

SCHEDULE 35

ADDITIONAL VEHICLES

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PART 1 DEFINITIONS

1.1 Definitions

The following definitions shall have the following meanings:

- (a) **“Additional Maintenance Spare Vehicles”** has the same meaning given to it in Section 2.2(a).
- (b) **“Additional Payments for Non-Project Co Additional Vehicles”** has the same meaning given to it in Section 5.3(a).
- (c) **“Additional Vehicles”** means any additional light rail transit vehicles purchased by the City following Financial Close pursuant to this Schedule 35, including all electromechanical and other equipment therein. For clarity, this includes any additional light rail transit vehicles beyond the initial fleet of Vehicles to be provided by Project Co at the Revenue Service Availability Date, whether or not such additional light rail transit vehicles are purchased from the Project Co or any other third party.
- (d) **“Additional Vehicles Agreement”** has the meaning given to it in Section 8.1(a).
- (e) **“Additional Vehicles Termination Date”** has the meaning given to it in Section 8.1(b).
- (f) **“Annual Service Payment”** has the meaning given to it in Schedule 20 - Payment Mechanism.
- (g) **“Capacity Factor”** means 1.25.
- (h) **“Closing Date”** means the date upon which resolution of all punch list items have been achieved, as certified by the Independent Certifier;
- (i) **“Configuration Management”** means a process to establish and maintain the integrity of all identified project outputs and make them available to all concerned stakeholders.
- (j) **“Cost of Work”** has the same meaning given to it in Schedule 3 of RFP, Part 2 - Financial Submission Requirements.
- (k) **“Corrective Maintenance Plan”** has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (l) **“Custodial Maintenance Plan”** has the same meaning given to it in Appendix A of Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements.
- (m) **“Daily Bus In Service Costs”** means \$935, Adjusted for Inflation.
- (n) **“Default Interest Rate”** means 5% over the Prime Rate.

- (o) **“Designated Site”** means a site in the City of Ottawa as designated by the City to which Project Co is required to deliver the Additional Vehicles.
- (p) **“Deliver”** or **“Delivery”** means that Project Co delivers the Additional Vehicles purchased by the City pursuant to and in accordance with this Schedule 35 to the Designated Site on the Delivery Date in a manner as requested by the City.
- (q) **“Delivery Date”** means the later of:
- (i) 30 months following the date when an Option Notice is given by the City to Project Co in accordance with Section 2.1(c), upon which date Project Co shall be required to deliver the Additional Vehicles to a Designated Site; and
 - (ii) the Required Revenue Service Availability Date.
- (r) **“Escalation Factor”** has the meaning given to it in Schedule 20 - Payment Mechanism.
- (s) **“Handover Maintenance Plan”** has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (t) **“Lifecycle Maintenance Plan”** means the plan as contemplated by Section 6.4(a).
- (u) **“Liquidated Damages for Service Level Increase Additional Vehicle Delivery Delay”** means the liquidated damages that are payable by Project Co to the City pursuant to and in accordance with Section 2.7(c) and Section 2.7(d).
- (v) **“Maintenance Plan”** means collectively, the Custodial Maintenance Plan, the Corrective Maintenance Plan, and the Preventive Maintenance Plan.
- (w) **“Major Service Change”** has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (x) **“Marginal PPHPD”** means, for any day, the difference in minimum service capacity (PPHPD) for the Morning Peak Period between:
- (i) the Service Level requested by the City for that day via a Major Service Change request in accordance with Section 3.5 of Appendix 1 of Schedule 15-3 - Output Specifications – Maintenance and Rehabilitation Requirements, and
 - (ii) the Service Level being provided by Project Co on that day;

and by way of example only, Marginal PPHPD for a Service Level Increase from Service Level 1 to Service Level 2 is derived by reference to Schedule 10 of the RFP - Preliminary Service Plan, by taking the minimum service capacity (PPHPD) for the Morning Peak Period (Monday-Thursday) for Service Level 2 (Cell Reference H20, Sheet “Service Level 2 2020-2021”), and subtracting the minimum service capacity (PPHPD) for the Morning Peak Period (Monday-Thursday) for Service Level 1 (Cell

Reference H20, Sheet “Service Level 1 2018-2019”), which yields $11,360 - 10,700 = 660$. For clarity, during the Maintenance Term, the relevant reference document will be the Operations Service Plan, as amended from time to time in accordance with the Project Agreement.

- (y) “**Maximum Order**” means the maximum number of the Additional Vehicles that the City shall be entitled to by way of the Option to Purchase in each year during the Option Term pursuant to Section 2.2(c).
- (z) “**Minimum Order**” means the minimum number of the Additional Vehicles that the City shall be entitled to by way of the Option to Purchase in each year during the Option Term pursuant to Section 2.2(b).
- (aa) “**Non-Project Co Additional Vehicles**” means the Additional Vehicles which are purchased by the City from a third party other than Project Co pursuant to this Schedule 35.
- (bb) “**Option Term**” means seven (7) years following Financial Close.
- (cc) “**Option Notice**” has the meaning given to it in Section 2.1(c)(i).
- (dd) “**Option to Purchase**” refers to the option described in Section 2.1(a).
- (ee) “**Preventive Maintenance Plan**” has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (ff) “**Price Change Formula**” means the Escalation Factor set out in Section 4.1 of Part B of Schedule 20 – Payment Mechanism.
- (gg) “**Prime Rate**” means on any day, the annual rate of interest announced by the Royal Bank of Canada (or its successor), or any Canadian chartered bank agreed by the City and Project Co, from time to time as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada.
- (hh) “**Project Co Additional Vehicles**” means the Additional Vehicles which are purchased by the City from Project Co pursuant to this Schedule 35.
- (ii) “**Service Level Increase**” has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (jj) “**Service Level Increase Date**” means the date upon which the Additional Vehicles are brought into revenue service. For greater certainty, for the purpose of this Schedule 35, the Service Level Increase Date shall not be earlier than the Delivery Date.
- (kk) “**Service Level Increase Additional Vehicle Delivery Delay**” has the meaning given to it in Section 2.7(c).

- (ll) “**System Extension**” has the meaning given to it in Schedule 38 – Extension and Additional Phases.
- (mm) “**Traction Power**” has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (nn) “**Train Control System**” has the meaning given to it in Schedule 15-1 – Output Specifications - Technical Definitions and Reference Documents.
- (oo) “**Vehicle Availability Standard**” has the same meaning given to it in Appendix A of Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements.
- (pp) “**Vehicle Long Stop Date**” means 6 months following the Delivery Date.
- (qq) “**Vehicle Supplier**” means Alstom Power and Transport Canada Inc.
- (rr) [REDACTED]

- (ss) “**Volume Payment**” has the meaning given to it in Schedule 20 - Payment Mechanism.
- (tt) “**Weekday**” means Monday, Tuesday, Wednesday, Thursday, or Friday that is not a statutory holiday in the Province of Ontario.

PART 2 OPTION TO PURCHASE

2.1 City’s Option to Purchase

- (a) At its option, the City shall have the right within the Option Term to purchase from Project Co Additional Vehicles and require such Additional Vehicles be delivered by Project Co to the Designated Site on the Delivery Date.
- (b) The Additional Vehicles that are purchased by the City pursuant to Section 2.1(a) may, at the City’s option, be used for the System and any System Extension.
- (c) Option to Purchase:
 - (i) The Option to Purchase shall be exercised by written notice (an “**Option Notice**”) given by the City to Project Co at any time during the Option Term in accordance with Section 61 of the Project Agreement.

- (ii) An Option Notice shall specify the number of the Additional Vehicles that the City wishes to purchase from Project Co, the Designated Site, additional storage area, maintenance requirements, upgrades to Train Control System (if any), Traction Power and other issues relating to integration of Additional Vehicles into the System.
 - (iii) Upon delivery of a relevant Option Notice in accordance with the foregoing provision there shall be deemed to be a binding agreement of purchase and sale between the City as purchaser and Project Co as vendor in respect of the Additional Vehicles. The terms and conditions of the agreement of purchase and sale of such Additional Vehicles shall be in accordance with this Schedule 35 or the terms otherwise provided in the Project Agreement not in conflict with this Schedule 35.
 - (iv) The purchase of the Additional Vehicles resulting from the exercise of the Option to Purchase shall be completed upon the Closing Date.
 - (v) On the Closing Date, Section 29.5 of the Project Agreement shall apply, *mutatis mutandis*, to Project Co and the Additional Vehicles.
 - (vi) If the Additional Vehicles are encumbered by any encumbrances contrary to Section 29.5 of the Project Agreement or Project Co fails to perform any covenant on its part herein contained, the City may in its Discretion, without derogation from its right respecting any Project Co Event of Default as provided for in the Project Agreement, on prior written notice to Project Co (the “**Default Notice**”), perform any such covenant capable of being performed by the City or arrange for the encumbrance to be discharged (any such event, a “**Default Event**”) and if the Default Event requires the payment or expenditure of money, the City may make such payment or expenditure and all sums so expended shall be forthwith payable by Project Co to the City with the Default Interest Rate thereon until paid and the City may deduct and set-off any such amount against the purchase price payable on the Closing Date. The parties agree that the Closing Date shall be extended by such period of time as the City determines is necessary for the purposes of it curing such Default Event prior to the Closing Date.
 - (vii) Each of the parties shall execute and deliver all such other further documents and do such other things as the other party may reasonably request to give full effect to this Section 2.1.
- (d) Project Co represents that it has agreed with its Vehicle Supplier on the terms that are sufficient to give effect to the Option to Purchase as provided for in this Schedule 35. Upon receipt of the Option Notice, Project Co shall exercise its rights and perform all necessary acts under its agreement with its Vehicle Supplier to give full effect to City’s Option to Purchase under this Section 2.1

2.2 The Number of the Additional Vehicles

- (a) The number of the Additional Vehicles with respect to which the Option to Purchase is exercised pursuant to Section 2.1 for each year of the Option Term shall take into account the spare vehicles required to provide the necessary spare vehicle capacity to allow Project Co to conduct Maintenance Services in accordance with Schedule 15-3 - Output Specifications – Maintenance and Rehabilitation Requirements (the “**Additional Maintenance Spare Vehicles**”). For the purpose of this Section 2.2, where the calculation for the required Additional Maintenance Spare Vehicles pursuant to Project Co’s Response produces a fraction, such fraction shall not be taken into account in determining the number of required Additional Maintenance Spare Vehicles.
- (b) The Minimum Order that the City shall have the right to place by way of the Option to Purchase from Project Co pursuant to Section 2.1 for each year of the Option Term shall be equal to one (1) train consist.
- (c) The Maximum Order that the City shall have the right to place by way of the Option to Purchase from Project Co pursuant to Section 2.1 for each year of the Option Term shall be equal to three (3) train consists. Notwithstanding the Maximum Order permitted in an annual period, the City shall also be entitled to order Additional Maintenance Spare Vehicles required in accordance with Section 2.2(a) in such year.

2.3 Output Specifications of Additional Vehicles

- (a) Subject to Section 2.3(b) and Section 2.3(c), the Additional Vehicles purchased by the City pursuant to Section 2.1(a) shall be manufactured in accordance with the Output Specifications provided for in Schedule 15-2 – Output Specifications - Design and Construction Specifications.
- (b) In the event that there are any improvements or upgrades required for the System in accordance with Schedule 15 – Output Specifications which do not result in a Variation (a “**Required Upgrade**”), or there are any improvements or upgrades included in the basic model of the Vehicles (an “**Included Upgrade**”), the Project Co shall ensure that the Additional Vehicles are upgraded to conform to any Required Upgrade or Included Upgrade, and that all associated equipment and interfaces are tested to accommodate such upgrades, without further costs to the City.
- (c) Notwithstanding Section 2.3(a), the City may amend the Output Specifications provided for in Schedule 15 – Output Specifications in respect of the Additional Vehicles including any improvements or upgrades thereof. Unless the amendments to the Output Specifications in respect of the Additional Vehicles result from required improvements or upgrades to the System as provided for in Section 2.3(b), such amendments shall result in a Variation in accordance with the Project Agreement and Schedule 22 - Variation Procedure. In the event that the Variation Procedure shall apply pursuant to this Section 2.3(c), Project Co shall, at the City’s request, provide the City with necessary

information determining the Variation before the City shall decide whether any amendment is required.

2.4 Price of Additional Vehicles

- (a) Subject to the provisions of this Section 2.4 and Section 2.3(c) providing otherwise, the price of each of the Additional Vehicles to be purchased by the City pursuant to Section 2.1(a) shall be the Vehicle Unit Price.
- (b) The price of each of the Additional Vehicles as provided for in this Section 2.4(a) shall be subject to price escalation or reduction as follows:
 - (i) there shall be no price escalation or reduction for the initial three (3) years of the Option Term; and
 - (ii) for the remainder of the Option Term, the Vehicle Unit Price in respect of the Additional Vehicles may increase or decrease in accordance with the Price Change Formula. The Vehicle Unit Price for each of the Additional Vehicles shall be increased or decreased by applying the Price Change Formula to 100% of the Vehicle Unit Price.

2.5 [REDACTED]

2.6 Commissioning of Additional Vehicles

- (a) The Additional Vehicles purchased pursuant to Part 2 of this Schedule 35 shall be tested and commissioned by Project Co in accordance with Schedule 14 - Commissioning.

2.7 Project Co's Failure to Deliver

- (a) Subject to Section 2.7(c), if Project Co shall fail to Deliver the Additional Vehicles on the Delivery Date, the City shall be entitled to an amount equal to \$1,500 per Additional Vehicle each day, subject to the Escalation Factor, on account of liquidated damages. Such amount of liquidated damages shall constitute the City's sole entitlement to damages in respect of a failure of Project Co to deliver the Additional Vehicles on the Delivery Date.
- (b) If Project Co shall fail to Deliver the Additional Vehicles by the Vehicle Long Stop Date, the City shall have the right to:
- (i) cancel the exercised Option to Purchase the undelivered Additional Vehicles by written notice to Project Co (the "**Cancelled Vehicles**"), in which event, without derogation from the City's right under Section 2.7(a) or Section 2.7(c), as the case may be, the City shall be entitled to a refund of the payments that the City has made up until the Vehicle Long Stop Date in respect of such Cancelled Vehicles, together with the Default Interest Rate thereon.

or,

- (ii) without derogation from the City's right under Section 2.7(a) or Section 2.7(c), as the case may be, proceed with the exercised Option to Purchase by written notice to Project Co in accordance with the terms and conditions set out herein.
- (c) Notwithstanding Section 2.7(a), where the City has caused Project Co to acquire Additional Vehicles under the provisions of this Schedule 35 in order to implement a Service Level Increase, and Project Co has failed or has determined that it will fail to achieve the delivery, commissioning, and assimilation into the vehicle fleet of the Additional Vehicles by the Service Level Increase Date so as to effect the required Service Level Increase ("**Service Level Increase Additional Vehicle Delivery Delay**"), then Project Co shall:
- (i) pay to the City the Liquidated Damages for Service Level Increase Additional Vehicle Delivery Delay in accordance with Section 2.7(d), below, for each Weekday of Service Level Increase Additional Vehicle Delivery Delay; or
- (ii) with the City's consent, not to be unreasonably withheld, confirm that it will provide the required Service Level Increase using Project Co's existing vehicle fleet, on a temporary basis, during the period of Service Level Increase Additional Vehicle Delivery Delay, in which case Project Co shall be responsible to provide the relevant Service Level and shall be subject to all applicable penalties under the Project Agreement for failure to do so, including Schedule 20- the Payment Mechanism;

or

- (iii) where Project Co can partially provide the required Service Level Increase using Project Co's existing vehicle fleet on a temporary basis during the period of Service Level Increase Additional Vehicle Delivery Delay, a combination of the foregoing subparagraphs (i) and (ii).

For greater certainty, the amount of the Liquidated Damages for Service Level Increase Additional Vehicle Delivery Delay as provided for in this Section 2.7(c) and 2.7(d) shall constitute the City's sole entitlement to damages in respect of a failure of Project Co to deliver the Additional Vehicles on the Service Level Increase Date as required in this Section 2.7(c)

- (d) For the purpose of this Section 2.7(c):

- (i) The Liquidated Damages for Service Level Increase Additional Vehicle Delivery Delay shall be calculated for each Weekday of Service Level Increase Additional Vehicle Delivery Delay, based on the formula below:

$$PWAVDLD_{Wk} = \left(\frac{\text{Marginal PPHPD}}{70} \right) * \text{Capacity Factor} * \text{Daily Bus In Service Cost}$$

Where:

"PWAVDLDWk" means the amount, in dollars, of Liquidated Damages for Service Level Increase Additional Vehicle Delivery Delay calculated for any given Weekday during a period of Service Level Increase Additional Vehicle Delivery Delay.

- (ii) The Liquidated Damages for Service Level Increase Additional Vehicle Delivery Delay shall be applicable to each Weekday during a period of Service Level Increase Additional Vehicle Delivery Delay, up to a maximum period of six (6) months following the Delivery Date.
- (e) In the event that the City shall cancel the exercised Option to Purchase with respect to the undelivered Additional Vehicles pursuant to Section 2.7(b)(i), the City shall have the right to exercise an Option to Purchase in respect of such Cancelled Vehicles in the next option period.
- (f) Section 2.7 does not derogate from any of Project Co's obligations as set out in Part 5 of this Schedule 35.

2.8 Canadian Content

- (a) For clarification, except as provided in Section 2.8(b), there shall be no obligation on Project Co to comply with the Canadian Content Requirements with respect to Additional Vehicles delivered to the City pursuant to the exercise of the Option to Purchase.

- (b) Notwithstanding Section 2.8(a), the City may, in its Discretion, require compliance with the Canadian Content Requirements (a “CC Request”), with respect to any Additional Vehicles purchased pursuant to the Option to Purchase by including the CC Request with the Option Notice. In such event the Canadian Content Requirements shall be deemed to be a Variation and the provisions respecting Variations in the Project Agreement and Schedule 22 – Variation Procedure shall be applicable to the Additional Vehicles that are the subject matter of the CC Request.

PART 3

NEGOTIATED PURCHASE OF ADDITIONAL VEHICLES

3.1 Negotiated Purchase

- (a) During and after the Option Term, the City shall have the right to negotiate with Project Co to purchase Additional Vehicles in accordance with Part 3 of this Schedule 35.
- (b) The Additional Vehicles that are purchased by the City pursuant to Section 3.1(a) may, at the City’s option, be used for the System and any System Extension.

3.2 Output Specifications of Additional Vehicles

- (a) Subject to Section 3.2(c), the Additional Vehicles purchased pursuant to Section 3.1(a) shall be manufactured in accordance with the Output Specifications provided for in Schedule 15-2 – Output Specifications - Design and Construction Specifications, or as otherwise agreed upon by the City and Project Co during the negotiation.
- (b) In the event that there are any Required Upgrades or Included Upgrades, Project Co shall ensure that the Additional Vehicles are upgraded to conform to such Required Upgrades or Included Upgrades, and that all associated equipment and interfaces are tested to accommodate such upgrades, without further costs to the City.
- (c) Notwithstanding Section 3.2(a), the City may amend the Output Specifications provided for in Schedule 15-2 – Output Specifications - Design and Construction Specifications in respect of the Additional Vehicles including any improvements or upgrades thereof. Unless the amendments to the Output Specifications in respect of the Additional Vehicles result from required improvements or upgrades to the System as provided for in Section 3.2(b), such amendments shall result in a Variation in accordance with the Project Agreement and Schedule 22 - Variation Procedure. In the event that the Variation Procedure shall apply pursuant to this Section 3.2(c), Project Co shall, at the City’s request, provide the City with necessary information determining the Variation before the City shall decide whether any amendment is required.

3.3 Price of Additional Vehicles

- (a) The price of each of the Additional Vehicles purchased by the City pursuant to Section 3.1(a) shall be negotiated by Project Co and the City.

3.4 Commissioning of Additional Vehicles

- (a) The Additional Vehicles as purchased by the City pursuant to Part 3 of this Schedule 35 shall be tested and commissioned by Project Co in accordance with Schedule 14 - Commissioning.

PART 4 VEHICLE PROCUREMENT

4.1 City's Right to Procure

- (a) During and after the Option Term, the City shall have the right to procure any Additional Vehicles from a provider other than Project Co. The City may use any form of competitive procurement, sole-source contract, or other procurement methodology or transaction structure. At its option, the City may bundle the Option to Purchase in respect of the Additional Vehicles with other procurement processes.

4.2 Consulting Service

- (a) The City shall have the right to retain either a third party or Project Co as consultant in procuring the Additional Vehicles procured pursuant to Section 4.1(a).
- (b) In the event that the City shall desire to consider retaining Project Co as consultant in procuring the Additional Vehicles pursuant to Section 4.1(a), the City shall provide Project Co with a written notice which shall include the following information:
 - (i) a description of the Additional Vehicles the City wishes to procure including the number, model, preliminary output specifications and other significant features of the Additional Vehicles; and
 - (ii) a preliminary plan and anticipated timelines for procurement of the Additional Vehicles.
- (c) Within a period of 15 days after the date of receipt of the notice provided for in Section 4.2(b), Project Co shall deliver to the City its written response advising the City of an estimate of the consulting fee it will charge for the consulting services to be provided in respect of such Additional Vehicles, with reasonable details to support such estimate.
- (d) the City shall within a period of 15 days after the date of receipt of Project Co's response as provided for in Section 4.2(c), deliver a written notice notifying Project Co whether or not the City shall wish to retain Project Co for providing the consulting service respecting such Additional Vehicles.
- (e) In the event that the City shall wish to retain Project Co for providing the consulting service respecting such Additional Vehicles by giving the notice as provided for in

Section 4.2(d), then upon delivery and receipt of such notice, the City and Project Co shall, in good faith and acting reasonably, negotiate the terms of a binding agreement for the performance of the consulting services in respect of procuring the Additional Vehicles pursuant to and in accordance with Section 4.2.

4.3 Project Co's Obligation to Assist

- (a) In the event that the City shall retain a third-party consultant in procuring the Additional Vehicles pursuant to Section 4.2(a), subject to the provisions in Schedule 41 – Intellectual Property, Project Co shall provide assistance to the City as reasonably required by the City and at the City's cost, which assistance shall include without limitation:
- (i) providing all necessary information and access to Fixed Facilities, E&M, MSF, and Vehicles supplied by Project Co in order to allow the City to develop appropriate technical specifications for the Additional Vehicles; and
 - (ii) other assistance reasonably requested by the City.
- (b) In the event that the City shall retain Project Co as consultant in procuring the Additional Vehicles pursuant to Section 4.2(a), subject to payment by the City of the consulting fees as agreed upon by the City and Project Co pursuant to Section 4.2(d), and the provisions in Schedule 41 – Intellectual Property, Project Co shall provide assistance to the City as reasonably required by the City, which assistance shall include without limitation:
- (i) assistance in development of vehicle specifications and evaluation of vehicle designs to ensure compatibility with existing Fixed Facilities, E&M, MSF supplied by Project Co and maintenance practices of Project Co;
 - (ii) providing all necessary information and access to Fixed Facilities, E&M, MSF, and Vehicles supplied by Project Co in order to allow the City to develop appropriate technical specifications for the Additional Vehicles;
 - (iii) advising the City on development of a Lifecycle Maintenance Plan, to be developed in conjunction with other supplier(s) that will include a schedule of lifecycle maintenance and major component replacement and a budget for carrying out such work;
 - (iv) advising the City on potential modifications that will result in maintenance cost savings guaranteed by Project Co, which savings shall be shared by the City and Project Co equally;
 - (v) participation in testing, commissioning, acceptance process and Configuration Management; and
 - (vi) other assistance reasonably requested by the City.

4.4 Commissioning of Non-Project Co Additional Vehicles

- (a) In the event that the City shall retain Project Co as consultant in procuring the Additional Vehicles pursuant to Section 4.2(a), at the City's option, the Non-Project Co Additional Vehicles as procured by the City pursuant to Part 4 of this Schedule 35 shall be tested and commissioned by Project Co in accordance with Schedule 14 – Commissioning.

4.5 Liquidated Damages

- (a) The provisions respecting liquidated damages in Section 2.7 shall apply to Non-Project Co Additional Vehicles if, and only if, the delivery delay as provided for Section 2.7 results from Project Co's failure to carry out commissioning activities in accordance with Schedule 14 – Commissioning.

**PART 5
MAINTENANCE SERVICES OF ADDITIONAL VEHICLES**

5.1 Obligation of Project Co to Maintain

- (a) The City may at its option require Project Co to be fully responsible for providing Maintenance Services for the Additional Vehicles purchased during the Maintenance Term pursuant to this Schedule 35, including without limitation, the Non-Project Co Additional Vehicles.
- (b) In the event that the City shall require Project Co to provide Maintenance Services for the Additional Vehicles pursuant to Section 5.1(a), provisions in Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements shall apply in respect of the Additional Vehicles, including without limitation, the provisions relating to maintenance reporting on the status and details of completion of various maintenance activities in respect of the Additional Vehicles.

5.2 Service Level Increase

- (a) Where Project Co is required to provide Maintenance Services for any Additional Vehicles pursuant to Section 5.1, due to a Major Service Change in accordance with Article 3 of Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements, Project Co's Annual Service Payment and Volume Payment shall be adjusted in accordance with Article 3 of Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements.
- (b) Subject to Section 5.3(a), Project Co shall have no other entitlement for any additional payment in respect of Maintenance Services provided to the Additional Vehicles pursuant to Section 5.1 due to a Major Service Change, save and except for that provided for in Section 5.2(a).

5.3 Additional Payments to Project Co

- (a) In addition to the payments as provided for in Section 5.2(a) but without duplication thereof, Project Co shall be entitled to additional payments in respect of providing Maintenance Services for the Non-Project Co Additional Vehicles pursuant to and in accordance with the provisions respecting Variations in the Project Agreement and Schedule 22 – Variation Procedure with respect to any addition or changes to the System required by the inclusion of the Non-Project Co Additional Vehicles as Approved by the City (“**Additional Payments for Non-Project Co Additional Vehicles**”), in which event, Project Co shall, at the City’s request, provide the City with necessary information determining the Variation before the City shall decide whether such addition or changes are required.

PART 6 ADJUSTMENT OF LIFECYCLE PAYMENTS

6.1 Lifecycle Maintenance Services

- (a) In the event that the City shall require Project Co to be fully responsible for providing Maintenance Services for any Additional Vehicles pursuant to Section 5.1, the provisions in respect of lifecycle maintenance services in Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements shall apply to such Additional Vehicles.

6.2 Option to Purchase

- (a) Where the City shall purchase any Additional Vehicles by way of exercising the Option to Purchase pursuant to Section 2.1(a), subject to Section 6.2(b), Project Co shall be entitled to amend its schedule of Lifecycle Payments set out in Schedule 20 - Payment Mechanism, taking into account lifecycle costs for the Additional Vehicles that occur within the Maintenance Term.
- (b) Project Co’s amendment of the Lifecycle Payments schedule as provided for in Section 6.2(a) shall be based on a lifecycle cost curve identical in real dollar terms to the lifecycle cost curve for Vehicles contained in Project Co’s financial model (PA Schedule 35 Lifecycle Info, columns D and E) at Financial Close, as amended from time to time.
- (c) For greater certainty, the amendment of the Lifecycle Payments as provided for hereunder shall take into account that:
- (i) any amendment in the Output Specifications requested by the City pursuant to Section 2.3(c) or Section 3.2(c) shall result in an adjustment in the Lifecycle Payments; and
 - (ii) the City shall be responsible for lifecycle costs for the Additional Vehicles that occur beyond the Maintenance Term.

6.3 Negotiated Purchase of Additional Vehicles

- (a) Where the City shall purchase any Additional Vehicles by way of negotiating a purchase pursuant to Section 3.1(a), subject to Section 6.3(b), the City and Project Co shall agree on appropriate amendments to the schedule of Lifecycle Payments set out in Schedule 20 - Payment Mechanism, taking into account lifecycle costs for the Additional Vehicles that occur within the Maintenance Term.
- (b) The amendments of the Lifecycle Payments schedule as provided for in Section 6.3(a) shall be presumptively based on a lifecycle cost curve identical in real dollar terms to the lifecycle cost curve for the Vehicles contained in Project Co's financial model at Financial Close, as amended from time to time. Any variations must be demonstrated by Project Co with specific references to unique features of the Additional Vehicles which require a different lifecycle maintenance approach.
- (c) For greater certainty, the amendment of the Lifecycle Payments as provided for hereunder shall take into account that:
 - (i) any amendment in the Output Specifications requested by the City pursuant to Section 2.3(c) or Section 3.2(c) shall result in an adjustment in the Lifecycle Payments; and
 - (ii) the City shall be responsible for lifecycle costs for the Additional Vehicles that occur beyond the Maintenance Term.

6.4 Procurement of Non-Project Co Additional Vehicles

- (a) Where the City shall procure any Non-Project Co Additional Vehicles pursuant to Section 4.1(a), Project Co and the City shall agree on a Lifecycle Maintenance Plan in respect of such Non-Project Co Additional Vehicles, which Lifecycle Maintenance Plan shall result in a Variation in accordance with Project Agreement and Schedule 22 - Variation Procedure.
- (b) The City and Project Co shall agree on appropriate amendments to the schedule of Lifecycle Payments set out in Schedule 20 - Payment Mechanism, taking into account:
 - (i) the lifecycle costs for the Non-Project Co Additional Vehicles that occur within the Maintenance Term, as budgeted for in the Lifecycle Maintenance Plan; and
 - (ii) the City shall be responsible for lifecycle costs for the Additional Vehicles that occur beyond the Maintenance Term.

PART 7 HANDOVER MAINTENANCE OF ADDITIONAL VEHICLES

7.1 Handover Maintenance Services

- (a) In the event that the City shall require Project Co to be fully responsible for providing Maintenance Services for any Additional Vehicles pursuant to Section 5.1, the provisions in respect of Handover Maintenance services in Schedule 15-3 – Output Specifications – Maintenance and Rehabilitation Requirements shall apply to such Additional Vehicles, including without limitation, the provisions relating to the Handover Maintenance Period, subject to reasonable adjustment based upon the proportionate age and usage of the Additional Vehicles in relation to the Vehicles, as determined by the City, acting reasonably.

PART 8 TERMINATION OF PROJECT AGREEMENT

8.1 Termination of Project Agreement

- (a) In the event that the Project Agreement shall be terminated pursuant to and in accordance with the provisions thereof and at that time the City shall have exercised the Option to Purchase pursuant to Section 2.1 hereof or otherwise there shall have been a binding agreement between the City and Project Co for the City to purchase Additional Vehicles from Project Co in accordance with this Schedule 35 (collectively, the “**Additional Vehicles Agreement**”), the provisions of this Section 8.1 shall apply.
- (b) If the Project Agreement shall be terminated as a result of a City Event of Default or the exercise of the City’s right to terminate for convenience pursuant to Section 47.3 of the Project Agreement:
- (i) Project Co shall have the right either to continue to carry out the Additional Vehicles Agreement or terminate the Additional Vehicles Agreement by giving the City a written notice within thirty (30) days following the termination of the Project Agreement effective immediately (the “**Additional Vehicles Termination Date**”);
 - (ii) in the event that Project Co shall elect to carry out the Additional Vehicles Agreement in accordance with subparagraph (i) above, the provisions of this Schedule 35 and the Additional Vehicles Agreement shall apply; and
 - (iii) in the event that Project Co shall elect to terminate the Additional Vehicles Agreement in accordance with subparagraph (i) above, the City shall be entitled to a refund of the payments that the City shall have made in respect of the Additional Vehicles on the Additional Vehicles Termination Date.
- (c) If the Project Agreement shall be terminated as a result of neither a City Event of Default nor the exercise of the City’s right to terminate for convenience pursuant to Section 47.3 of the Project Agreement:

- (i) the City shall have the right either to continue to carry out the Additional Vehicles Agreement or terminate the Additional Vehicles Agreement by giving Project Co a written notice within thirty (30) days following the termination of the Project Agreement effective immediately;
 - (ii) in the event that the City shall elect to carry out the Additional Vehicles Agreement in accordance with subparagraph (i) above, the provisions of this Schedule 35 and the Additional Vehicles Agreement shall apply; and
 - (iii) in the event that the City shall elect to terminate the Additional Vehicles Agreement in accordance with subparagraph (i) above, the City shall be entitled to a refund of the payments that the City shall have made in respect of the Additional Vehicles, together with the Default Interest Rate thereon up until the date of repayment by Project Co.
- (d) In the event that Project Co or the City, as the case may be, fails to deliver a written notice within thirty (30) days following the termination of the Project Agreement as provided for in Section 8.1(b) or Section 8.1(c), it shall be deemed that Project Co or the City, as the case may be, elects to terminate the Additional Vehicles Agreement.