

SCHEDULE 35**VEHICLES****1.1 Definitions**

The following definitions shall have the following meanings:

- (a) “**Baseline Service Plan**” has the meaning given to it in Schedule 20 – Payment Mechanism.
- (b) “**Configuration Management**” means a process to establish and maintain the integrity of all identified project outputs and make them available to all concerned stakeholders as described in Article 1 of Schedule 15-2 - Design and Construction Requirements;
- (c) “**Fleet Contract Amendment**” has the meaning given to it in paragraph 2.2(d);
- (d) “**Fleet Defect**” has the meaning given to the term “Fleet Defect” in the WLRT Fleet Contract;
- (e) “**Initial Fleet**” has the meaning set out in paragraph 2.1(a);
- (f) “**Reliability Performance Program**” has the meaning given to the term “Reliability Performance Program” in the WLRT Fleet Contract;
- (g) “**Vehicle Acceptance Testing**” means the acceptance testing activities in respect of the Vehicles to be carried out by the Vehicle Supplier under the WLRT Fleet Contract and generally described in Appendix A of this Schedule 35;
- (h) “**Vehicle Final Acceptance Certificate**” means the “Final Acceptance Certificate” to be issued to the Vehicle Supplier by the Region in respect of a Vehicle under the WLRT Fleet Contract;
- (i) “**Vehicle Preliminary Acceptance Certificate**” means the “Preliminary Acceptance Certificate” to be issued to the Vehicle Supplier by the Region in respect of a Vehicle under the WLRT Fleet Contract;
- (j) “**Vehicle Handover Date**” has the meaning given to it in paragraph 2.7(a);
- (k) “**Vehicle Warranties**” means manufacturer and supplier warranties or guarantees in respect of the Vehicles provided by the Vehicle Supplier under the WLRT Fleet Contract (including the Vehicle Supplier’s obligations under the Reliability Performance Program and in respect of Metrolinx Reliability Modifications, as defined in the WLRT Fleet Contract) and any other obligations owed by the Vehicle Supplier to the Region under the WLRT Fleet Contract in respect of the quality or performance of the Vehicles;
- (l) “**WLRT Fleet Contract**” has the meaning set out in paragraph 2.1(a);

GENERAL**2.1 The Parties acknowledge as follows:**

- (a) The initial configuration of the System at the Substantial Completion Date will include 14 Vehicles (the “**Initial Fleet**”). The Initial Fleet is being procured under an agreement (the “**WLRT Fleet Contract**”) entered into between the Region and the Vehicle Supplier on August 20, 2013. . The General Conditions of the WLRT Fleet Contract are set forth in Appendix D of Schedule 15-2 – Design and Construction Requirements.
- (b) The Initial Fleet will be provided to, and maintained and operated by, Project Co in accordance with the terms of the Project Agreement, as more specifically set out in this Schedule 35 – Vehicles.
- (c) The Region has an option to purchase additional Vehicles from the Vehicle Supplier . The Region may exercise this option at any time during the Project Term in accordance with the terms of this Schedule 35 – Vehicles.
- (d) The purpose of this Schedule 35 – Vehicles is to set out or refer to the relevant contract provisions of the Project Agreement in so far as they relate to Vehicles.

2.2 Project Co acknowledgement of Vehicle design and Region activities during production

- (a) Project Co acknowledges that it has seen a copy of:
 - (i) the design and specifications for the Vehicles to be provided under the WLRT Fleet Contract;
 - (ii) the Vehicle Acceptance Testing regime applicable thereunder; and
 - (iii) the Vehicle Warranties being provided under the WLRT Fleet Contract;as set out in Article 5 and Appendix D of Schedule 15-2 – Design and Construction Requirements of the Output Specifications.
- (b) Project Co agrees that it accepts the design and specifications for the Vehicles and their suitability for integration into the System.
- (c) The Region shall keep Project Co reasonably informed of all major activities and inspections being undertaken in respect of the Initial Fleet whilst in production at the Vehicle Supplier’s facilities, and shall provide Project Co with copies of factory tests and any other commissioning results which the Region is entitled to be provided with under the WLRT Fleet Contract, and shall consult with Project Co in relation to such matters prior to the issue by the Region of any Vehicle Preliminary Acceptance Certificate.
- (d) The Region will facilitate on behalf of Project Co the development of an amendment to the WLRT Fleet Contract (a “**Fleet Contract Amendment**”) based upon Project Co's specification

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providing for configuration of the Vehicles at the Vehicle Supplier's factory so as to enable installation either at the factory or following Vehicle Acceptance Testing of on-board equipment specified by Project Co, for example ATP and radio equipment. All costs in respect of such Fleet Contract Amendment, once agreed to by Project Co, the Region and the Vehicle Supplier, shall be payable by Project Co.

Project Co shall submit to the Region details of their approach to on-board Vehicle equipment requirements, e.g. ATP, radios, etc., on or before May 30, 2014 so as to facilitate design development of the Vehicles.

2.3 Completion of OMSF/Test Track

- (a) The Parties acknowledge that:
- (i) Project Co is obliged under this Agreement to achieve OMSF/Test Track Readiness Completion by the Scheduled OMSF/Test Track Readiness Completion Date, to be certified by the Independent Certifier in accordance with Section 25 – Commissioning and Completion.
 - (ii) Failure to achieve OMSF/Test Track Readiness Completion by the Scheduled OMSF/Test Track Readiness Completion Date will permit the Region to levy Delay Liquidated Damages under Section 56.5 of the Project Agreement.
- (b) Project Co shall maintain the OMSF and Test Track in the same condition from the OMSF/Test Track Readiness Date until the Substantial Completion Date, subject to reasonable wear and tear. If Project Co fails to maintain the OMSF or Test Track in such condition, then, subject to the other terms of the Project Agreement:
- (i) Project Co shall not be relieved from any consequent failure to achieve Substantial Completion by the Scheduled Substantial Completion Date;
 - (ii) Project Co shall be obliged to meet any reasonable Direct Costs incurred by the Region as a result of any delay to or rescheduling of Vehicle Acceptance Testing.

2.4 Delivery of Initial Fleet to the Site

- (a) The Parties acknowledge that the Vehicles shall be delivered to the Site following the issue of a Vehicle Preliminary Acceptance Certificate in accordance with the WLRT Fleet Contract, provided that the OMSF/Test Track Readiness Date has occurred. If the Region wishes to arrange for the delivery of any Vehicle to the Site prior to the OMSF/Test Track Readiness Date it shall seek the approval of Project Co, not to be unreasonably withheld or delayed, and meet any reasonable costs and expenses incurred by Project Co as a result of taking delivery of any Vehicle prior to the OMSF/Test Track Readiness Date.
- (b) Upon delivery of any Vehicle to the Site, Project Co shall take delivery on behalf of the Region and stable the Vehicle in accordance with reasonable instructions of the Region or the Vehicle Supplier.

2.5 Insurance and responsibility for the Initial Fleet during Vehicle Acceptance Testing and Vehicle Warranty periods

- (a) The Parties acknowledge that prior to a Vehicle Final Acceptance Certificate being issued, the Vehicle Supplier shall retain title to the Vehicle, and that both before and after such date the Vehicle Supplier shall require access to the OMSF and the wider System in accordance with Section 21.1(a)(iii) of the Project Agreement for the purpose of Vehicle Acceptance Testing and compliance with its Vehicle Warranty obligations.

Accordingly:

- (i) From the date of delivery of the first Vehicle until the date all Vehicle Final Acceptance Certificates are issued in respect of the Initial Fleet, Project Co shall be obliged to include in the “All Risk” Course of Construction Property (including Boiler and Machinery) insurance policy coverage for all Vehicles in the manner set out in Schedule 25 – Insurance and Performance Security and as further described in Appendix A of Schedule 25. The Vehicle Supplier will be identified as a Named Insured under this policy with respect to the Vehicles for this time period.
- (ii) From the date of delivery of the first Vehicle until the Substantial Completion Date, Project Co shall be obliged to provide a waiver of subrogation in favour of the Vehicle Supplier under the “All Risk” Course of Construction Property (including Boiler and Machinery). For clarity, this waiver of subrogation will include the Vehicles and the System as a whole.
- (iii) From the Substantial Completion Date until the Termination Date, Project Co shall be obliged to include in the “All Risk” Property and Boiler and Machinery insurance policies coverage for all Vehicles in the manner set out in Schedule 25 – Insurance and Performance Security and as further described in Appendix A of Schedule 25.
- (iv) From the Substantial Completion Date until the expiry of the relevant period under the Vehicle Warranty for the last Vehicle, Project Co shall be obliged to provide a waiver of subrogation in favour of the Vehicle Supplier under the “All Risk” Course of Construction Property (including Boiler and Machinery). For clarity, this waiver of subrogation will include the Vehicles and the System as a whole.
- (v) Project Co acknowledges that it is at all times responsible for providing appropriate security to the Site in accordance with Article 2 of Schedule 15-3 - Safety and Security Programme and Sections 9.5(a)(iii) and (iv) of the Project Agreement.
- (vi) Prior to the Vehicle Final Acceptance Certificate, Project Co shall permit the Vehicle Supplier to make claims in respect of any physical damage or loss of the Vehicle under the relevant insurance policy. Project Co shall be responsible for the deductible for such claims to the extent it has caused or contributed to the event giving rise to the claim.
- (vii) Following the Vehicle Final Acceptance Certificate, Project Co shall be fully responsible for care, control and maintenance of the Vehicles, subject to the terms of the Project

Agreement. The Region shall be responsible for any deductible under the relevant insurance policy arising out of any physical damage or loss of the Vehicle to the extent the Region or the Vehicle Supplier has caused or contributed to the event giving rise to the claim.

2.6 Vehicle Acceptance Testing

- (a) The Parties acknowledge that after each Vehicle has been delivered to the Site, Vehicle Acceptance Testing shall be carried out with a view to the Vehicle Supplier achieving the requirements for a Vehicle Final Acceptance Certificate under the WLRT Fleet Contract, including completion of the 600 km “burn-in” test.
- (b) The Region shall achieve, and shall cause the Vehicle Supplier to achieve, the Vehicle Final Acceptance Certificate for each Vehicle in the Initial Fleet no later than the date specified in Appendix C, save to the extent the Region is prevented from doing so by any failure on the part of Project Co or a Project Co Party to comply with the provisions of this Agreement.
- (c) During the carrying out of Vehicle Acceptance Testing:
 - (i) Project Co shall give the Vehicle Supplier and the Region appropriate access in accordance with Section 21.1(a)(iii) of the Project Agreement to the OMSF, Test Track and any other relevant parts of the Site to enable the Vehicle Supplier to undertake the Vehicle Acceptance Testing and in order to enable the Region to participate in such testing. The Region shall comply, and shall ensure that the Vehicle Supplier and all other Region Parties comply with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Vehicle Acceptance Testing.
 - (ii) The Region acknowledges that, during Vehicle Acceptance Testing, Project Co and Project Co Parties will be active on the Site in the completion of Project Co Commissioning, the Design and Construction Works and the Public Infrastructure Works, and the Region shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
 - (iii) Project Co acknowledges that during Vehicle Acceptance Testing, Project Co and its Subcontractors shall cooperate with the Region, the Vehicle Supplier and all other Region Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Vehicle Acceptance Testing activities are able to be completed in the timeframe for completion set out in Article 18 of Schedule 15-2 – Design and Construction Requirements of the Output Specifications. Specifically, Project Co shall:
 - (A) provide sufficiently trained staff to operate each Vehicle in the manner contemplated by the Vehicle Acceptance Testing;
 - (B) comply with the reasonable requirements of the Vehicle Supplier in respect of the operation of the Vehicles during such period;

- (C) manage the operation of the Vehicles on the Test Track and the System, including dispatch of Vehicles (control movements), issue Vehicle orders, manage track allocation permits, oversee the Central Control Facility, oversee logistics, throw switches, man substations, manage grade crossing protection and meet FLS requirements.; and
 - (D) provide the services set forth in Appendix B attached to this Schedule 35.
- (iv) The Region shall comply, and shall cause the Vehicle Supplier to comply, with the reasonable requirements of Project Co in respect of their access to, and use of the OMSF and Test Track, and any other parts of the System to which access is required to carry out Vehicle Acceptance Testing.
- (d) The Region shall administer the WLRT Fleet Contract in accordance with its terms in respect of the requirements for Vehicle Acceptance Testing, and shall not issue a Vehicle Final Acceptance Certificate otherwise than in accordance with such terms (which for these purposes shall include not waiving any requirement under the WLRT Fleet Contract which would have a material effect on Project Co’s ability to deliver its obligations and/or the cost of it meeting such obligations), unless such deviation is with the prior written approval of Project Co.
 - (e) The Region and Project Co shall consult regularly and in good time prior to the anticipated date of completion of Vehicle Acceptance Testing and shall act in good faith to share any information regarding the tests and any concerns regarding the compliance of the Vehicle with the Vehicle Acceptance Testing Requirements.
 - (f) The Region shall provide Project Co with at least five (5) Business Days’ notice of its intention to issue a Vehicle Final Acceptance Certificate, and shall permit representatives from Project Co to attend the final physical inspection of each Vehicle before the Vehicle Final Acceptance Certificate is issued in respect of that Vehicle. Project Co may notify the Region of any concerns it may have as to whether or not the certificate should be issued, and if so, on what terms, under the terms of the WLRT Fleet Contract. If the Region disagrees with Project Co’s representations, the Region shall have the right to issue the Vehicle Final Acceptance Certificate. If it is subsequently agreed or determined that the issue of the Region of the Vehicle Final Acceptance Certificate was in breach of the Region’s obligation in paragraph (d) above, this shall constitute a Delay Event under Section 40.1(a)(ii) of the Project Agreement.

2.7 Project Co’s activities following issue of Vehicle Final Acceptance Certificate

- (a) The Region shall immediately provide Project Co with a copy of any Vehicle Final Acceptance Certificate issued to the Vehicle Supplier under the WLRT Fleet Contract, and shall confirm the date on which title of the relevant Vehicle transferred to the Region (the “**Vehicle Handover Date**”).
- (b) The Parties acknowledge that from each Vehicle Handover Date, the Region’s licence under Section 14.1(b) – Licence shall commence in respect of the Vehicle, and Project Co shall carry out the systems integration activities with the Vehicle as part of Project Co’s Commissioning under Section 25.

- (c) Project Co shall allow representatives of the Vehicle Supplier and the Region appropriate access to the OMSF and the Vehicles in accordance with Section 21.1(a)(iii) of the Project Agreement for the purposes of the Vehicle Supplier complying with its Vehicle Warranty obligations and making any necessary modifications to the Vehicles to improve their performance to the levels required under the WLRT Fleet Contract, including the provisions relating to Fleet Defects and the Reliability Performance Program. The Region shall comply, and shall ensure that the Vehicle Supplier and all other Region Parties comply with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the activities referred to in this paragraph.
- (d) Project Co acknowledges that during the conduct of the Reliability Performance Program, Project Co and its Subcontractors shall cooperate with the Region, the Vehicle Supplier and all other Region Parties and use commercially reasonable efforts to ensure that all requirements of the Reliability Performance Program demonstration activities are able to be completed in the timeframe for completion set out in Reliability Performance Program. Specifically, Project Co shall:
 - (i) operate the Vehicles during the Pre-revenue Service Phase (as defined in the Reliability Performance Program) so as to permit early identification and resolution of reliability issues;
 - (ii) verify the accuracy of data collected by the Vehicle Supplier relating to Vehicle failures; and
 - (iii) participate as the representative of the Region in a joint Failure Review Board with the Vehicle Supplier and Metrolinx to agree on failures relevancy and classify each relevant failure per category.
- (e) To the extent any modification proposed by the Vehicle Supplier would amount to a change from the design and specification of the Vehicles set out in Schedule 15-2, Article 5 or Appendix D which would have a material effect on Project Co's ability to deliver its obligations and/or the cost of it meeting such obligations, then Project Co may require that the Region issues a Variation Enquiry to Project Co in respect of such modification.
- (f) The list of special tools and test equipment to be provided by the Region to Project Co is set forth in Appendix D of Schedule 15-2 – Design and Construction Requirements.

2.8 Vehicle Warranties: Project Co Administration and Enforcement Obligations

- (a) The Region confirms and agrees that Project Co shall hereby have the authority to administer the Vehicle Warranties against the Vehicle Supplier commencing on the Vehicle Handover Date, in accordance with and subject to the terms of this paragraph 2.8. The Region shall take all administrative steps as may be reasonably requested by Project Co to ensure that the Vehicle Supplier recognizes the delegation of authority contemplated by this sub-paragraph (a).
- (b) Project Co shall, at its own cost and expense:

- (i) act as a single point of contact for the Vehicle Supplier in connection with all Vehicle Warranties; and
 - (ii) administer, coordinate, manage, enforce and pursue all Vehicle Warranties; and
 - (iii) monitor and inspect the Vehicles on an ongoing basis, and immediately upon becoming aware (and in any event within two (2) Business Days after the occurrence) report to the Region all Vehicle Warranty claims which it reasonably considers may be available and/or which are being or may be pursued.
- (c) Project Co shall indemnify and save harmless the Region and each other Region Party and each of their respective directors, officers, employees, agents and representatives from and against all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising from the failure by Project Co to fulfill its obligations under this paragraph 2.8.
- (d) For greater certainty, the obligations of Project Co pursuant to this paragraph 2.8 are in addition to, and not in substitution of, all other obligations of Project Co under the Project Agreement.
- (e) The Region has the right, at any time upon notice to Project Co, to perform the functions described in paragraph 2.8(b) in lieu of Project Co, and recover any damages in its own name from the Vehicle Supplier, to the extent the Region has incurred a loss in its own right.
- (f) In the event that Project Co and/or a Project Co Party incurs a cost or suffers a loss due to failure by the Vehicle Supplier to honour a warranty or guarantee given by it in respect of the Vehicles, Project Co shall provide notice to the Region of same. As part of such notice, Project Co shall provide appropriate details of the warranty claim and the associated costs and/or losses. Following receipt of such notice and at the Region's option (but subject to paragraph (h) below, the Region shall either:
- (i) take action against the Vehicle Supplier in its own name as Project Co may (acting reasonably) direct; or
 - (ii) permit Project Co or a Project Co Party to take such action in the name of the Region at Project Co's own risk and expense,
- (g) subject to Project Co indemnifying the Region in respect of all reasonable costs properly incurred by the Region in respect of such action, and Project Co shall pass over to the Region an appropriate portion of any net proceeds so received as a result of such action after deducting any costs or expenses suffered or incurred by Project Co in relation to such action and taking into account the comparative losses, damages and costs suffered by the Region and Project Co, respectively, to the extent the Region has incurred a loss in its own right. Where the Region requires, Project Co shall also take the lead in preparing all relevant documents in respect of such action and/or taking such steps in any proceedings as the Region reasonably requires.
- (h) The Region shall have no obligation to take any action against the Vehicle Supplier to recover losses referred to in paragraph (f) above where the Region (acting reasonably) considers that such

action would be frivolous or vexatious or where the Region considers (acting reasonably) that it would have no reasonable prospect of success and in such circumstances, Project Co shall be permitted to take all necessary action in the name of the Region at Project Co's own risk and expense.

- (i) Insofar as one party (in this paragraph called the "First Party") has conduct of any negotiations or disputes in accordance with this paragraph 2.8 it will keep the other party (in this paragraph called the "Second Party") informed as to the progress of any negotiations or disputes and will afford to the Second Party the opportunity to participate in such negotiations or to participate and assist in the conduct of such disputes insofar as relevant to the Second Party and in each such case the First Party and the Second Party shall agree the manner in which the Second Party shall be afforded such opportunity (neither party being entitled unreasonably to withhold or delay its agreement). The First Party will not make any compromise of the rights or remedies referred to in this paragraph 2.8 without first using reasonable endeavours to obtain the consent of the Second Party, such consent not to be unreasonably withheld or delayed. Where the First Party has conduct of any negotiations or dispute in accordance with this paragraph 2.8, the Second Party shall provide all reasonable assistance and information to the First Party in a prompt fashion.
- (j) The Region may at its discretion at any time elect to take over the conduct of any negotiations or disputes commenced by Project Co or a Project Co Party in accordance with paragraph (f)(ii) above.
- (k) Project Co shall indemnify and save harmless the Region and each other Region Party and each of their respective directors, officers, employees, agents and representatives from and against all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising from Project Co voiding the Vehicle Warranties or any part thereof.
- (l) The Parties agree that:
 - (i) the existence of a WLRT Fleet Defect; and/or
 - (ii) any Vehicle being taken out of service for the purposes of any modifications or corrective action which the Vehicle Supplier is entitled or obliged to take under the WLRT Fleet Contract, whether under the Vehicle Warranties or otherwise,

shall each constitute an Excusing Cause for the purposes of Section 42.1 of this Project Agreement. Project Co shall consult with the Region and the Vehicle Supplier in good faith with a view to minimizing any disruption to the Project Operations which may result from such modification or rectification actions by the Vehicle Supplier.

- (m) The proposed list of initial spare parts to be obtained by the Region from the Vehicle Supplier and provided to Project Co is set out in Appendix D of Schedule 15-2 – Design and Construction Requirements. If Project Co wishes to amend the proposed list of initial spare parts, the Region will facilitate discussions with the Vehicle Supplier to revise the initial spares to be delivered in accordance with the WLRT Fleet Contract, and provided that Project Co shall be responsible for any additional cost for such spares that may arise from such request (being total costs for the initial inventory of spares in excess of \$6 million, exclusive of HST). The Region will provide

Project Co with the finalized lists of recommended maintenance and capital spare parts, including pricing and ordering interval information, upon receipt of such information from the Vehicle Supplier (currently anticipated on or about November 26, 2014).

2.9 Damage to Vehicles and “Total Loss” scenario

- (a) From the Vehicle Handover Date for each Vehicle until the Expiry Date, each Vehicle comprises part of the System for which Project Co is fully responsible to secure and maintain, subject to the other terms of this Agreement. In the event of damage to any Vehicle, Project Co shall be responsible for rectifying such damage and managing the consequences of such damage and the Vehicle’s absence from the Operations Services under the terms of this Agreement, including Section 30 – Damage and Destruction, in conjunction with the insurances taken out by Project Co.
- (b) Notwithstanding paragraph (a), in the event that a Vehicle suffers a total loss, as determined by the relevant insurer for the Vehicle, Project Co shall be under no obligation to procure a replacement Vehicle and the following provisions shall apply:
 - (i) subject to paragraph (iv) below, the Region shall procure a replacement Vehicle for the System and any insurance proceeds available for such replacement shall be turned over to the Region in accordance with Article 20 – Insurance Trust Agreement of Schedule 25 – Insurance and Performance Security Requirements. Project Co shall also compensate the Region for any shortfall in such insurance proceeds to the extent such shortfall results from a failure by Project Co to obtain or maintain insurance in accordance with Schedule 25 – Insurance and Performance Security Requirements, together with any deductible (subject to the provisions of Article 5 – Responsibility for Deductibles under Schedule 25 – Insurance and Performance Security Requirements);
 - (ii) to the extent that any replacement Vehicle procured by the Region differs in specification from the Initial Fleet so as to have a material effect on Project Co’s ability to deliver its obligations and/or the cost of meeting such obligations, the Region shall issue a Variation Enquiry under Schedule 22 – Variation Procedure in respect of the varied requirements;
 - (iii) the integration of the replacement Vehicle with the System shall be carried out in a manner consistent with paragraphs 2.10 to 2.12 of this Schedule 35, as if the replacement Vehicle constituted an additional Vehicle being procured by the Region under those provisions.
 - (iv) the Region may at any time:
 - (A) issue an instruction to amend the Baseline Service Plan, in accordance with Section 1.12 of Schedule 15-4 – Operations Requirements of the Output Specifications, to mitigate the impact of the destroyed Vehicle, and/or
 - (B) issue a Variation Enquiry under Schedule 22 – Variation Procedure to permanently change the size of the Vehicle fleet forming part of the System;

- (v) until such time as a replacement Vehicle is put into service in accordance with the procedure contemplated in limb (iii) above:
 - (A) if the Substantial Completion Date has not yet occurred, the unavailability of the destroyed Vehicle shall not be taken into account for the purposes of assessing whether Substantial Completion has occurred, but this shall not of itself relieve Project Co from the consequences of the unavailability of such Vehicle following the Substantial Completion Date; and
 - (B) if Project Co incurs a loss of Monthly Service Payment during the Maintenance Term as a result of the unavailability of the destroyed Vehicle, which loss is no longer covered by delay in start-up or business interruption insurance proceeds under the relevant policy required to be taken out under Schedule 25 – Insurance and Performance Security Requirements, the unavailability of the destroyed Vehicle shall constitute an Excusing Cause under Section 42.1 of the Project Agreement.
- (vi) Nothing in this paragraph 2.9 shall affect the operation of Sections 40-44 of the Project Agreement to the extent applicable to the provision of the Design and Construction Works, the Public Infrastructure Works, the Maintenance and Rehabilitation Services or the Operations Services.

2.10 Additional Vehicles

- (a) The Region shall have the right to procure additional Vehicles for incorporation into the System in order to allow different Baseline Service Plans to be achieved.
- (b) The Region anticipates that it will procure such additional Vehicles under the WLRT Fleet Contract with the Vehicle Supplier, however the Region may use any form of competitive procurement, sole-source contract, or other procurement methodology or transaction structure.
- (c) To the extent that any additional Vehicle procured by the Region differs in specification from the Initial Fleet, the Region shall issue a Variation Enquiry under Schedule 22 – Variation Procedure in respect of the varied requirements.

2.11 Project Co's Obligation to Assist

- (a) Project Co shall provide assistance to the Region, which assistance shall include without limitation:
 - (i) providing all necessary information and access to the System, including the OMSF and Vehicles, in order to allow the Region to develop appropriate technical specifications for any additional Vehicles; and
 - (ii) advising the Region on potential necessary or desirable modifications to the Maintenance and Rehabilitation Plan that will result in cost increases or savings as a result of the proposed additional Vehicles; and

- (iii) supporting the testing, commissioning and acceptance process and Configuration Management.

2.12 Integration of Additional Vehicles

- (a) In the event that the Region decides to purchase additional Vehicles for the System, the Region will issue a Variation Enquiry under Schedule 22 - Variation Procedure, requesting Project Co to prepare a testing, integration and commissioning program for the additional Vehicles, based on the parameters set out by the Region in the Variation Enquiry.
- (b) The Variation Enquiry shall assume that the procurement, commissioning, testing, certification and systems integration of additional Vehicles shall be in a manner consistent with the arrangements carried out for the Initial Fleet set out in this Schedule 35 – Vehicles, with appropriate adjustments to account for (inter alia) the following:
 - (i) timing and location of Vehicle delivery, Vehicle Acceptance Testing and system integration and commissioning, within the constraints of the operational System;
 - (ii) appropriate timing and method of payment for Project Co's involvement in the above activities;
 - (iii) procedure for sign-off of completion of Project Co activities in connection with the additional Vehicles;
 - (iv) rates of damages to apply in the event of late completion of Project Co activities leading to delay in commencement in service of the new Vehicle(s);
 - (v) adjustments under Schedule 20 – Payment Mechanism to reflect increased maintenance, lifecycle and insurance costs for the increased Vehicle fleet.
- (c) From the date on which Project Co's activities in relation to each additional Vehicle, as determined under the Variation referred to in paragraph (b) above, are appropriately certified in accordance with the agreed methodology:
 - (i) the additional Vehicle shall be treated as part of the operational System for the purposes of Project Co's Maintenance and Rehabilitation Services and Operational Services; and
 - (ii) such date shall be the relevant date for the purpose of calculating the remaining service life of the Vehicle under Schedule 15-3 Appendix B – Expiry Date Requirements.

2.13 Operations and Maintenance Manuals

- (a) Pursuant to the WLRT Fleet Contract, the Vehicle Supplier shall provide operations and maintenance manuals ("**O&M Manuals**") in sufficient detail to enable the Region to operate, test maintain, overhaul, and repair and restore the Vehicles to their original vehicle-acceptance condition that meets the specified performance requirements.

- (b) Pursuant to the WLRT Fleet Contract, the Vehicle Supplier shall:
 - (i) submit an outline of the O&M Manuals for approval by the Region and Metrolinx prior to completion of the preliminary design review process; and
 - (ii) submit preliminary draft O&M Manuals in editable format for approval by the Region and Metrolinx prior to delivery of the first Metrolinx pilot vehicle.
- (c) The Region will make available to Project Co all O&M Manuals received from the Vehicle Supplier and provide Project Co an opportunity to provide input to the Region in respect thereof.

2.14 Training

- (a) Pursuant to the WLRT Fleet Contract, the Vehicle Supplier shall provide training comprised of:
 - (i) vehicle operations training; and
 - (ii) maintenance training.
- (b) Vehicle Operations Training
 - (i) The Vehicle Supplier shall provide a train-the-trainer program for Project Co instructors to ensure that they are qualified to safely operate and deliver vehicle operations training for the Vehicles to Project Co operators.
 - (ii) The vehicle operations training shall be supported by relevant instructor guides and training manuals.
- (c) Maintenance Training
 - (i) The Vehicle Supplier shall provide a train-the-trainer program for Project Co instructors to ensure that they are qualified to maintain the vehicles and deliver maintenance training for the Vehicles to Project Co maintenance employees. The training program shall address each of the following systems: articulation and bellows; couplers and drawbars; sanders; trucks (bogies) and suspension; propulsion; brakes; auxiliary electrical system; lighting; doors; HVAC; pantograph; communication equipment; train control monitoring. The training modules will include: overview of the system, including location and function of constituent components; inspection, preventative and corrective maintenance procedures; vehicle recovery/disablement; and use of TCMS and PTE for fault isolation.
 - (ii) The Vehicle maintenance training shall be supported by relevant instructor guides and training manuals.
- (d) The Region will take steps to ensure that the training provided for in the WLRT Fleet Contract is made available to Project Co in advance of delivery of the first Vehicle.

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Appendix A

Vehicle Acceptance Testing

To be conducted at OMSF and Test Track.

1 Check Tests

- 1.1 Check tests shall be performed jointly by the Region and the Vehicle Supplier on each Vehicle on arrival, first stationary and then running at low speed on the Test Track, to establish that all equipment is operating correctly. The Vehicle Supplier shall submit these tests for approval by Region.
- 1.2 During initial trial runs, the Vehicle Supplier may make adjustments after which the tests below shall be carried out.
- 1.3 Inspections shall be performed by the Region and Vehicle Supplier on each Vehicle after completion of the above check tests to verify that the required workmanship is met and that no deterioration in performance has taken place during the shipping, erection and delivery processes. The Vehicle Supplier shall make good any defect thus found at his own cost.

2 Acceptance Tests

- 2.1 Acceptance Tests shall be completed following successful completion of the check tests at the OMSF and Test Track. Detailed static and dynamic tests including acceleration and braking performance are to be conducted.
- 2.2 Acceptance Test Overview

The acceptance tests shall be prepared and conducted by the Region and the Vehicle Supplier, with operational support from Project Co. A series of tests classified (but not limited to) as follows shall be conducted:

- (a) Operator's and related Vehicle controls – Static
- (b) Propulsion control verification - Dynamic
- (c) HVAC certification - Static/Dynamic
- (d) Door and door interlock - Static/Dynamic
- (e) Accessibility features verification - Static/Dynamic
- (f) Communications verification - Static/Dynamic
- (g) Power line gap/zero voltage (current) sensing operation - Dynamic
- (h) Acceleration and braking performance verification - Dynamic
- (i) Street running, parking brake and rollback test - Dynamic

- (j) Emergency Vehicle recovery - Dynamic

3 Burn-In Tests

- 3.1 Upon successful completion of the Acceptance Tests, the Vehicle shall start the Burn-In Test to be conducted by the Region and the Vehicle Supplier, with operational support from Project Co utilizing the Test Track and any other available track.
- 3.2 The 600 Km “Burn-In Test” will be run on each Vehicle prior to final acceptance and shall be free of class A, B, and C failures, as generally defined below; the only permissible fault shall be of class D:
 - (a) Rescue towing/pushing is required - Failure Mode Category A = Severe vehicle impairment
 - (b) Out-of-service to carhouse - Failure Mode Category B = Vehicle impairment
 - (c) In service to end of the line - Failure Mode Category C = Minor vehicle impairment
 - (d) In service to end of the day - Failure Mode Category D = No vehicle impairment
- 3.3 The test shall simulate revenue service, to the extent reasonably possible, and include regular cycling of doors, PA announcements, and automatic passenger announcements, PEI operation, radio communication as well as any other feature normally encountered in revenue service. Such simulation may include manual activation of certain features. In the event that the A, B, and C fault-free continuous 600 km is not achieved the “burn-in” will be repeated until the requirement is met.
- 3.4 Upon successful completion of the Burn-In Test, the Vehicle shall be eligible for issuance of a Vehicle Final Acceptance Certificate.

Appendix B

Vehicle Acceptance Testing Support

Project Co operational responsibilities during Vehicle Acceptance Testing includes the following:

- Upon Vehicle arrival and assembly, conduct first initial run with Vehicle Supplier to ensure track and power station availability.
- Provide Vehicle access/entrance into the OMSF; at least one pit shall be available.
- Fully functional Traction Power Substations (TPSS) at the OMSF and along the Test Track.
- Possibilities for the first Vehicle run at full acceleration and full braking along the Test Track and eventually on the revenue service line.
- Possibility to access the main revenue service line either at night or during day time.
- City traffic signal control during dry runs on any part of the track, including grade crossings. If Transit Signal Priority (TSP) operations or required traffic signals are not operational, flaggers or barricades must be provided by Project Co.
- Project Co to co-ordinate all activities associated with Vehicle Acceptance Testing with Canadian National (CN), especially in the case of any operation interference.
- Provide sand bags to simulate a W5 run.
- Ensure as much track availability as possible for back and forth multiple runs.
- Operational track switches. Either manually or remote controlled.
- Provide towing service in case of emergencies.
- Provide operator for a 10 hours shift.
- Flexibility to work additional shifts on Saturday and Sunday.
- No train control (train signaling) test will be conducted during the Region/Vehicle Supplier Vehicle Acceptance Testing.

Appendix C

Guaranteed completion date for issue of Vehicle Final Acceptance Certificates

Each of the Vehicles in the Initial Fleet shall achieve a Vehicle Final Acceptance Certificate by January 31, 2017, provided that such date shall be postponed to the extent that any Vehicle Acceptance Testing activities are affected by any delay in achieving OMSF/Test Track Readiness Completion and/or by any failure by Project Co to comply with its obligations in respect of Vehicle Acceptance Testing set out in this Schedule 35 – Vehicles.

For planning purposes, Project Co can assume that the first Vehicle will be delivered to the OMSF no earlier than May 1, 2016 and not later than August 15, 2016. Subsequent Vehicles will be delivered at the rate of approximately two per month.