

## SCHEDULE 43

### PROCUREMENT SUPPORT SERVICES

#### 1. DEFINITIONS

##### 1.1 Definitions

- (a) In this Schedule, unless the context indicates a contrary intention, capitalized terms used herein which are defined in this Schedule and/or the MOU (and not otherwise defined in this Schedule) shall have meanings given to them in this Schedule and/or the MOU. The MOU shall survive this Schedule. The following terms shall have the following meanings:
- (i) **"City Objectives"** means in connection with the delivery of the Stage 2 LRT Project:
- (A) to derive optimum value for the public sector dollars contributed to the Stage 2 LRT Project in line with the risk profile associated with the Stage 2 LRT Project Variations;
  - (B) to realise a single point of accountability for service availability and lifecycle maintenance for the Expanded System;
  - (C) to benefit from the efficiencies of this Agreement and associated infrastructure by negotiating one or more Variations to that contract for those project elements that demonstrate value for money, including by reference to the original competitive pricing for the Stage 1 Project;
  - (D) that the result of any negotiations in respect of the Stage 2 LRT Project must maintain the carefully negotiated risk transfer and commercial arrangements from this Agreement (as certain elements may be enhanced and modified in the context of the recent light rail projects in the Province of Ontario) provided that the parties will be left with no proportionately greater risk in the aggregate (additional risk in some areas will be priced and/or offset by lower risk in other areas); and the result of any such negotiations shall be in accordance with the Agreed Parameters; and
  - (E) that the result of the negotiation and the overall plan to implement the Stage 2 LRT Project shall be satisfactory to and approved by the City's federal and provincial funding partners.

- (ii) “**Clearance Notice**” has the meaning given to it in Section 2.3(e).
- (iii) “**Consultants**” means those professional firms and consultants providing professional architectural, engineering, planning, consulting, Light Rail Vehicle procurement, maintenance, repair and specialty procurement PS Services which are retained by Project Co in respect of the delivery of the PS Services.
- (iv) “**DB Co**” means a third party who is the preferred DB Co Proponent that reaches financial close in connection with the DB Co Works RFP.
- (v) “**DB Co Proponent**” means a Person invited to respond to the DB Co Works RFP.
- (vi) “**DB Co Works**” has the meaning given to such term in Appendix 3, Part C, Section 1.1 to the MOU.
- (vii) “**DB Co Works Agreement**” means the design build finance project agreement to be entered into between the City and DB Co, including the schedules thereto.
- (viii) “**DB Co Works Agreement Documents**” means the DB Co Works Agreement and any agreements to be entered into by or at the behest of DB Co in connection of the DB Co Works, but not including the Stage 2 Interface Agreement.
- (ix) “**DB Co Works RFP**” means the request for proposals to be issued by the City to selected Persons in connection with the carrying out of the DB Co Works.
- (x) “**Divergence**” occurs where any PSS Submittal(s) or compliance with any PSS Submittal(s), including any part thereof and including any time sensitive or date specific handover requirements and any conditions relating to handover, would be inconsistent with any of the Agreed Parameters (including the Stage 2 Assumptions) or would cause any of the Agreed Parameters (including the Stage 2 Assumptions), including in terms of Project Co’s pricing or assumption of risk contemplated thereunder, not to be complied with; and “**Divergent**” shall have a corresponding meaning.
- (xi) “**Expanded System**” means the System (as it is defined in this Agreement as of March 16, 2017) as expanded by the Stage 2 System.
- (xii) “**Expanded System Revenue Service Availability**” means substantial completion of the Stage 2 System and the overall systems integration has been completed such that the Expanded System operates as a single coherent system.
- (xiii) “**Expanded System Revenue Service Availability Date**” means the date upon which Expanded System Revenue Service Availability has been achieved. The

anticipated target date for Expanded System Revenue Service Availability is December 31, 2023.

- (xiv) **“GAP Interface Terms”** has the meaning given to it in Section 2.5(l)(ii).
- (xv) **“Interface Rejection Notice”** has the meaning given to it in Section 2.5(f), as such notice may be revised pursuant to Section 2.5(f) following the Internal Interface Comment Resolution Meeting.
- (xvi) **“Interface Reserved Position Issue”** has the meaning given to it in Section 2.5(g).
- (xvii) **“Internal Comment Resolution Meeting”** has the meaning given to it in Section 2.3(d).
- (xviii) **“Internal Interface Comment Resolution Meeting”** has the meaning given to it in Section 2.5(e).
- (xix) **“M&R Assumption Comments”** means any comment by Project Co that a PSS Submittal prior to the execution of the DB Co Works Agreement, in whole or in part, is Divergent.
- (xx) **“M&R Review Suggestions”** means, in connection with the PSS Submittals, comments in respect of design and/or construction changes which would result in reduced construction cost and/or more efficient maintenance over the asset life (it being acknowledged and agreed that Project Co may propose changes to either its scope or to DB Co’s design or construction means and/or methodology as long as the overall impact over the life of this Agreement (as the same may be amended to reflect any Stage 2 LRT Project Variations) would be cost-effective for the City).
- (xxi) **“MOU”** means the memorandum of understanding dated March 16, 2017 between Project Co and the City governing the Parties’ approach to the integration of the Stage 2 LRT Project into this Agreement.
- (xxii) **“Notice of Complaint”** has the meaning given to it in Section 4.2(a)(i).
- (xxiii) **“Notice of PSS Termination”** means a notice of termination of the PS Services as defined in Section 4.2(a)(iii).
- (xxiv) **“Preliminary Interface Rejection Dispute Meeting”** has the meaning give to it in Section 2.5(f).
- (xxv) **“Preliminary Internal Comment Resolution Meeting”** has the meaning given to it in Section 2.2(b).

- (xxvi) **“Preliminary Rejection Dispute Meeting”** has the meaning given to it in Section 2.2(d).
- (xxvii) **“Preliminary Rejection Notice”** has the meaning given to it in Section 2.2(c), as such notice may be revised pursuant to Section 2.2(d).
- (xxviii) [INTENTIONALLY DELETED]
- (xxix) **“Project Co Assumption Verification”** has the meaning given to it in Section 2.3(k).
- (xxx) **“Project Manager”** means the individual identified as such in Appendix C.
- (xxx1) **“Proponent Interface Comments”** has the meaning given to it in Section 2.5(i).
- (xxxii) **“Proponent Interface Comment Resolution Meeting”** has the meaning given to it in Section 2.5(i).
- (xxxiii) **“Proposals”** means the proposals to be submitted by the DB Co Proponents in response to the DB Co Works RFP.
- (xxxiv) **“PS Services”** means those procurement support services to be provided by Project Co as set out in this Schedule.
- (xxxv) **“PS Services Commencement Date”** means the date on which Project Co starts to perform the PS Services.
- (xxxvi) **“PS Term”** has the meaning given to it in Section 4.1(a).
- (xxxvii) **“PSS Event of Default”** any material failure of Project Co to perform the PS Services in accordance with this Schedule which is not rectified within 30 days of notification by the City.
- (xxxviii) **“PSS Submittal”** means a draft of the Stage 2 DB Co PSOS or any DB Co Works Agreement Documents produced by the City and any subsequent updates of any such documents, in connection with the procurement for the DB Co Works, excluding the Reference Concept Design.
- (xxxix) **“Reference Concept Design”** means the Non Reliant, preliminary design produced by the City which is viewed by the City as being substantially compliant with the Stage 2 DB Co PSOS requirements.
- (xl) **“Rejection Notice”** has the meaning given to it in Section 2.3(e).
- (xli) **“Reserved Position Issue”** has the meaning given to it in Section 2.3(f).

- (xlii) “**Review Comments**” means any M&R Assumption Comment or M&R Review Suggestion.
- (xliii) “**RFP Documents**” means any documents issued by the City to DB Co Proponents during the course of the RFP Process in connection with the DB Co Works RFP, including the DB Co Works Agreement Documents, the form of Stage 2 Interface Agreement and the Stage 2 DB Co PSOS.
- (xliv) “**RFP Process**” means the procurement process carried out pursuant to the DB Co Works RFP.
- (xlv) “**Stage 2 Assumptions**” means the following assumptions in respect of the DB Co Works and Project Co’s assumption of risk in respect of the Expanded System as contemplated by the MOU:
- (A) following achievement of the Expanded System Revenue Service Availability Date, Project Co shall assume full responsibility for maintaining availability of the Expanded System in accordance with the Stage 2 Maintenance PSOS (including the obligation to deliver the Stage 2 Maintenance Services for the fixed price outlined in Appendix 3 Part E - Financial Parameters of the MOU);
  - (B) unless otherwise agreed, as a general matter the Output Specifications (in respect of the System as it is defined in this Agreement as at March 16, 2017) will provide an appropriate starting point and standard for maintaining availability of the Expanded System in accordance with Stage 2 Maintenance PSOS, together with any relevant items set out in the maintenance and rehabilitation pricing assumptions provided as part of the Price Form set out as Attachment 1 to Part E of Appendix 3 of the MOU;
- (except to the extent the City otherwise retains responsibility for any matter under either this Agreement or the Stage 2 LRT Project Variations (for example, such as the role of the City as operator in the commissioning process)),
- (C) the terms of the DB Co Works Agreement and the Stage 2 Interface Agreement shall follow the assumptions set out in Appendix 3, Part C, Section 1.2 of the MOU and Appendix 3, Part F, Section 1.5 of the MOU, respectively; and
  - (D) the overall goal of the Stage 2 LRT Project procurement process is to achieve the City Objectives (including value for money for the City), provided that priority shall be given to ensuring that the assumptions in respect of the DB Co Works Agreement and the Stage 2 Interface Agreement are complied with, subject to any deviations to this approach

which the Parties may agree (for example, higher risk profile for DB Co in return for reduced maintenance cost risk margin).

- (xlvi) “**Stage 2 DB Co PSOS**” means the output specifications to be developed by the City for the DB Co Works.
- (xlvii) “**Stage 2 East Extension**” means the east extension of the Confederation Line from Blair station to Trim as generally illustrated by the darker blue lines to the east of the Confederation Line in Figure 1: Summary of Stage 2 Project Components of the MOU including all related DB Co Works.
- (xlviii) “**Stage 2 Interface Agreement**” means the agreement to be entered into among Project Co, DB Co and the City in respect of certain interface issues between the stakeholders of the Expanded System, as envisaged by Section 1.5 of Part F of Appendix 3 of the MOU.
- (xlix) “**Stage 2 Interface Agreement Protocol Review**” has the meaning given to it in Section 2.5(a).
  - (l) “**Stage 2 LRT Project**” means the Stage 2 East Extension and the Stage 2 West Extension and includes both the Stage 2 Project Co Expanded Scope and the DB Co Works.
  - (li) “**Stage 2 LRT Project Variations**” means one or more Variations to be initiated by the City in accordance with the terms of Schedule 22 to the Project Agreement (subject to the terms of the MOU) to implement the Stage 2 Project Co Expanded Scope, which were referred to under the MOU as the “Stage 1 PA Variations” and which include this Schedule.
  - (lii) “**Stage 2 Maintenance PSOS**” means the output specifications to be developed for the Stage 2 Project Co Expanded Scope, which was referred to under the MOU as the “Stage 2 RTG PSOS”.
  - (liii) “**Stage 2 Maintenance Services**” means the services described in Section 1.5 of Appendix 2 of the MOU.
  - (liv) “**Stage 2 Project Co Expanded Scope**” means the additional works and services described in Appendix 2 of the MOU intended to be delivered by Project Co as part of the Stage 2 LRT Project, which was referred to under the MOU as the “RTG Expanded Scope” and which includes the PS Services.
  - (lv) “**Stage 2 West Extension**” means the west extension of the Confederation Line from Tunney’s Pasture to Moodie Drive as generally illustrated by the darker blue

lines to the west of the Confederation Line in Figure 1: Summary of Stage 2 Project Components of the MOU including all related DB Co Works.

- (lvi) “**Strategic Issues**” has the meaning given in Section 2.2(b).
- (lvii) “**Unavoidable Delay**” means any condition or cause beyond the reasonable control of Project Co that prevents or delays Project Co in fulfilling its obligations under this Schedule, provided that Project Co has acted in a reasonable manner consistent with its obligations hereunder with respect to such condition or cause.

## 2. PROCUREMENT SUPPORT SERVICES

### 2.1 Duties

- (a) Project Co shall provide the PS Services all in accordance with and in the manner more particularly set out in this Schedule.
- (b) Project Co shall provide the resources and staff necessary for the delivery of the PS Services. As at the date hereof, the Project Manager for the PS Services is James Messel. Project Co shall treat such Project Manager as if such person were a Key Individual performing PS Services and the provisions of Section 10.4(c) of this Agreement shall apply to such Project Manager, mutatis mutandis, during the period that Project Co is providing the PS Services.
- (c) Other than as authorized by the City or as permitted or required under this Schedule, none of Project Co nor its Affiliates nor any of their respective advisors, employees or representatives engaged in the PS Services shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the DB Co Proponents or, to the extent Project Co is aware of them, team members of any DB Co Proponent, on any matter related to the RFP Process, the RFP Documents or the Proposals. Project Co shall be added as a party who cannot be contacted pursuant to the DB Co Works RFP. Project Co shall not be in breach of this provision if an employee of Project Co, any of its Affiliates or any of their respective advisors or representatives ceases to be so employed and subsequently becomes employed by any DB Co Proponent or any team member of a DB Co Proponent. Notwithstanding the foregoing, with respect to employees engaged in the provision of the PS Services who are both (i) employees of Project Co or of any of its Affiliates or of any of their respective advisors or representatives and (ii) bound by written restrictive covenants with their respective employers prohibiting them from being employed by a DB Co Proponent or a team member of a DB Co Proponent, Project Co shall use commercially reasonable efforts to enforce such restrictive covenants (if any exist) with respect to its own employees and shall use commercially reasonable efforts to require such Affiliates or any such advisors or representatives to use commercially reasonable efforts to enforce such restrictive

covenants (if any exist) with respect to their respective employees engaged in the performance of the PS Services.

- (d) Other than as specified herein, neither Project Co nor any of its Affiliates, acting in its capacity as the provider of PS Services, shall enter, directly or indirectly, into any ancillary agreement, side letter or similar additional agreement with any DB Co Proponent with respect to the PS Services pursuant to which Project Co or any of its Affiliates grants rights to or otherwise benefits such DB Co Proponent in a manner more favorable in any respect than the rights and benefits established in favour of any DB Co Proponent pursuant to this Schedule.
- (e) For the avoidance of doubt and without limitation, the PS Services shall not:
  - (i) form part of the Approved Purposes, the Civic Works, the Design and Construction Works, the Highway Work, the Maintenance, the Maintenance Services, Work or Works; or
  - (ii) form part of the definition of, or be required for, 2017 Readiness, Substantial Completion, Final Completion or Revenue Service Availability.

## 2.2 Preliminary Review Procedure

- (a) As soon as practicable, and in any event, no later than April 19, 2017, the City shall deliver to Project Co a draft of the Stage 2 DB Co PSOS and the Reference Concept Design. Project Co shall review the Stage 2 DB Co PSOS and provide M&R Assumption Comments and M&R Review Suggestions on the same. All such Review Comments shall be submitted to the City on a mutually acceptable comment review form by the later of (i) 7 Business Days following the delivery of such Stage 2 DB Co PSOS to Project Co via SharePoint and (ii) May 1, 2017, or such later date agreed to by the City (acting reasonably).
- (b) Not less than two (2) Business Days prior to the deadline for submission of the Review Comments by Project Co regarding the Stage 2 DB Co PSOS, Project Co will provide a written list of material issues that require further discussion and which cannot practically be implemented as proposed drafting changes (“**Strategic Issues**”), which Strategic Issues shall, for clarity, be in the nature of M&R Assumption Comments. Within three (3) Business Days following the City’s receipt of the Review Comments (or such later date agreed to by the Parties), a meeting (a “**Preliminary Internal Comment Resolution Meeting**”) will be held between Project Co and the City to review and dispose of all Strategic Issues. Without limiting the City’s obligations in this Section 2.2, the City shall give reasonable consideration to any Strategic Issues and any other input or comments from Project Co in the nature of M&R Assumption Comments on Stage 2 DB Co PSOS.

- (c) Within five (5) Business Days of the conclusion of the Preliminary Internal Comment Resolution Meeting, the City shall inform Project Co in writing: (i) of any Review Comments that have been rejected by the City (a “**Preliminary Rejection Notice**”), with written reasons therefor; or (ii) that all Review Comments were accepted. For the avoidance of doubt, the inclusion of any M&R Assumption Comments in the Preliminary Rejection Notice shall not in any way prejudice Project Co’s right to make or confirm such M&R Assumption Comments as Reserved Position Issues pursuant to the process contemplated in Section 2.3(f). For the avoidance of doubt, the City shall, at the time it provides Project Co with the Preliminary Rejection Notice, indicate in writing to Project Co which of the Review Comments have been accepted and which of the Review Comments have been rejected by the City.
- (d) Three (3) Business Days after Project Co’s receipt of the Preliminary Rejection Notice, the Parties shall meet to discuss the Review Comments that have been rejected by the City (the “**Preliminary Rejection Dispute Meeting**”) and the Parties (each acting reasonably) shall seek to reach agreement on the disposition of such rejected Review Comments. Within one (1) Business Day following the Preliminary Rejection Dispute Meeting, the City shall deliver a revised Preliminary Rejection Notice to Project Co, which shall indicate which Review Comments have been rejected by the City, with written reasons therefor. For the avoidance of doubt, the City shall, at the time it provides Project Co with such revised Preliminary Rejection Notice, indicate in writing to Project Co which of the Review Comments have been accepted and which of the Review Comments have been rejected by the City.
- (e) Following the Preliminary Internal Comment Resolution Meeting and the Preliminary Rejection Dispute Meeting, a record of each comment and agreed disposition among Project Co and the City shall be developed and maintained by the City and shall be made available to Project Co upon request. The City shall update the Stage 2 DB Co PSOS following the Preliminary Internal Comment Resolution Meeting and the Preliminary Rejection Dispute Meeting such that all agreed upon comments are incorporated into the Stage 2 DB Co PSOS.
- (f) Project Co and the City shall follow a substantially similar process as outlined in Sections 2.2(a), 2.2(b), 2.2(c), 2.2(d) and 2.2(e) above (including, for greater certainty, in respect of the timelines for review and comment provided therein), with the necessary changes, in connection with the development of the DB Co Works Agreement Documents and the City shall give reasonable consideration to any input or comments from Project Co on the DB Co Works Agreement Documents. The City shall deliver to Project Co drafts of the DB Co Works Agreement Documents as soon as practicable, and in any event, no later than April 27, 2017, for preliminary review pursuant to this Section 2.2.

## 2.3 Final Review Procedure

- (a) Prior to their initial release to the DB Co Proponents, each of the Stage 2 DB Co PSOS and DB Co Works Agreement Documents produced by the City shall be developed and provided by the City to Project Co for review and comment in accordance with the final review procedure described in this Section 2.3.
- (b) As soon as practicable, and in any event, no later than May 18, 2017, the City shall deliver to Project Co, prior to issuance to the DB Co Proponents, the draft Stage 2 DB Co PSOS, which shall, in the opinion of the City, be in a form suitable for release to the DB Co Proponents, subject to Project Co's right to review and comment on the same pursuant to this Section 2.3. As soon as practicable, and in any event, no later than May 25, 2017, the City shall deliver to Project Co, prior to issuance to the DB Co Proponents, the draft DB Co Works Agreement Documents, which shall, in the opinion of the City, be in a form suitable for release to the DB Co Proponents, subject to Project Co's right to review and comment on the same pursuant to this Section 2.3.
- (c) Project Co shall review the draft Stage 2 DB Co PSOS and the DB Co Works Agreement Documents and provide M&R Assumption Comments and/or M&R Review Suggestions with respect to the same. All of Project Co's Review Comments on such documents shall be submitted to the City on a mutually acceptable comment review form by the later of (i) eight (8) Business Days following the delivery of such PSS Submittals to Project Co via SharePoint and (ii) May 31, 2017 (in the case of the Stage 2 DB Co PSOS) or June 8, 2017 (in the case of the DB Co Works Agreement Documents), or such later date agreed to by the City (acting reasonably).
- (d) Not less than two (2) Business Days prior to the submission of the Review Comments by Project Co on the Stage 2 DB Co PSOS, and not less than two (2) Business Days prior to the submission of the Review Comments by Project Co on the DB Co Works Agreement Documents, Project Co will provide a written list of Strategic Issues regarding the Stage 2 DB Co PSOS or the DB Co Works Agreement Documents, whichever is applicable. On the Business Day following the City's receipt of the Review Comments on the Stage 2 DB Co PSOS and on the Business Day following the City's receipt of the Review Comments on the DB Co Works Agreement Documents, (or such later date agreed to by the Parties), a meeting (an "**Internal Comment Resolution Meeting**") will be held between Project Co and the City to review and dispose of all Strategic Issues. Without limiting the City's obligations under this Section 2.3, the City shall give reasonable consideration to any Strategic Issues and any other input or comments from Project Co in the nature of M&R Assumption Comments on any PSS Submittals.
- (e) Within five (5) Business Days of the conclusion of the Internal Comment Resolution Meeting regarding the Stage 2 DB Co PSOS and within three (3) Business Days of the conclusion of the Internal Comment Resolution Meeting regarding the DB Co Works Agreement Documents, the City shall inform Project Co in writing: (i) of any Review

Comments (with respect to the Stage 2 DB Co PSOS or the DB Co Works Agreement Documents, as applicable) that have been rejected by the City (a “**Rejection Notice**”), with written reasons therefor; or (ii) that all Review Comments (with respect to the Stage 2 DB Co PSOS or the DB Co Works Agreement Documents, as applicable) were accepted by the City (a “**Clearance Notice**”). For the avoidance of doubt, the City shall, at the time it provides Project Co with the Rejection Notice, indicate in writing to Project Co which of the Review Comments have been accepted and which of the Review Comments have been rejected by the City (in each case, with respect to the Stage 2 DB Co PSOS or the DB Co Works Agreement Documents, as applicable).

- (f) Within three (3) Business Days after Project Co’s receipt of the Rejection Notice from the City regarding the Stage 2 DB Co PSOS, and within two (2) Business Days after Project Co’s receipt of the Rejection Notice from the City regarding the DB Co Works Agreement Documents, Project Co shall notify the City whether or not Project Co wishes to make or confirm any M&R Assumption Comments (which, for greater certainty, may include any M&R Assumption Comments rejected in any Preliminary Rejection Notice or any Rejection Notice and/or any Strategic Issues raised (whether under Section 2.2 or this Section 2.3) with respect to the Stage 2 DB Co PSOS or the DB Co Works Agreement Documents, as applicable, (each such comment, a “**Reserved Position Issue**”) (and any failure by Project Co to make or confirm any such previously raised comment within such response period shall constitute a determination by Project Co not to dispute the M&R Assumption Comment which was identified in the applicable Preliminary Rejection Notice or the applicable Rejection Notice but not made or confirmed by Project Co pursuant to this paragraph).
- (g) Notwithstanding Project Co’s right to raise Reserved Position Issues, the City shall be entitled to proceed with the procurement for the DB Co Works and the City’s obligations under the document in question, provided however that nothing in this Section 2.3(g) is intended to prejudice the Parties’ respective rights and obligations with respect to such Reserved Position Issues under the other provisions of this Schedule.
- (h) The City shall give Project Co five (5) Business Days’ prior notice before issuing the final version of the DB Co Works RFP to the DB Co Proponents. Prior to the issuance of such final version of the DB Co Works RFP, either Party may refer for resolution pursuant to the Dispute Resolution Procedure (specifically by an Expert under Section 5 of Schedule 27 – Dispute Resolution Procedure to this Agreement) any Dispute relating to any Reserved Position Issues raised by Project Co to determine whether the relevant PSS Submittal(s) or any subsequent amendment or development of the relevant documents prior to the execution of the DB Co Works Agreement, in whole or in part, is Divergent and:
  - (A) subject to Sections 2.3(j)(ii)(A) to (D), 2.4, 2.5 and 2.6, to the extent that it is determined under such Dispute Resolution Procedure that, with respect

to the relevant Reserved Position Issue, the relevant PSS Submittal(s) or any subsequent amendment or development of the relevant documents prior to the execution of the DB Co Works Agreement, in whole or in part, was/were not Divergent, Project Co shall have no further right to raise such Reserved Position Issue and, for greater certainty, if it is determined under such Dispute Resolution Procedure that, with respect to the relevant Reserved Position Issues, none of the relevant PSS Submittal(s) or any subsequent amendment or development of the relevant documents prior to the determination under the Dispute Resolution Procedure were, in whole or in part, Divergent, subject to Sections 2.3(j)(ii)(A) to (D), 2.4, 2.5 and 2.6, Project Co shall have no further right to dispute the relevant PSS Submittal; and

- (B) to the extent that it is determined under such Dispute Resolution Procedure or the Parties agree in writing that, with respect to the relevant Reserved Position Issue, the relevant PSS Submittal(s) or any subsequent amendment or development of the relevant documents prior to the determination under the Dispute Resolution Procedure were, in whole or in part, Divergent, the City, at its option, shall carry out one of the following options as soon as reasonably practicable:
- (1) rectify the Divergence (such that there is no longer any Divergence) by amending the relevant PSS Submittal to the reasonable satisfaction of both Parties;
  - (2) negotiate in good faith with Project Co suitable adjustments to any one or more of the Stage 2 LRT Project Variations to bring such Stage 2 LRT Project Variation(s) within the Agreed Parameters and within a cost effective approach for the City and an acceptable risk tolerance for Project Co (taking into account any consequential amendments to the wider Stage 2 LRT Project procurement);
  - (3) negotiate adjustments in pricing under the General Parameters as set out in Section 1.1 of Appendix 3 to the MOU; or
  - (4) initiate a Variation under the Project Agreement that, where, expressly so specified in the MOU, Project Co's right to object to such a Variation under Section 1.5 of Schedule 22 will continue to be restricted as contemplated by subsection 1 of the MOU (No objection if within Agreed Parameters) and provided further that, if the City elects to withdraw the relevant Variation Enquiry or otherwise not proceed with such Variation, the City shall thereupon carry out one of the options set out in paragraphs (1) to (3) above,

and where paragraphs (2) or (3) of this paragraph (B) applies, within twenty (20) Business Days of such determination under the Dispute Resolution Procedure or such agreement between the Parties, Project Co shall provide the City with written details of the financial consequences, with respect to the relevant Reserved Position Issue, of the relevant PSS Submittal(s) or any subsequent amendment or development of the relevant documents, in whole or in part, being Divergent.

- (i) Following the Internal Comment Resolution Meeting, a record of each comment and agreed disposition among Project Co and the City shall be developed and maintained by the City and shall be updated by the City promptly following any Dispute. The City shall update the PSS Submittals following the Internal Comment Resolution Meeting and again following the resolution of each Dispute such that all agreed upon comments, or, as applicable, all comments as determined under the Dispute Resolution Procedure, are incorporated into the relevant PSS Submittals. The City shall afford Project Co a reasonable opportunity to review the updated PSS Submittals prior to issuance of the same to the DB Co Proponents. The allotted time to incorporate comments shall extend for a maximum of three (3) Business Days. The City shall not be required to consider additional comments or input, if any, from Project Co on the PSS Submittals referred to above in this paragraph submitted by Project Co during this three (3) Business Day period, unless such comments or input result from a further change made by the City which, in Project Co's opinion (acting reasonably), result in any Divergence or Project Co (acting reasonably) takes issue with the way in which any agreed upon comment has been incorporated into the relevant PSS Submittals. The City shall ensure that Project Co is provided with the final version of the Stage 2 DB Co PSOS and the Reference Concept Design at least seven (7) calendar days prior to the City's release of the same to the DB Co Proponents. The City shall ensure that Project Co is provided with the final version of the DB Co Works Agreement Documents at least four (4) Business Days prior to the City's release of the same to the DB Co Proponents.
- (j) If, within three (3) Business Days after the delivery by the City to Project Co of the relevant Rejection Notice or the relevant Clearance Notice, Project Co has not provided any comments on the relevant PSS Submittal as provided for herein or has provided comments on the relevant PSS Submittal but has not asserted that the City has failed to give reasonable consideration to such comments, without prejudice to any Reserved Position Issue which may be raised by Project Co or which has not yet been resolved through the Dispute Resolution Procedure, Project Co shall thereafter not be entitled to (and hereby waives any rights to):
  - (i) subject to paragraph (ii) below, object to the relevant PSS Submittal;
  - (ii) provide any additional comments on any subsequent development of the specific PSS Submittal in question or other matters contained within any such PSS

Submittal, provided, however, that Project Co (acting reasonably) may raise comments related to:

- (A) any Reserved Position Issue which has not yet been resolved through the Dispute Resolution Procedure;
- (B) any bona fide new issues or modifications of previous issues that arise as a result of the subsequent development of the document or matter in question the particulars and consequences of which were not known to Project Co prior to the applicable deadline under Section 2.2(a) for Project Co's submission of Review Comments (and for the avoidance of doubt and without limiting the generality of the foregoing, a new edit in section X or in document A that changes the nature or effect of a pre-existing provision in section Y or in document B that would have been acceptable had the new section X edit or document A edit not been introduced, shall be considered a new issue for both sections X and Y or, as applicable, for both documents A and B, but only to the extent of the consequences of that edit);
- (C) without limiting (B), above, or (D), below, any new issues or modifications of previous issues that arise as a result of any interpretation of any PSS Submittal by any DB Co Proponent, or any consequences of such interpretation, that was/were not known to Project Co prior to the applicable deadline under Section 2.2(a) for Project Co's submission of Review Comments; or
- (D) without limiting (B) or (C), above, any new issues or modifications of previous issues that arise as a result of any DB Co Proponent filling in any gaps in any PSS Submittal, or the consequences of such action, which gaps or actions were not known to Project Co prior to the applicable deadline under Section 2.2(a) for Project Co's submission of Review Comments,

and in the case of any new issues or modifications of previous issues referred to in any of (B), (C) or (D), above, the provisions of Section 2.3 shall apply mutatis mutandis as though such issues were Review Comments; or

- (iii) subject to paragraph (ii) above, claim against the City that the fixed price outlined in Appendix 3 Part E - Financial Parameters of the MOU provided in respect of Scope 5: Stage 2 Maintenance Services under the MOU (or, if applicable, the pricing under the terms of the relevant Stage 2 LRT Project Variation) should be increased or adjusted in connection with the relevant PSS Submittal.

- (k) Upon completion of the process set out in this Section 2.3 for the Stage 2 DB Co PSOS (including in respect of any new issues or modifications of previous issues as referred to in any of Section 2.3(j)(ii)(B), (C) or (D)), the Stage 2 DB Co PSOS shall be finalized and submitted by the City to the DB Co Proponents, and Project Co shall confirm that, subject to any Reserved Position Issues (and their subsequent resolution) and to Sections 2.4, 2.5 and 2.6, the Stage 2 DB Co PSOS is not, as at the date of such confirmation, Divergent (the “**Project Co Assumption Verification**”).

## 2.4 Procurement Period Review

- (a) Project Co and any relevant Project Co Parties shall have the right to participate in the design presentation meetings relating to the DB Co Works with the DB Co Proponents. The City shall provide Project Co with notice of the design presentation meetings, such notice to be provided sufficiently in advance (acting reasonably) so as to permit Project Co to prepare for the attendance at such meetings. Project Co and, if applicable, the Project Co Parties will only actively participate in such meetings at the request of the City and otherwise shall only be observers in such meetings. Following attendance at a design presentation meeting, Project Co will provide comments and timely feedback as to the discussions and presentations that were the subject of the meeting, but only to the extent required to confirm compliance with the Project Co Assumption Verification or otherwise raise any M&R Assumption Comments, in each case in respect of any changes that might be proposed to the underlying documents, provided that Project Co may also comment on issues in the nature of those described in any of paragraphs (B), (C) or (D) of Section 2.3(j)(ii).
- (b) Project Co shall have the right to participate in commercially confidential meetings held in connection with the DB Co Works RFP, and the City acknowledges and agrees that Project Co may, acting reasonably, extend such right to the Project Co Parties. The City shall provide Project Co with notice of the commercially confidential meetings, such notice to be provided sufficiently in advance (acting reasonably) so as to permit Project Co to prepare for the attendance at such meetings. Project Co and, if applicable, the Project Co Parties will only actively participate in such meetings at the request of the City and otherwise shall only be observers in such meetings. Following attendance at a commercially confidential meeting, Project Co will provide comments and timely feedback as to the discussions and presentations that were the subject of the meeting, but only to the extent required to confirm compliance with the Project Co Assumption Verification or otherwise raise any M&R Assumption Comments, in each case in respect of any changes that might be proposed to the underlying documents, provided that Project Co may also comment on issues in the nature of those described in any of paragraphs (B), (C) or (D) of Section 2.3(j)(ii).
- (c) To the extent the City intends to make any changes to the Stage 2 DB Co PSOS, the Reference Concept Design or any of the DB Co Works Agreement Documents at any

time during the RFP Process, the provisions of Section 2.3 shall apply to such changes mutatis mutandis.

- (d) During preferred proponent negotiations held in connection with the DB Co Works RFP, the City shall provide Project Co with the final version of the Stage 2 DB Co PSOS and the DB Co Works Agreement Documents prior to the same being formally confirmed by the parties thereto as the final execution versions and prior to the same being executed by the parties thereto. Project Co will be afforded not less than fifteen (15) Business Days to complete a final compliance check to confirm the Project Co Assumption Verification or raise any M&R Assumption Comments, in each case in respect of any changes appearing in or proposed for the Stage 2 DB Co PSOS or any of the DB Co Works Agreement Documents, or to raise comments on any issues in the nature of those described in any of paragraphs (B), (C) or (D) of Section 2.3(j)(ii), and Project Co may provide the City with a list of non-compliances and/or gaps. The relevant provisions of Section 2.3, including Section 2.3(h), shall apply to any such comments raised by Project Co mutatis mutandis.

## 2.5 Stage 2 Interface Agreement

- (a) The Parties shall develop the form of Stage 2 Interface Agreement in accordance with this Section 2.5 (the “**Stage 2 Interface Agreement Protocol Review**”), which form shall be issued to DB Co Proponents as part of the DB Co Works RFP as provided in Section 2.5(h). The Parties acknowledge and agree that the purpose of this Stage 2 Interface Agreement Protocol Review is to ensure that the form of Stage 2 Interface Agreement issued to DB Co Proponents as part of the DB Co Works RFP is consistent with the terms of the MOU.
- (b) The Parties acknowledge and agree that the disposition of any comments pursuant to this Stage 2 Interface Agreement Protocol Review shall be consistent with Section 1.5 of Part F of Appendix 3 to the MOU.
- (c) The City shall prepare an initial draft of the form of Stage 2 Interface Agreement based on the terms provided in Section 1.5 of Part F of Appendix 3 to the MOU and shall provide such draft to Project Co for review and comment in accordance with the Stage 2 Interface Agreement Protocol Review as soon as practicable, and in any event, no later than April 27, 2017. The allotted time for this review by Project Co shall be a period of ten (10) Business Days after delivery of the form of Stage 2 Interface Agreement to Project Co via SharePoint unless otherwise agreed by the Parties, acting reasonably. The City shall not release any version of the Stage 2 Interface Agreement to the DB Co Proponents until after Project Co has had the opportunity to review and comment on the same in accordance with the provisions of this Section 2.5 and such comments have been addressed in accordance with the provisions of this Section 2.5.

- (d) Project Co shall review the draft form of Stage 2 Interface Agreement and provide comments and feedback to the City on a mutually acceptable comment review form by the later of (i) the date falling ten (11) Business Days after delivery of the form of Stage 2 Interface Agreement to Project Co via SharePoint and (ii) May 12, 2017. Project Co acknowledges and agrees that any substantive comments provided pursuant to this Section 2.5(d) shall be consistent with the terms provided in Section 1.5 of Part F of Appendix 3 of the MOU.
- (e) Within two (2) Business Days following the City's receipt of such comments from Project Co (or such later date agreed to by the Parties), a meeting (an "**Internal Interface Comment Resolution Meeting**") will be held between Project Co and the City to review and dispose of all such comments, and the Parties will use commercially reasonable efforts to mutually agree on the disposition thereof, consistent with the general principle provided in Section 2.5(b), above.
- (f) Within four (4) Business Days of the conclusion of the Internal Interface Comment Resolution Meeting, the City shall inform Project Co in writing: (i) of any comments that were rejected (an "**Interface Rejection Notice**"), with written reasons therefor; or (ii) that all comments were accepted. For the avoidance of doubt, the City shall, at the time it provides Project Co with such Interface Rejection Notice, indicate in writing to Project Co which of Project Co's comments on the Stage 2 Interface Agreement have been accepted and which of the Review Comments have been rejected by the City. One (1) Business Day after Project Co's receipt of the Interface Rejection Notice (or such later date agreed to by the Parties), the Parties shall meet to discuss Project Co's comments on the Stage 2 Interface Agreement that have been rejected by the City (the "**Preliminary Interface Rejection Dispute Meeting**") and the Parties (each acting reasonably) shall seek to reach agreement on the disposition of such rejected comments. Within one (1) Business Day following the Preliminary Interface Rejection Dispute Meeting, the City shall deliver a revised Interface Rejection Notice to Project Co, which shall indicate which of Project Co's comments on the Stage 2 Interface Agreement have been rejected by the City, with written reasons therefor. For the avoidance of doubt, the City shall, at the time it provides Project Co with such revised Interface Rejection Notice, indicate in writing to Project Co which of Project Co's comments on the Stage 2 Interface Agreement have been accepted and which of the Review Comments have been rejected by the City.
- (g) Within three (3) Business Days after Project Co's receipt of the Interface Rejection Notice from the City, Project Co shall notify the City whether or not Project Co wishes to make or confirm any comments on the Stage 2 Interface Agreement previously raised by Project Co (each such comment an "**Interface Reserved Position Issue**") (and any failure by Project Co to make or confirm any such previously raised comment within such response period shall constitute a determination by Project Co not to dispute the

previously raised comment which was identified in the Interface Rejection Notice but not made or confirmed by Project Co pursuant to this paragraph.

- (h) Upon completion of the process set out above, the revised draft form of Stage 2 Interface Agreement shall be issued by the City to the DB Co Proponents.
- (i) The City shall provide Project Co any comments received from the DB Co Proponents on the form of Stage 2 Interface Agreement pursuant to the DB Co Works RFP (“**Proponent Interface Comments**”) via SharePoint. Within seven (7) Business Days (or such later date agreed to by the Parties) following the Project Co’s receipt of the Proponent Interface Comments, a meeting (a “**Proponent Interface Comment Resolution Meeting**”) will be held between Project Co and the City to review and dispose of all such comments, and the Parties will use commercially reasonable efforts to mutually agree on the disposition thereof, consistent with the general principle provided in Section 2.5(b), above.
- (j) Within three (3) Business Days after the Proponent Interface Comment Resolution Meeting, the City shall further revise the form of Stage 2 Interface Agreement by incorporating (to the Parties’ mutual satisfaction, each acting reasonably) all agreed upon Proponent Interface Comments, and send the same to Project Co for review and approval.
- (k) The process described in Sections 2.5(i) and 2.5(j) above shall be repeated for so long as DB Co Proponents continue to provide Proponent Interface Comments pursuant to the DB Co Works RFP.
- (l) The City shall give Project Co five (5) Business Days’ prior notice before issuing the final version of the form of Stage 2 Interface Agreement to the DB Co Proponents. Prior to the issuance of such final version of the form of Stage 2 Interface Agreement, either Party may refer for resolution pursuant to the Dispute Resolution Procedure (specifically by an Expert under Section 5 of Schedule 27 – Dispute Resolution Procedure to this Agreement), any Dispute relating to any Interface Reserved Position Issues raised by Project Co to determine whether the failure to reflect such Interface Reserved Position Issue would result in any of items (a) through (r) of Section 1.5 of Part F of Appendix 3 to the MOU being omitted from the form of Stage 2 Interface Agreement and:
  - (i) to the extent that it is determined under such Dispute Resolution Procedure that failing to reflect such Interface Reserved Position Issue would not result in any of items (a) through (r) of Section 1.5 of Part F of Appendix 3 of the MOU being omitted from the form of Stage 2 Interface Agreement, Project Co shall have no further right to raise such Interface Reserved Position Issue during the RFP Process (and, for greater certainty, such determination shall be without prejudice to the rights of the Parties to further negotiate the development of the Stage 2

Interface Agreement at preferred proponent stage, including the right of Project Co to raise such Reserve Position Issue); and

- (ii) to the extent that it is determined under such Dispute Resolution Procedure that failing to reflect such Interface Reserved Position Issue would result in any of items (a) through (r) of Section 1.5 of Part F of Appendix 3 of the MOU being omitted from the form of Stage 2 Interface Agreement (such omitted terms, the “**GAP Interface Terms**”), the City, at its option, shall select one of the following options as soon as reasonably practicable:
  - (A) rectify the Interface Agreement such that any GAP Interface Term is eliminated to the reasonable satisfaction of both Parties; or
  - (B) the City and Project Co shall determine an appropriate adjustment to the Fixed Price (as defined in the MOU) using the terms and conditions of Schedule 22 to the Project Agreement to determine the additional risk premium and cost required by Project Co to address any GAP Interface Terms, provided that Project Co’s rights of objection referred to under Section 1.5 of Schedule 22 to the Project Agreement will continue to be restricted in the manner contemplated by subsection 1 (No objection if within Agreed Parameters) of the MOU; and provided further that should the additional risk created by the exclusion of any GAP Interface Terms not be capable of being resolved by an appropriate adjustment to the Fixed Price as set out above, the City shall assume, or otherwise provide adequate relief from, the risks associated with the exclusion of such GAP Interface Term(s) from the Stage 2 Interface Agreement.
- (m) Following the Internal Interface Comment Resolution Meeting, a record of each comment and agreed disposition among Project Co and the City shall be developed and maintained by the City. The City shall update the draft form of Stage 2 Interface Agreement following the Internal Interface Comment Resolution Meeting. The City shall further update such record after the resolution of each Dispute relating to the Stage 2 Interface Agreement. The City shall ensure that all agreed upon comments and, as applicable, comments as determined under the Dispute Resolution Procedure, are incorporated into the Stage 2 Interface Agreement. The City shall afford Project Co a reasonable opportunity to review the updated form of Stage 2 Interface Agreement prior to issuance of the same to the DB Co Proponents.
- (n) Project Co shall be entitled to participate in any discussions relating to, and consent to, any changes in the Stage 2 Interface Agreement at the preferred proponent stage.
- (o) For the avoidance of doubt, nothing in this Schedule shall be construed as limiting Project Co’s rights under the provisions of the MOU pertaining to Scope 4: Interface and Design Management for the Expanded System or to Scope 5: Stage 2 Maintenance

Services or under any Stage 2 Variation LRT Project Variation relating to any of the foregoing.

## **2.6 Review Comments Generally**

- (a) Review Comments may include comments on any of the following:
  - (i) impacts on annual maintenance/life cycle costs as outlined in Price Form (Appendix 3, Part E, Attachment 1) to the MOU;
  - (ii) impacts on scope and/or pricing included in Stage 2 LRT Project Variations;
  - (iii) a change or divergence from the Stage 2 Assumptions and/or the assumptions set out in in Appendix 3, Part C, Section 1.2 to the MOU;
  - (iv) maintenance of systems infrastructure and efficient maintenance over the life of the asset;
  - (v) DB Co to Project Co hand over requirements;
  - (vi) testing/inspection/commissioning related to construction of the DB Co Works by DB Co; and
  - (vii) provision of as-built drawings and related documentation by DB Co to Project Co.

## **2.7 Consultants**

- (a) Project Co shall provide to the City and maintain a list of Consultants and sub-Consultants engaged in the provision of the PS Services, organized by discipline, so that they may be added to the do not contact and ineligible persons list in the DB Co Works RFP.

## **2.8 Standard of Care and Unavoidable Delay**

- (a) Project Co shall perform the PS Services with the reasonable skill and care as would normally be exercised by licensed or registered professionals having knowledge and experience in providing services of a similar nature, scope and complexity to the PS Services.
- (b) The PS Services will be provided in a manner that is consistent with the Stage 2 Assumptions and Project Co's assumption of risk contemplated thereunder. Project Co shall also have due regard to the City Objectives in the performance of the PS Services and assist the City to achieve the City Objectives, in so far as they do not conflict with Project Co's legitimate expectations outlined in the Stage 2 Assumptions. In carrying out the PS Services, Project Co will be expected to consider the combined best interests of

both Parties, and shall promptly inform the City of any potential conflicts of interests that arise.

- (c) The City shall act in good faith in cooperating with Project Co in the performance of the PS Services in accordance with this Schedule 43, including when considering any Review Comment raised by Project Co as part of the PS Services.
- (d) If Project Co is prevented from, or delayed in, the performance of its duties by an event of Unavoidable Delay, the date for performance shall be delayed by a period of time equal to the period of Unavoidable Delay. Project Co will notify the City as soon as practicable after becoming aware of an event of Unavoidable Delay and will, from time to time, notify the City of the expected duration of the period of Unavoidable Delay.
- (e) If, during the course of any review by Project Co contemplated hereunder, Project Co requests further information or clarification from the City in connection with such review, the City shall use all reasonable efforts to provide such information and/or clarification to Project Co within a reasonable period of time following receipt of such request from Project Co.
- (f) Any timeline for comment, confirmation and/or review by Project Co contemplated in this Schedule may be extended as set out herein, or if not set out herein, may be extended as permitted by the City (acting reasonably).
- (g) Any meetings referred to in this Schedule may be held by telephone or videoconference.
- (h) Project Co: (i) confirms that it is generally familiar with the general requirements, design and performance criteria of the City in connection with the PS Services and the City Objectives; and (ii) subject to Section 2.8(b), covenants that it will apply this familiarity in the delivery of the PS Services with respect to the Stage 2 LRT Project. For certainty, the Parties acknowledge and agree that the PS Services do not include any scope of, or otherwise pertain to, system integration.

## **2.9 Insurance**

- (a) Project Co shall, at its own expense, effect and maintain insurance to protect itself and its employees from claims, losses or damages arising out of the performance of PS Services rendered by Project Co and its employees, agents and subcontractors under this Schedule and caused by any error, omission or negligent act for which it is legally liable. Project Co shall maintain this insurance in force throughout the PS Term. Project Co shall also effect and maintain insurance to protect itself from claims under workers' compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom.

- (b) Certificates of insurance shall be delivered to the City prior to commencement of PS Services. The certificates shall contain a provision that the coverage afforded under the policies shall not be cancelled or reduced in limits by endorsement until at least thirty (30) days' prior written notice has been given to the City.

**3. [INTENTIONALLY DELETED]**

**4. TERM**

**4.1 Duration**

- (a) This PS Services to be provided under this Schedule shall commence on the PS Services Commencement Date and shall continue in full force and effect until the earlier of the date on which the DB Co Works Agreement has been executed and delivered and such other date, if any, on which termination of the PS Services takes effect in accordance with the terms of this Schedule (the “**PS Term**”).

## 4.2 Termination by the City

- (a) The City may terminate the PS Services for cause if at any time there occurs a PSS Event of Default which is continuing. Such termination is to be conducted on the following basis:
- (i) the City shall give written notice (“**Notice of Complaint**”) to Project Co specifying in reasonable detail the PSS Event of Default;
  - (ii) if the PSS Event of Default in question is one that is capable of being cured, then within fifteen (15) days of receipt of such Notice of Complaint, Project Co shall commence to cure such default and proceed diligently thereafter to cure such default until such default is cured;
  - (iii) if the PSS Event of Default in question is one that is capable of being cured and, if within the fifteen (15) day period referred to in Section 4.2(a)(ii), Project Co fails to commence to cure such default or if at any time after the expiry of such fifteen (15) day period Project Co fails to proceed diligently to cure such default, the City may terminate the PS Services by written notice (“**Notice of PSS Termination**”) to Project Co stating that the PS Services are terminated and the reasons therefor. Such termination shall be effective as of and from the last day of the month in which the Notice of PSS Termination is given to Project Co;
  - (iv) if the PSS Event of Default in question is one that is not capable of being cured, then within fifteen (15) days of receipt of such Notice of Complaint, Project Co shall deliver in writing to the City a reasonable plan to prevent the reoccurrence of such PSS Event of Default, which plan is satisfactory to the City (acting reasonably) and Project Co shall proceed diligently thereafter to implement such plan; and
  - (v) if the PSS Event of Default in question is one that is not capable of being cured, and, if within the fifteen (15) day period referred to in Section 4.2(a)(iv), Project Co fails to deliver the plan referred to in that Section or if at any time after the expiry of such fifteen (15) day period Project Co fails to proceed diligently to implement such plan to the satisfaction of the City (acting reasonably), the City may terminate the PS Services by giving Project Co a Notice of PSS Termination (and shall include the reasons for the termination). Such termination shall be effective as of and from the last day of the month in which the Notice of PSS Termination is given to Project Co.
- (b) Upon written notice to Project Co, the City may terminate the PS Services for its convenience, without obligation or liability of any nature except as set out in Section 4.4.

- (c) The City agrees that nothing in or arising out of this Schedule and no performance or delay or failure in the performance of this Schedule (including any delay or failure relating to the performance of the PS Services) shall give rise to or be capable of giving rise to a Project Co Event of Default. To the extent that any claim by the City under this Schedule would cause Project Co to be unable to meet its obligations under the Lending Agreements, payment of such claim shall be deferred until such time Project Co is able to meet make such payment without breaching its obligations under the Lending Agreements.

#### **4.3 Termination by Project Co**

- (a) If the City defaults [INTENTIONALLY DELETED] or in any material respect of any other obligation under this Schedule and such default shall continue for more than thirty (30) days after notice thereof is given to the City, Project Co may suspend performance of PS Services, but only until [INTENTIONALLY DELETED] or the default is otherwise cured. If such default continues for sixty (60) days from the date such notice of default has been given to the City, Project Co may terminate the PS Services by notice to the City with immediate effect. The election to terminate shall not be construed to be an election of remedies and a waiver of other potential remedies available to it at law and/or in equity.

#### **4.4 Consequences of Termination**

- (a) The PS Services are being provided alongside the continued operation of the MOU with a view to finalizing all of the Stage 2 LRT Project Variations. If the City validly terminates the PS Services on the grounds of a PSS Event of Default, the City shall be entitled to consider this as a material breach of the MOU for the purposes of Section 3 of the MOU and take the actions described thereunder (such as recovery of additional costs incurred to replace the PS Services).
- (b) In addition, if the PS Services hereunder are terminated for a PSS Event of Default and Project Co remains the intended provider of the Stage 2 Maintenance Services, the City will act in good faith in respect of the development of documents under the DB Co Works RFP with a view to ensuring that the DB Co Works and the DB Co Works Agreement Documents shall reflect the Stage 2 Assumptions, but, subject to the foregoing and to the Parties' respective rights and obligations under Section 1.5 of Part F of Appendix 3 to the MOU, Project Co shall not be entitled to claim that any decision made by the City in such circumstances has impacted Project Co's pricing assumptions in the Price Form.
- (c) If the PS Services are terminated early for any reason other than PSS Event of Default, and Project Co remains the intended provider of the Stage 2 Maintenance Services, then the waivers in Sections 2.3 and 4.4(b) shall not apply, and the City acknowledges that if the DB Co Works or any of the DB Co Works Agreement Documents are Divergent, this

shall entitle Project Co to an adjustment (which, for clarity, may be an adjustment in respect of Project Co's scope of work, assumption of risk and/or pricing) under the terms of the MOU and any relevant Stage 2 LRT Project Variation which incorporates the relevant Stage 2 Assumptions.

- (d) [INTENTIONALLY DELETED]
- (e) If the PS Services are terminated early, Project Co shall promptly deliver to the City copies of all records and documents (with the exception of Sensitive Information) maintained under the terms of this Schedule, which are in the possession or control of Project Co, relating directly or indirectly to the PS Services, in accordance with the terms of Section 4.4 of Schedule 26.

## **5. GENERAL**

### **5.1 Dispute Resolution Procedure**

- (a) For the purposes of this Schedule 43, Section 5.1 of Schedule 27 – Dispute Resolution Procedure shall be amended as follows:
  - (i) the word “or” at the end of Section 5.1(c) shall be deleted;
  - (ii) the comma at the end of Section 5.1(d) shall be deleted and replaced with a semi-colon;
  - (iii) following Section 5.1(d), a new Section 5.1(e) shall be added as follows:

“(e) whether a PSS Submittal or any subsequent amendment or development of the relevant documents prior to the execution of the DB Co Works Agreement, in whole or in part, was or was not Divergent; or”
  - (iv) following the new Section 5.1(e), a new Section 5.1(f) shall be added as follows:

“(f) whether failing to reflect an Interface Reserved Position Issue would result in any of items (a) through (r) of Section 1.5 of Part F of Appendix 3 to the MOU being omitted from the form of Stage 2 Interface Agreement,”

- (a) For the avoidance of doubt, “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

**5.2 [INTENTIONALLY DELETED]**