);

- (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Design and Construction Works or the Highway Work to be abandoned.
- (b) The occurrence of an event of Belfast MSF Expansion Force Majeure (as defined in the Belfast MSF Expansion Variation) which causes Project Co to be unable to perform all or part of its obligations under this Project Agreement shall also constitute an event of Force Majeure under this Project Agreement.

44.2 Consequences of Force Majeure

- (a) Subject to Section 44.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 40.1(a)(ix):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 40; and
 - (ii) where such Delay Event causes a delay in achieving Milestone Acceptance of a Milestone by the Scheduled Milestone Acceptance Date of that Milestone or a delay in achieving Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date or in achieving Revenue Service Availability by the Required Revenue Service Availability Date, on the earlier of (A) the Milestone Acceptance Date of that Milestone, (B) the Highway Substantial Completion Date, (C) the Revenue Service Availability Date, and (D) the date of payment of the City Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, the City shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by the City to Project Co.
- (c) If an event of Force Majeure occurs prior to the Revenue Service Availability Date to be achieved, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 44.2(b)(ii) and 49.
- (d) During an event of Force Majeure which occurs on or after the Revenue Service Availability Date, the provisions of Schedule 20 – Payment Mechanism will be

suspended, and the City shall pay to Project Co, for each Contract Month, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Maintenance Services performed, provided that, during such Contract Month, the amount paid to Project Co pursuant to this Section 44.2(d) shall never be more than the Maximum Monthly Service Payment.

- (e) Subject to Section 49, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 44.

44.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 44.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 44.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 44.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 44.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

44.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 44 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover,

under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

44.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of the City and Project Co to reach agreement pursuant to this Section 44.5.

45. PROJECT CO DEFAULT

45.1 Project Co Events of Default

- (a) Subject to Section 45.1(b), for the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by the City of its payment obligations hereunder:
- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, the City, a City Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the Governmental Activities or the availability of the System to System Users (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver,

- manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 45.1(a)(i)(A);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
- (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 45.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 45.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Revenue Service Availability within 365 days after the Required Revenue Service Availability Date (the "Longstop Date");
- (iii) Project Co:
- (A) failing to deliver a rectification plan under Section 22.3(a)(iii)(B);
- (B) delivering a rectification plan under Section 22.3(a)(iii)(B) which indicates that Project Co will not achieve Revenue Service Availability by the Longstop Date; or
- (C) delivering a rectification plan under Section 22.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 22.3(a)(iii)(B)(II);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the activities within the Project Scope, the Governmental Activities or the availability of the System to System Users, or that may compromise (1) the City's or any City Party's reputation or integrity or the nature of the City or the Project, or (2) the ability of the City to conduct its affairs, so as to negatively affect public perception of the City or the Project, and, in the case of a false or misleading representation or warranty that is capable of being

remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from the City;

- (v) Project Co committing a breach of Section 52 or 53 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 45.1(a)(i) to (iv) inclusive or 45.1(a)(vi) to (xxi) inclusive) which has or will have a material adverse effect on the Governmental Activities, the availability of the Highway or the availability of the System to System Users, other than where such breach is a consequence of a breach by the City of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
- (A) Project Co shall:
- (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on the City and the Governmental Activities, the availability of the Highway or the availability of the System to System Users;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from the City, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
 - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 45.1(a)(v)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on the City and the Governmental Activities, the availability of the Highway or the availability of the System to System Users;
 - (II) Project Co shall, within 3 Business Days after notice from the City, submit a plan and schedule, which the City shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to the City, in its Discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms

within the time for the performance of its obligations thereunder;
and

- (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 45.1(a)(v)(B), or the City, in its Discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by the City of its obligations under this Project Agreement;
- (vii) Project Co ceasing to perform any Maintenance Services in accordance with this Project Agreement which is necessary for the Governmental Activities or the availability of the System to System Users, other than as a consequence of a breach by the City of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Section 59.1 or 59.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 59.4;
- (x) Project Co being awarded a total of 1300 or more Failure Points in any rolling 3 Contract Months;
- (xi) Project Co being awarded a total of 1600 or more Failure Points in any rolling 6 Contract Months;
- (xii) Project Co being awarded a total of 2000 or more Failure Points in any rolling 12 Contract Months;
- (xiii) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through the City) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiv) Project Co failing to pay any sum or sums due to the City under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$ (index linked), and such failure

continues for 30 days from receipt by Project Co of a notice of non-payment from the City;

- (xv) Project Co failing to comply with Section 60;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 28 – Refinancing;
- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by the City of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xix) at any time after the Revenue Service Availability Date, Project Co committing a breach of its obligations under this Project Agreement (other than its obligations in Schedule 45 or otherwise as a consequence of a breach by the City of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *OHS Act* against Project Co or any Project Co Party or the City (an “**H&S Conviction**”) provided however that:
 - (A) an H&S Conviction against Project Co, a Project Co Party or the City shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Scope of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 59.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to the City, in its Discretion; and
 - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 45.1(a)(xix), the City shall:
 - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and

- (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement;
 - (xx) Project Co failing to comply with Section 28.5;
 - (xxi) Project Co wholly abandoning the Highway Work for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Highway Site, other than as a consequence of a Delay Event or a breach by the City of its obligations under this Project Agreement;
- (b) The City shall not exercise any rights under this Section 45 (except its rights under Section 45.5(a)) as a result of a Project Co Event of Default referred to in Sections 45.1(a)(vii), 45.1(a)(x) to 45.1(a)(xii) until the day after the Revenue Service Availability Payment Date. For greater certainty, if the City is prevented from exercising any rights under this Section 45 by the terms of the immediately preceding sentence, then, notwithstanding the passage of time or any intervening event (including that the City may have exercised its rights under Section 45.5(a)), on and after the day after the Revenue Service Availability Payment Date, the City may exercise any such rights.

45.2 Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify the City of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

45.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after the City becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a Project Co Event of Default has occurred), the City may, subject to Section 45.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

45.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 45.1(a)(i)(B), 45.1(a)(i)(C), 45.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 45.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 45.1(a)(i)(B) or 45.1(a)(i)(C)), 45.1(a)(iii), 45.1(a)(iv), 45.1(a)(vi), 45.1(a)(vii), 45.1(a)(viii), 45.1(a)(ix) (where the Project Co Event of Default referred to in Section 45.1(a)(ix) is capable of being remedied), 45.1(a)(xiv), 45.1(a)(xvi), 45.1(a)(xvii) (where the Project Co Event of Default referred to in Section 45.1(a)(xvii) is not in respect of insurance), 45.1(a)(xviii), 45.1(a)(xix), 45.1(a)(xx) or 45.1(a)(xxi) the City shall, prior to being entitled to terminate this Project Agreement, give notice of default to

Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:

- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to the City, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 45.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, the City shall have 5 Business Days from receipt of the same within which to notify Project Co that the City does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which the City shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 45.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on the City and the Governmental Activities, the availability of the Highway or the availability of the System to System Users; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 45.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 45.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 45.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then the City may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (d) Notwithstanding that the City may give the notice referred to in Section 45.4(a), and without prejudice to the other rights of the City in this Section 45.4, at any time during

which a Project Co Event of Default is continuing, the City may, at Project Co's risk and expense, take such steps as the City considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 45.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and the City shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.
- (f) In the case of a Project Co Event of Default referred to in Sections 45.1(a)(x), (xi) or (xii), in addition to and without prejudice to any of the City's other remedies including its right to terminate this Project Agreement pursuant to Section 45, the City may require Project Co to provide the plan and schedule referred to in Section 45.4(a)(i) and thereafter perform the obligations referred to in Section 45.4(a)(ii), in which event the provisions of Sections 45.4(b), (c) and (d) shall thereupon apply.

45.5 Replacement of Non-Performing Maintenance Contractor

- (a) The City may, acting reasonably, require Project Co to terminate the Maintenance Contract and ensure that a replacement Maintenance Contractor is appointed in accordance with Section 59.3 to provide the Maintenance Services within 60 days:
 - (i) if the City could have exercised a right to terminate this Project Agreement but for the provisions of Section 45.1(b), and the Project Co Event of Default was caused, or contributed to, by Project Co (in the case of Project Co directly performing the Maintenance Services) or a Maintenance Contractor, as applicable, or otherwise relates to the Maintenance Services; or
 - (ii) as an alternative to termination of this Project Agreement pursuant to Section 45.3 or 45.4, in any circumstance in which the City could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Maintenance Contractor or otherwise relates to the Maintenance Services; or
 - (iii) if Project Co accrues, in any rolling 6 Contract Months more than:
 - (A) 1000 Failure Points in respect of Vehicle and System Availability Failures;
 - (B) 1500 Failure Points in respect of Station Availability Failures; or
 - (C) 250 Failure Points in respect of Quality Failures and Service Failures, combined,

provided that this Section 45.5 shall not give rise to partial termination of either the obligation to provide the activities within the Project Scope or this Project Agreement.

- (b) If the City exercises its rights under this Section 45.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or performance of the Maintenance Services until such time as a replacement Maintenance Contractor can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate performance of the Maintenance Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or performance of the Maintenance Services, then, without prejudice to the other rights of the City in this Section 45.5, the City itself may perform, or engage others (including a third party) to perform, the Maintenance Services and Section 32.4 shall apply, mutatis mutandis, to the Maintenance Services. Any Dispute in respect of the interim management or provision of the Maintenance Services may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the Maintenance Contract and to secure a replacement Maintenance Contractor in accordance with Section 45.5, the City shall be entitled to exercise its termination rights in accordance with Sections 45.3 and 45.4, as applicable.
- (d) Where a replacement Maintenance Contractor is appointed in accordance with this Section 45.5, 50% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled. Where the replacement Maintenance Contractor is primarily responsible for the maintenance of Vehicles, then 100% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

45.6 City's Costs

- (a) Project Co shall reimburse the City for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by the City in exercising its rights under this Section 45, including any relevant increased administrative expenses. The City shall take commercially reasonable steps to mitigate such costs.

45.7 No other Rights to Terminate

- (a) The City shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 45 and 47.

46. CITY DEFAULT

46.1 City Events of Default

- (a) For the purposes of this Project Agreement, “**City Event of Default**” means any one or more of the following events or circumstances:
- (i) the City failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by the City in accordance

with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$250,000 (index linked), and:

- (A) in respect of a Milestone Payment, the Highway Milestone Payment, the Highway Final Payment or the Revenue Service Availability Payment such failure continues for 10 Business Days;
- (B) subject to Section 46.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
- (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
- (D) in respect of any other payment due and payable by the City to Project Co under this Project Agreement, such failure continues for 90 days,

in any such case, from receipt by the City of a notice of non-payment from or on behalf of Project Co;

- (ii) the City committing a material breach of its obligations under Section 14 or Section 9 or Schedule 40 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences and Approvals shall not constitute an “**act of any Governmental Authority**”).

46.2 Project Co’s Options

- (a) On the occurrence of a City Event of Default and while the same is continuing, Project Co may give notice to the City of the occurrence of such City Event of Default, which notice will specify the details thereof, and, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, may:
 - (i) suspend performance of the Design and Construction Works and the Maintenance Services until such time as the City has remedied such City Event of Default; or
 - (ii) if such City Event of Default has not been remedied within 30 days of receipt by the City of notice of the occurrence of such City Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

46.3 Project Co's Costs

- (a) The City shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 46, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

46.4 No Other Rights to Terminate

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

47. RELIEF EVENT AND NON-DEFAULT TERMINATION**47.1 Termination for Relief Event**

- (a) Subject to Section 47.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 43.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 47.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than 85% of the Maximum Monthly Service Payment for the relevant Contract Month.

47.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 44.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

47.3 Termination for Convenience

- (a) The City shall, in its Discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co.
- (b) In the event of notice being given by the City in accordance with this Section 47.3, the City shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works or the Highway Work, or any part or parts of the Works or the Highway Work, or the Maintenance Services, or any element of the Maintenance Services, where such Works, Highway Work or Maintenance Services have not yet been commenced.

47.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

48. EFFECT OF TERMINATION**48.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 47.4, this Section 48 shall apply in respect of such termination.

48.2 Continued Effect – No Waiver

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

48.3 Continuing Performance

- (a) Subject to any exercise by the City of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 48.

48.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 47.4:
- (i) if termination is prior to the Revenue Service Availability Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to the City as shall not already have been transferred to the City pursuant to Section 55.1, Project Co shall transfer to, and there shall vest in, the City, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the City), such part of the Works and System as shall have been constructed and, such items of the plant and equipment as shall have been procured by Project Co, and, if the City so elects:
 - (A) all plant, equipment and materials (other than those referred to in Section 48.4(a)(i)(B)) on or near to the Site shall remain available to the City for the purposes of completing the Works; and
 - (B) all construction, plant and equipment shall remain available to the City for the purposes of completing the Works, subject to payment by the City of the relevant Construction Contractor's reasonable charges;
 - (ii) if termination is prior to the Revenue Service Availability Date, Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of all Project Data and Drawings;
 - (iii) if the termination is prior to the Highway Substantial Completion Date, Project Co shall cooperate with the City and turn over to the City copies of Project Co's records, documentation and drawings necessary for the City to proceed with the Highway Work, including, subject to Section 48.4(a)(vi), the legal assignment to the City of any of Project Co's rights in any agreement relating to the Highway Work as the City may require, and Project Co shall not do anything to impede the City's ability to proceed with the Highway Work. Further, Project Co agrees to turn over to the City, on a timely basis, enabling Project Co to make and retain copies as it may reasonably deem necessary, all of Project Co's records, files, documents, materials, drawings, and any other items relating to the Highway Work, whether located on the Highway Site, at Project Co's office or elsewhere and to vacate the Highway Site in accordance with the City's reasonable instructions. The City may retain such records, files, documents, materials, drawings and any other items for such time as it may need them and may reproduce any and all such items for its own use;
 - (iv) subject to the rights and obligations set forth in Schedule 41 – Intellectual Property, the City will be entitled to retain all Project Co Intellectual Property, Subcontractor Intellectual Property and Third Party Intellectual Property that has been Delivered up to the Termination Date or that is Delivered pursuant to this

Section 48.4, which may thereafter be Used by the City in accordance with the Licences granted herein;

- (v) in so far as title shall not have already passed to the City pursuant to Section 55.1 or Section 48.4(a)(i), Project Co shall hand over to, and there shall vest in, the City, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the City), the Highway, the System together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the activities within the Project Scope and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory as set forth in Appendix C (Expiry Date Requirements) of Schedule 15-3 – Maintenance and Rehabilitation Requirements, and to the extent that any such assets or rights are not capable of being transferred by Project Co to the City, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by the City in order to enable it, or its designated agents or Subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
- (vi) if the City so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Contracts), and any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Scope or to protect the interests of Project Co, shall be novated or assigned to the City or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with any Contractor or shall be made to the City pursuant to, and subject to, the terms of the applicable Contractor's Direct Agreement;
- (vii) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if the City so elects, execute such sale) to the City at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the City), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Highway, the System, and reasonably required by the City in connection with the operation of the Highway, the System or the performance of the Maintenance Services;
- (viii) Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of:

- (A) the most recent As Built Drawings in the format that the City, acting reasonably, considers most appropriate at the time showing all alterations made to each Milestone since the relevant Milestone Acceptance Date; and
- (B) the most recent maintenance, operation and training manuals for the System;
- (ix) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by the City), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical and equipment used or made available by Project Co under this Project Agreement and included in the Highway and the System;
- (x) Project Co shall deliver to the City all information, reports, documents, records and the like referred to in Section 37, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to the City);
- (xi) Project Co will return to the City all City Intellectual Property and Confidential Information of the City; and
- (xii) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 47.4, the System and elements of the System shall be in the condition required in accordance with Section 50 and Schedule 24 – Expiry Transition Procedure.

48.5 Ownership of Information

- (a) Subject to Section 51, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Scope accumulated over the course of the Project Term shall be the property of the City and upon termination of this Project Agreement shall be provided or returned to the City, as applicable, in electronic format acceptable to the City, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

48.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that the City shall be in a position to

exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 48.

48.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued performance of Maintenance Services pursuant to Sections 3.2 and 3.3 of Schedule 23 – Compensation on Termination if applicable:
- (i) cooperate fully with the City and any successors providing services in the nature of any of the Maintenance Services or any part of the Maintenance Services in order to achieve a smooth transfer of the manner in which the Maintenance Services are performed and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of any System Users;
 - (ii) as soon as practicable remove from the Site and the Highway Site all property belonging to Project Co or any Project Co Party that is not acquired or retained by the City pursuant to Section 48.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from the City requiring it to do so, the City may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (iii) forthwith deliver to the City Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the System; and
 - (B) to the extent transferable and in addition to and without prejudice to the City's rights pursuant to Section 51, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the System; and
 - (iv) as soon as practicable vacate the Site, the Highway and, without limiting Project Co's obligations under Schedule 24 – Expiry Transition Procedure, shall leave the Site, the Highway Site and the System in a safe, clean and orderly condition.
- (b) If the City wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Maintenance Services or any part of the Maintenance Services, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with the City fully in such competition process, including by:

- (i) providing any information which the City may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to the City, other than Sensitive Information; and
- (ii) assisting the City by allowing any or all participants in such competition process unrestricted access to the Site, the Highway Site and the System.

48.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 48, this Project Agreement shall terminate and, except as provided in Section 48.9, all rights and obligations of the City and Project Co under this Project Agreement shall cease and be of no further force and effect.

48.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16.1, 16.1A, 16.1B, 16.2(a), 16.3(a), 16.4(a), 16.5(a), 25.6, 26.8, 31.4, 32, 34.6, 34.8, 34.13, 34.14, 34.15, 35, 36, 37, 45.6, 46.3, 47.4, 48, 49, 50, 52, 53, 55, 56, 57, 58, 60.3, 61.1, 64.4, 64.5, 64.9, 64.10, 64.11, 64.12 and 64.13 of this Project Agreement, Schedule 8 – Energy Matters, Schedule 23 – Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 – Expiry Transition Procedure, Sections 1.1 to 1.4, 4 and 5 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Section 8.1 of Schedule 35 – Additional Vehicles, Sections 9.6, 11.9(f) and 14 of Schedule 40 – Highway Work, Sections 3.1 to 3.4, 3.6, 4.2, 4.6 and 4.9 of Schedule 41 – Intellectual Property and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or to the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 47.4.

49. COMPENSATION ON TERMINATION

49.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 – Compensation on Termination shall apply and the City shall pay Project Co any applicable compensation on termination.

49.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 49.2(b), any compensation paid pursuant to this Section 49, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and the City, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and the City shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 49.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 34.13 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the City Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 48.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
 - (iii) any amount owing to the City in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28 and
 - (D) any fraud or other criminal offence committed against the City.

50. EXPIRY TRANSITION PROCEDURE

50.1 Expiry Transition

- (a) Project Co and the City shall each comply with the requirements of Schedule 24 – Expiry Transition Procedure.

51. INTELLECTUAL PROPERTY**51.1 Intellectual Property Ownership and Licences**

- (a) Project Co shall comply with the requirements of Schedule 41 –Intellectual Property.

52. CONFIDENTIALITY/COMMUNICATIONS**52.1 Disclosure**

- (a) Subject to Sections 52.1(b), 52.1(c) and 52.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the City each of the City and IO has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as each of the City or IO, in its Discretion, may consider appropriate. In exercising its discretion, each of the City and IO will be guided by the principles set out in Sections 52.1(b) and 52.1(c). In relation to any information relating to the Stage 2 MOU and the Stage 2 System, the City shall not accede to any request to the City by IO for access to such information or for permission to publicly disclose such information without first consulting Project Co and having due regard to Project Co's views, provided that nothing shall prevent the City from acceding to such a request from IO after such consultation where it is compelled to do so by law or by any existing agreement with IO.
- (b) Neither the City nor IO will disclose portions of this Project Agreement or any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 10(1) of MFIPPA or section 17(1) of FIPPA.
- (c) Notwithstanding Section 52.1(b), but subject to Section 52.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), each of the City or IO may disclose such information.
- (d) The City may disclose this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) to any of the Contribution Agreement Parties in support of the City's obligations under the Contribution

Agreements. In relation to any information relating to the Stage 2 MOU and the Stage 2 System, the City shall not accede to any request to the City by any Contribution Agreement Party for access to such information or for permission to publicly disclose such information without first consulting Project Co and having due regard to Project Co's views, provided that nothing shall prevent the City from acceding to such a request from a Contribution Agreement Party after such consultation where it is compelled to do so by law or by any Contribution Agreement. In the event of such disclosure, Project Co acknowledges and agrees that:

- (i) the Contribution Agreement Parties may be subject to FIPPA, *Access to Information Act* (Canada) or other Applicable Laws in respect of protection and/or disclosure of such information;
- (ii) such disclosure is not limited or prohibited by this Project Agreement, including pursuant to Section 52.2, Section 52.3, Section 52.4 or Section 52.5 hereof;
- (iii) subject to compliance with as applicable, FIPPA, *Access to Information Act* (Canada) or other Applicable Laws, a Contribution Agreement Party will be free to use, disclose or publish (including on websites) any information, including Confidential Information, on such terms and in such manner as they see fit.

52.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), each of the City and IO shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 52.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 52.1(b) and, accordingly, would be exempt from disclosure under as applicable, MFIPPA or FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and the City shall not (and the City shall cause IO to not) disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of MFIPPA or FIPPA.

52.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that subject to compliance with as applicable, MFIPPA or FIPPA, either the City or IO will be free to use, disclose or publish

(including on websites) any information, including Confidential Information, on such terms and in such manner as either the City or IO sees fit.

- (b) For greater certainty, Project Co acknowledges and agrees that, subject only to the removal of any information which Project Co is (or would be) entitled to refuse to disclose pursuant to section 10(1) of MFIPPA or Section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by the City or IO.

52.4 Freedom of Information and Protection of Privacy Act

- (a) The Parties acknowledge and agree that MFIPPA applies to the City, and that the City is required to fully comply with MFIPPA.
- (b) The Parties acknowledge and agree that FIPPA applies to IO and that IO is required to fully comply with FIPPA.
- (c) The City and IO respectively, shall, within the time periods provided in MFIPPA and FIPPA for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co (or any Project Co Party) or of the City's intention to voluntarily release any information or documents which contain Confidential Information that relates to Project Co (or any Project Co Party).

52.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 52 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
- (i) disclose in confidence to the Lenders and prospective Lenders and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Scope or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.

- (c) Project Co acknowledges that the City and any City Party may use the Confidential Information of Project Co for Approved Purposes not specific to the Project, but for other general governmental purposes. The City will advise Project Co prior to using any Confidential Information of Project Co for Approved Purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care.
- (f) Without limiting the generality of Section 52.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 20.11 and approved by the City, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by the City.

52.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”), other than Government Sensitive Information and other than Personal Information will not be considered to be Confidential Information in the following circumstances:
 - (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of Commercial Close, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant’s knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;

- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) subject to the obligation set forth in Schedule 41 – Intellectual Property, the information is disclosed to the City upon a termination of this Project Agreement, pursuant to Section 48 or is otherwise required by the City for the purposes of performing (or having performed) the Project Scope, including the design or construction of the System, the maintenance or improvement of the System, or any other operations or services the same as, or similar to, the Project Scope; or
- (ix) the information would not be exempt from disclosure under FIPPA or MFIPPA.

52.7 Survival of Confidentiality

- (a) The obligations in Section 52.1 to Section 52.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

52.8 Communications Protocol

- (a) The Parties shall comply with the provisions of Schedule 18 – Communications and Public Consultation Protocol.

52.9 Government Use of Documents

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with the City's, IO, HMQ or Her Majesty the Queen in Right of Canada's ability to use this Project Agreement in any manner desired by the City, IO, HMQ or Her Majesty the Queen in Right of Canada.
- (b) Project Co hereby consents to the use by the City, IO, HMQ or Her Majesty the Queen in Right of Canada of this Project Agreement, and any portion thereof, subject to compliance with MFIPPA, FIPPA and *Access to Information Act* (Canada) and to the removal by the City, IO, HMQ or Her Majesty the Queen in Right of Canada (in consultation with Project Co) of any information supplied in confidence to the City, IO, HMQ or Her Majesty the Queen in Right of Canada by Project Co in circumstances where disclosure may be refused under Section 10(1) of MFIPPA, section 17(1) of FIPPA or section 20 of *Access to Information Act* (Canada).

53. PERSONAL INFORMATION**53.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of the City and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by the City.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA and MFIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Scope.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 53.
- (e) Project Co shall allow the City on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 53 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of the City with respect to Project Co or each Project Co Party's handling of Personal Information.
- (f) Project Co shall not subcontract or delegate to any third party any of the Project Scope that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of the City and without obtaining written contractual commitments of such third party substantially the same as those of this Section 53.

53.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co

- Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees that require access to such Personal Information to fulfil their job requirements in connection with the Project Scope and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 53.
 - (c) Upon termination of this Project Agreement or upon request of the City, whichever comes first, Project Co shall immediately cease all use of and return to the City or, at the direction of the City, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
 - (d) To the extent that any of the Project Scope involves or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to (c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
 - (e) Project Co shall immediately inform the City of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 53.
 - (f) The City may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to the City, acting reasonably, requiring such person to keep Personal Information confidential.

53.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to the City and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 53 and any other provision of the Project Agreement, this Section 53 shall prevail.
- (c) The obligations in this Section 53 shall survive the termination of this Project Agreement.

54. INSURANCE AND PERFORMANCE SECURITY**54.1 General Requirements**

- (a) Project Co and the City shall comply with the provisions of Schedule 25 – Insurance and Performance Security Requirements.

54.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or the City of their respective liabilities and obligations under this Project Agreement.

55. TITLE**55.1 Title**

- (a) Without derogation from the provisions of Section 29, Title to each item and part of the System, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to the City (or as the City may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the System or are to be affixed or attached to either Component of the System prior to Revenue Service Availability shall pass to the City (or as the City may direct) at the time that such items are included in the System or affixed or attached to the System.

56. INDEMNITIES**56.1 Project Co Indemnities to the City**

- (a) Project Co shall indemnify and save harmless the City, each City Party (for the purposes of this section, not including DB Co or any DB Co Party) and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) **[Intentionally deleted]**
 - (ii) any physical loss of or damage to all or any part of the Site, the Highway Site, the System, the Highway, or to any equipment, assets or other property related thereto;
 - (iii) the death or personal injury of any person;
 - (iv) any physical loss of or damage to property or assets of any third party;

- (v) any other loss or damage of any third party including injurious affection arising from or in consequence of any act or omission of Project Co in respect of the Design and Construction Works that are not in compliance with the requirements set out in this Project Agreement and in the Applicable Law including the City's by-laws;
- (vi) any obligations of Project Co to satisfy judgments and pay costs resulting from construction liens arising from the performance of the Highway Work or actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against the City by any person that provided services or materials to the Highway Site which constituted part of the Highway Work; and
- (vii) (A) Project Co's obligations under Article 14 of Schedule 40; and
(B) Project Co Hazardous Substances,
(collectively, the "Project Co Indemnified Hazardous Substances Claims"),
which indemnification shall apply and extend to:
 - (I) Project Co Indemnified Hazardous Substances Claims made by federal, provincial or local government entities or agencies, and
 - (II) all Project Co Indemnified Hazardous Substances Claims arising out of such actual Release of Hazardous Substances even if such Project Co Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Highway Work or after conclusion of this Project Agreement, provided this indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in this 56.1, or which otherwise exist respecting a person or party described in this Section 56.1,

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, including any failure on the part of Project Co to adhere to the collective bargaining obligations set out in Section 28.14, except to the extent caused, or contributed to, by:

- (A) the breach of this Project Agreement by the City; or
- (B) **[Intentionally deleted]**
- (C) in respect of Sections 56.1(a)(ii), 56.1(a)(iii), 56.1(a)(iv) or 56.1(a)(v) any act or omission of the City or any City Party; or
- (D) a deliberate or negligent act or omission of a System User that results in undue interference with Project Co's performance of the Maintenance Services and Project Co has been unable to take commercially reasonable

steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of the City or an appropriate City Party, except to the extent:

- (1) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (2) the System User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless the City and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless the City and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences and Approvals in accordance with this Project Agreement;
 - (ii) the failure of Project Co to manage, remediate and/or remove, as applicable, any Contamination as required in accordance with Section 16.2(a) or the failure of Project Co to discharge its obligations under Sections 16.2(d) and 16.2(e);
 - (iii) any release of Contamination or Existing Contamination described in Sections 16.2(b)(i) and 16.2(b)(ii); or
 - (iv) the provision of assistance by the City to Project Co pursuant to Section 9.6(c),
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by the City or by any act or omission of the City or any City Party.
- (d) Without prejudice to the City's rights under Section 45 and any other rights under this Project Agreement, if the City exercises its step-in rights under any Contractor's Direct Agreement, Project Co shall indemnify the City for all obligations of Project Co assumed by the City under the Contracts, and for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights.
- (e) Project Co shall indemnify the City for damages suffered or incurred on account of any payment not duly made by Project Co pursuant to the terms of this Project Agreement on

the due date, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due up to and including the date of payment.

- (f) Where a demand, claim, action or proceeding is made or brought against the City or any City Party that any Project Co Intellectual Property or the Use thereof by the City or any City Party or the use of any materials, machinery or equipment in connection with the Project Scope infringes an Intellectual Property Right of a third party or misappropriates any confidential information or otherwise violates any right of a third party, unless such infringement has arisen out of the use of the allegedly infringing Project Co Intellectual Property, materials, machinery or equipment by the City or any City Party otherwise than in accordance with the terms of this Project Agreement, Project Co shall defend the City and such City Party from and against all such demands, claims, actions and proceedings in accordance with Section 56.3; and shall indemnify and save harmless the City and such City Party from and against all Direct Losses arising out of or relating to such demands, claims, actions and proceedings or the settlement thereof. References in this Section 56.1(f) to a City Party shall not include DB Co or any DB Co Party.

56.2 City Indemnities to Project Co

- (a) The City shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by the City or any act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the City or any deliberate or negligent act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the City or any deliberate or negligent act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and

- (iv) (A) exposure to, or the presence of, Hazardous Substances at the Highway Site other than Project Co Hazardous Substances;
- (B) the breach of any Applicable Law relating to such Hazardous Substances; and
- (C) any Release or threatened Release at or from the Highway Site of any such Hazardous Substances which has or may have an adverse effect upon the environment or human health or safety.

other than Project Co Indemnified Hazardous Substances Claims as set out in Section 56.1(a)(vii) (collectively, the “City Indemnified Hazardous Substances Claims”), and in this regard, it is expressly agreed and understood that such indemnification shall apply and extend to City Indemnified Hazardous Substances Claims even if such City Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Highway Work or after conclusion of this Project Agreement, provided this indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in this Section 56.2 or which otherwise exist respecting a person or party described in Section 56.1,

provided that there shall be excluded from the indemnity given by the City any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) The City shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by the City herein.
- (c) The City shall indemnify Project Co for damages suffered or incurred on account of any Payment not duly made by the City pursuant to the terms of this Project Agreement on the due date, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due up to and including the date of payment.
- (d) To the extent that:
 - (i) Project Co has a valid claim against DB Co (and whether such claim is pursued directly by Project Co against DB Co under the Interface Agreement or is pursued by the City on behalf of Project Co as an EPR Claim pursuant to Section 9.12); and
 - (ii) such claim can only be brought against DB Co through the indemnity provisions of the DB Co Works Agreement and/or the the DB Co Interface Agreement; and

- (iii) DB Co has a whole or partial defence to such claim due to the application of the limitation of liability in Section 47.4(a) of the DB Co Works Agreement (the portion unrecoverable for this reason being the “**Excess Claim Amount**”),

the City shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against the Excess Claim Amount.

56.3 Conduct of Claims

- (a) This Section 56.3 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 56, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 56.3(d), 56.3(e) and 56.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

- (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 56.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 56.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 56.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 56.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 56.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where the City is the Beneficiary, the City may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 56.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

- (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 56.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

56.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 64.5 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

57. LIMITS ON LIABILITY

57.1 Indirect Losses

- (a) Without prejudice to the City's rights under the Payment Mechanism, or the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
 - (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity sustained by either Party and not by third parties; or
 - (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,(collectively, "**Indirect Losses**").

57.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, neither the City nor any City Party shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to the City or any City Party in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

57.3 Sole Remedy

- (a) Subject to:
- (i) any other rights of the City expressly provided for in this Project Agreement; and
 - (ii) the City's right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by the City pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by the City pursuant to Section 49,
- the sole remedy of the City in respect of a failure to perform the Maintenance Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.
- (b) Nothing in Section 57.3(a) shall prevent or restrict the right of the City to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

57.4 Maximum Liability

- (a) Subject to Section 57.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 56 (other than any claim under Section 56.2(d)) shall not exceed \$50,000,000. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Nothing in this Section 57.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

58. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 – Dispute Resolution Procedure.

59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**59.1 Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, any of the Contracts or any agreement entered into in connection with this Project Agreement without the prior written consent of the City in its Discretion, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the City's role (in the City's reasonable opinion); (ii) may compromise the reputation or integrity of the City and/or any City Party; or (iii) are inconsistent with the nature of the City or the Project; so as to negatively affect public perception of the City or the Project.
- (b) Section 59.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if the City so requires.

59.2 City Assignment

- (a) The City may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement, including without limitation the Highway Warranty, or any agreement in connection with this Project Agreement to which Project Co and the City are parties:
 - (i) as may be required to comply with Applicable Law;
 - (ii) to any minister of the Province of Ontario or of Canada, for greater certainty, including but not limited to the MTO in respect of all or part of the Highway Work;
 - (iii) to a corporation, all of the shares of which are owned by the City provided that in such event, the City shall remain liable for all its obligations under this Project Agreement;
 - (iv) to an agency of the Government of Canada or Province of Ontario having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the City under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of City's obligations hereunder and under the other Project Documents to which the City is a party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 59.2(a)(i) to 59.2(a)(iv), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of the City hereunder and under any agreement in connection with

this Project Agreement to which Project Co and the City are parties in respect of the period from and after the assignment; and

upon receiving written notification from the City of any such assignment, transfer, disposition, or other alienation of interest, Project Co agrees to be bound in respect thereof.

- (b) The City shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 59.2 (with the exception of Section 59.2(a)(iii)).

59.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement or any of the Contracts, and shall not permit the Contractors to subcontract any interest in the applicable Contract to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with the City's role (in the City's reasonable opinion) (ii) may compromise the reputation or integrity of the City and/or any City Party; or (iii) are inconsistent with the nature of the City or the Project, so as to negatively affect public perception of the City or the Project.
- (b) Project Co shall not terminate, agree to the termination of or replace Contractors, or make any appointment of the Contractors, unless Project Co has complied with Sections 7.2(a), 59.3(c), and 59.3(d) or received the prior written consent of the City. The City shall accept the Subcontractors named in Project Co's Response without further consent rights of the City.
- (c) Subject to Section 59.3(d), if any of the Contracts, shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Contractor, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to the City's prior written consent, acting reasonably, as to the suitability of the replacement. The City's prior written consent does not apply to the initial Contractor.
- (d) It is a condition of the appointment and replacement of the Construction Contractor and/or the Maintenance Contractor that, and Project Co shall require that:
 - (i) each of the Contractors enter into the applicable contract, as the case may be, in form and substance satisfactory to the City, acting reasonably, and into a direct agreement in the form of the Direct Agreement. The City shall accept the Subcontractors named in Project Co's Response without further consent rights of the City; and
 - (ii) replacement Contractors enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by the City, acting reasonably.

59.4 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, shall be permitted:
- (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the City's role (in the City's reasonable opinion); (ii) may compromise the reputation or integrity of the City and/or, any City Party; or (iii) are inconsistent with the nature of the City or the Project, so as to negatively affect public perception of the City or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the activities within the Project Scope, the Governmental Activities or the availability of the System to System Users.
- (b) Prior to the third anniversary following the Revenue Service Commencement Date, the City shall be entitled to receive a 50 percent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (c) Subject to Sections 59.4(a) and 59.4(b), no Change in Control of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, shall be permitted without the prior written consent of the City not to be unreasonably withheld or delayed.
- (d) This Section 59.4 shall not apply to a Change in Ownership or Change in Control of persons whose Securities evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (e) Whether or not Project Co is required to obtain the City's consent pursuant to this Section 59.4, Project Co shall provide notice to the City of any proposed Change in Ownership or Change in Control of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, as the case may be, within 5 Business Days after such Change in Ownership or Change in Control, and such notification shall include a statement identifying, in respect of the relevant owners in the ownership interests of Project Co, or of any person with an ownership interest in Project Co, as the case may be, the holdings prior to and proposed holdings following the Change in Ownership or Change in Control, respectively.
- (f) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.

59.5 City Due Diligence

- (a) Project Co shall promptly reimburse the City for the City's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of the City pursuant to, or the City's determination of Project Co's compliance with, Sections 59.1, 59.3 or 59.4, whether or not such consent is granted.

60. PROHIBITED ACTS

60.1 Definition

- (a) The term "Prohibited Act" means:
- (i) offering, giving or agreeing to give to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with the City or any public body in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with the City or any public body in connection with the Project,

provided that this Section 60.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to the City or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the City or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with the City or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the City, provided that this Section 60.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to the City or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the City or any public body in connection with the Project without contravening the intent of this Section 60;

- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with the City or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the City or any other public body.

60.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the City shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then the City may give written notice to Project Co and Section 45 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then the City may give written notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Scope shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then the City may give written notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Scope shall be performed by another person, where relevant, in accordance with Section 59.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then the City may give notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Scope shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 60.2(a)(i) to 60.2(a)(iv), then the City may give notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Scope shall be performed by another person.
- (b) Any notice of termination under this Section 60.2 shall specify:

- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom the City believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 60.2, the City shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 60.

60.3 Permitted Payments

- (a) Nothing contained in this Section 60 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

60.4 Notification

- (a) Project Co shall notify the City of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

60.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 60, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

61. NOTICES

61.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Project Agreement shall be in writing (whether or not “**written notice**” or “**notice in writing**” is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co:

Rideau Transit Group General Partnership

If to the City: City of Ottawa
Finance Department, Supply Branch
100 Constellation Crescent
4th Floor West Tower
Ottawa, ON K2G 6J8

Fax: (613) 580-9688

Attn.: Director, Rail Implementation

With a copy to: Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, ON M5G 2C8

Fax: (416) 327-6387

Attn.: Vice President, Civil Infrastructure

61.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 61.1, where any Notice is to be provided or submitted to the City Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative:

If to the City Representative: City of Ottawa
Finance Department, Supply Branch
100 Constellation Crescent
4th Floor West Tower
Ottawa, ON K2G 6J8

Fax: (613) 580-9688

Attn.: Director, Rail Implementation

With a copy to: Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, ON M5G 2C8

Fax: (416) 327-6387

Attn.: Vice President, Civil Infrastructure

61.2(A) Notice to Consultant

- (a) In addition to the notice requirements set out in Section 61.1, where any Notice is to be provided or submitted to the Consultant, it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

McIntosh Perry Consulting Engineers Ltd.
115 Walgreen Road
Carp, ON K0A 1L0

Fax: (613) 836-3742

Attn.: Gord Perry

61.3 Facsimile

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 61.3.

61.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Section 61.1 or 61.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

61.5 Deemed Receipt of Notices

- (a) Subject to Sections 61.5(b), 61.5(c) and 61.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall

not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 61.

- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

61.6 Service on the City

- (a) Where any Notice is required to be served on the City, the obligation to serve such Notice shall be fulfilled by serving it on the City in accordance with the provisions of this Section 61.

62. EMERGENCY MATTERS

62.1 Emergency

- (a) During the Project Term, upon the occurrence of an Emergency, Project Co shall comply with Part 1, Article 9.2(vi) and Article 11.2 of Schedule 15-2 – Design and Construction Requirements (subject to any adjustments required in respect of the Stage 2 System to reflect the Emergency Response Plan referred to in Section 62.1(b) below) and with Schedule 15-4 – Regulatory Standards.
- (b) During the Project Term, upon the occurrence of an Emergency, Project Co shall comply with its Emergency Response Plan in accordance with Part 1, Article 11.2 of Schedule 15-2 – Design and Construction Requirements (as subsequently updated in respect of the Stage 2 System to reflect DB Co's Emergency Response Plan prepared under Schedule 15-2, Part 1 Article 8 of the DB Co Works Agreement) and with Schedule 15-4 – Regulatory Standards.
- (c) If, in respect of any Emergency, the City notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by the City or any other statutory body, then Project Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application) and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 62.1(a) or Section 62.1(b).
- (d) Project Co shall develop emergency procedures for both the Construction Period and the Maintenance Term in accordance with all legal obligations. Project Co shall amend all emergency procedures throughout the Construction Period and Maintenance Term on an as needed basis to reflect changes in law or safety obligations. Project Co shall develop

the emergency procedures in line with best safety practices and shall be guided by the results of the ongoing Safety Management Plan, Safety and Security Certification and Emergency Response Plan detailed in Part 1 of Schedule 15-2 – Design and Construction Requirements and with Schedule 15-4 – Regulatory Standards.

63. THE CITY DESIGNATE

[Intentionally deleted]

64. GENERAL

64.1 Amendments

- (a) This Project Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Project Agreement.

64.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

64.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between the City and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between the City and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent that it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation,

express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;

- (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, WSIB or other similar levies with respect to any persons employed or engaged by the other Party;
 - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
 - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.
- (c) Nothing in this Agreement shall be construed as authorizing any person to contract for, to incur any obligation on behalf of, or to act as agent for a Contribution Agreement Party.

64.4 City as Municipality and Planning Authority

Project Co acknowledges that although the City is a party to this Agreement, nevertheless, the City is and shall remain an independent planning authority and municipality with all requisite powers and discretion provided under Applicable Law, including the *Planning Act* (Ontario) and the *Municipal Act, 2001* (Ontario).

64.5 General Duty to Mitigate

- (a) The City and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

64.6 [Intentionally deleted]

64.7 Entire Agreement

- (a) Except where provided otherwise in this Project Agreement, this Project Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Project Agreement.

64.8 No Reliance

- (a) Each of the Parties acknowledges that:

- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
- (ii) this Section 64.8 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

64.9 Severability

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

64.10 Enurement

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both the City and Project Co are parties shall enure to the benefit of, and be binding on, the City and Project Co and their respective successors and permitted transferees and assigns.

64.11 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

64.12 Cumulative Remedies

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

64.13 Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

64.14 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

64.15 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, and instructions to staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

64.16 Proof of Authority

- (a) The City and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to the City or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind the City or Project Co, as applicable.

64.17 Counterparts

- (a) This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of this Project Agreement which was so faxed.

64.18 City Parties as Third Party Beneficiaries

- (a) The provisions of Sections 6.1, 6.2(a), 6.3(a), 8.1(b), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 16.1(a), 20.3(j), 21.1, 35.6, 36.2(e), 56.1 and 57.2(a), and each other provision of this Project Agreement which is expressed to be for the benefit of a City Party, are:
- (i) intended for the benefit of each City Party (unless otherwise stated with respect to DB Co and DB Co Parties), and, if so set out in the relevant Section, each City Party's directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each City Party, the "**City Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the City Party Beneficiaries may have in contract or otherwise.
- (b) The City shall hold the rights and benefits of Sections 6.1, 6.2(a), 6.3(a), 8.1(b), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 16.1(a), 20.3(j), 21.1, 35.6, 36.2(e), 56.1 and 57.2(a), and each other provision of this Project Agreement which is to the benefit of a City Party (unless otherwise stated with respect to DB Co and DB Co Parties), in trust for and on behalf of the City Third Party Beneficiaries, and the City hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the City Third Party Beneficiaries.

[This section intentionally left blank]

IN WITNESS WHEREOF the Parties have executed this Project Agreement as of the date first above written.

CITY OF OTTAWA

Per: _____
Name: Kent Kirkpatrick
Title: City Manager

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

RIDEAU TRANSIT GROUP GENERAL PARTNERSHIP, by its partners, ACS RTG PARTNER INC., SNC RTG PARTNER INC. and ELLISDON RTG PARTNER INC.

ACS RTG PARTNER INC.

Per: _____
Name:
Title:

I have authority to bind the corporation.

SNC RTG PARTNER INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

ELLISDON RTG PARTNER INC.

Per: _____
Name:
Title:

I have authority to bind the corporation.