

SCHEDULE 41

INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 **Definitions:** In this Schedule 41, the following terms have the following meanings:

(a) **“City Intellectual Property”** means:

- (i) Intellectual Property that is Owned, created, developed or acquired by the City or any City Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Project Co Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
- (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of the City and Project Co to be Owned by Project Co;
- (iii) any Project Data and Drawings that are specified in a Variation or by separate agreement of the City and Project Co to be Owned by the City; and
- (iv) all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City or any Subcontractor alone, jointly with each other or with any other person;

and which is used by the City, or required to be used by Project Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under the Project Agreement.

(b) **“City Personnel”** means persons acting on behalf of the City or employed, engaged or retained by the City in connection with the performance of the City’s obligations in connection with the Project, including the City’s consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the City and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.

(c) **“City Third Party Intellectual Property”** means Intellectual Property Owned by a person other than the City, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by the City to Project Co or a Subcontractor under the Project Agreement and which is required by Project Co or a Subcontractor for the performance of their obligations in respect of the Project or under

the Project Agreement (and includes, for the avoidance of doubt, all Intellectual Property Owned by DB Co which relates in any way to the Stage 2 System)

- (d) **“Developed Intellectual Property”** means Intellectual Property that is:
- (i) created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope;
 - (ii) created, developed or acquired for the purposes of the Project or the System; and
 - (iii) designed based on functional, design and performance specifications provided by the City and is agreed between the City and Project Co to constitute Developed Intellectual Property;

and, for greater certainty, Developed Intellectual Property does not include any Project Co Intellectual Property used to develop or create the Developed Intellectual Property.

- (e) **“Deliverable”** means any item required to be supplied or delivered by Project Co to the City within the Project Scope, including Equipment, Software, Project Data and Drawings and other deliverable requirements specified in Schedule 10.
- (f) **“Delivered”** means, with respect to any Intellectual Property, that such Intellectual Property is:
- (i) a Deliverable;
 - (ii) incorporated, embedded or otherwise included in any Deliverable, the System or any part of the Work;
 - (iii) necessary for the undertaking and completion of the Works, or the Maintenance or Operation of the System, or any Equivalent Activity; or
 - (iv) necessary for the Use by the City or a subsequent Licensee of any Deliverable, the System, any part of the Work or any Intellectual Property in accordance with the rights granted to the City hereunder;

or that the Use of such Intellectual Property for any of the purposes set out in clause (iii) or (iv) above would infringe the Intellectual Property Rights of any Person.

- (g) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (h) **“Equivalent Activity”** means any activity, undertaking or operation relating to the System done by the City, any permitted assignee of the City pursuant to section 59.2 of the Project Agreement or any other Person acting on behalf of or under the authority of the City, which activity, undertaking or operation if done by Project Co would be within

the Project Scope, including activities, undertakings and operations within the scope of the Works and the Maintenance of the System.

- (i) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and having a location within the Province of Ontario from which it will perform its obligations relevant to the Project Agreement.
- (j) **“Escrow Agreement”** means an escrow agreement that meets the requirements of section 4.5 and pursuant to which Escrow Materials are held by the Escrow Agent and the City is designated as a beneficiary party.
- (k) **“Escrow Materials”** means:
 - (i) with respect to Software, the Source Materials for that Software;
 - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software; and
 - (iii) with respect to any Equipment or Vehicle, a complete copy, in English or such other language as is acceptable to the City, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials for such Equipment or Vehicle as may be required for a person skilled in the applicable technology other than the supplier of such Equipment or Vehicle to specify the performance of such Equipment or Vehicle or replacement parts thereof and to further develop, maintain and operate such Equipment or Vehicle without further recourse to the supplier which will include, to the extent such items have been or are created for such Equipment or Vehicles, pseudocode descriptions, flowcharts and state diagrams, and which shall be deemed to include those materials, as revised from time to time.
- (l) **“Escrow Provider”** means:
 - (i) in respect of any Software, the Licensor of that Software;
 - (ii) Project Co in respect of the Project Co Embedded Software;
 - (iii) the applicable Subcontractor in respect of any Subcontractor Embedded Software;
 - (iv) the applicable third party licensor in respect of any Third Party Embedded Software; and
 - (v) in respect of any Equipment or Vehicle, whichever of Project Co and one or more Subcontractors is the supplier of such Equipment or Vehicle.
- (m) **“Escrow Provider Event of Default”** means (i) where the Escrow Provider is Project Co, a Project Co Event of Default has occurred in accordance with Section 45.1 of the Project Agreement, (ii) where the Escrow Provider is a Contractor, a Construction

Contractor Event of Default or Maintenance Contractor Event of Default (both as defined under the applicable Contract) has occurred, and (iii) where the Escrow Provider is a Subcontractor, which is not one of the Contractors, any default has occurred in respect of the Escrow Provider under the applicable Subcontract as a result of which such Subcontract is or may be terminated.

- (n) **“Intellectual Property”** means discoveries, research, developments, designs, industrial designs, improvements, innovations, inventions, software, computer programs and code of all types, layouts, interfaces, applications, tools, databases, hardware, methods, concepts, processes, know-how, formulae, mask works, works subject to copyright, and other technologies, works and creations now existing or developed in the future, whether or not registered or registrable, patentable or non-patentable, or confidential or non-confidential.
- (o) **“Intellectual Property Rights”** means all intellectual property rights of any kind whatsoever, whether or not registered or registrable, including copyright, patents and patent applications, database rights, industrial design registrations, rights in respect of trademarks, trade names, domain names, mask works, trade secrets and confidential information, and all applications, registrations, renewals, extensions, continuations, divisions, reissues, and restorations relating to any such rights (where applicable) now or hereafter in force and effect throughout all or any part of the universe.
- (p) **“Licence”** means a non-exclusive licence, granting the rights and subject to the restrictions and limitations set out in this Schedule 41.
- (q) **“Licensed Intellectual Property”** means, with respect to any Licence, the Intellectual Property and Intellectual Property Rights that are within the scope of that Licence as provided for in this Schedule 41.
- (r) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 41, the City or any permitted assignee under section 59.2 of the Project Agreement that is the holder of that Licence at the relevant time.
- (s) **“Licensor”** means Project Co in respect of the Project Co Licensed Software, the applicable Subcontractor in respect of any Subcontractor Licensed Software, or the applicable third party licensor in respect of any Third Party Licensed Software.
- (t) **“Modification”** means all corrections, modifications, enhancements, improvements, supplements, customizations or derivative works, and **“Modify”** means to make a Modification.
- (u) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property, including all Intellectual Property Rights therein, and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.
- (v) **“Permitted Purposes”** means:

- (i) during the Project Term, performance of the City's obligations under the Project Agreement and any other agreements relating to the Project;
- (ii) during the Project Term, all Operations and any activity, undertaking or operation within the Project Scope, including Design, Construction, Maintenance, Repair, Correction and Renovation of the System;
- (iii) after the Project Term, any Equivalent Activity;
- (iv) both during and after the Project Term, the integration and interoperation of the System, as Designed, Constructed, Operated, Maintained, Repaired, Corrected and Renovated hereunder, with any other light rail project undertaken by the City, including the System Extension;
- (v) both during and after the Project Term, and so long as the Licensee is the City or other Governmental Authority:
 - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the System and the Lands by the City or any Governmental Authority or any emergency service provider; and
 - (B) the development of transportation standards, policies and procedures.
- (w) **"Personnel"** means (i) in reference to Project Co, the Project Co Personnel, (ii) in reference to the City, City Personnel, and (iii) in reference to any Subcontractor, its Subcontractor Personnel;
- (x) **"Project Co Services"** means the services provided by persons employed by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the activities within the Project Scope.
- (y) **"Project Data and Drawings"** mean any and all drawings, blueprints, schematics, sketches, layouts, designs, reports, documents, plans, calculations and other data prepared by Project Co or any Subcontractor during the Project Term for the purposes of the Project or the System.
- (z) **"Project Intellectual Property"** means Intellectual Property that is created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope, and which is created, developed or acquired for the purposes of the Project or the Systems, but excluding Software, Embedded Software, Escrow Materials, Project Data and Drawings, Developed Intellectual Property and Technical Information.
- (aa) **"Project Co Embedded Software"** means computer software that is Owned by Project Co and that:

- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licensed separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (bb) **“Project Co Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not City Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
 - (ii) the Project Co Licensed Software (including the Source Materials therefor);
 - (iii) the Project Co Embedded Software;
 - (iv) Project Co’s Technical Information;
 - (v) the Project Intellectual Property;
 - (vi) the Project Data and Drawings, excluding any Project Data and Drawings that are specified in a Variation or by separate agreement of the City and Project Co to be Owned by the City;
 - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of the City and Project Co to be Owned by Project Co; and
 - (viii) all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City or any Subcontractor alone, jointly with each other or with any other person.
- (cc) **“Project Co Licensed Software”** means any computer software that is Owned by Project Co, is not Project Co Embedded Software and is delivered, supplied or otherwise provided by Project Co under the Project Agreement as or as part of any Deliverable.
- (dd) **“Project Co Personnel”** means persons acting on behalf of Project Co or employed, engaged or retained by Project Co in connection with the performance of Project Co’s obligations under the Project Agreement, including Project Co’s consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of Project Co and its direct and indirect consultants, contractors and Subcontractors.

- (ee) **“Software”** means any Project Co Licensed Software, Subcontractor Licensed Software and Third Party Licensed Software, but does not include Embedded Software.
- (ff) **“Software Maintenance and Support”** means, with respect to any Software, the software maintenance and support services for that Software that form part of the Maintenance Services or that are provided separately under a software maintenance and support agreement with the Licensor of that Software.
- (gg) **“Software Tools”** means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of such Software or Embedded Software in connection with the programming, compiling, maintenance, debugging, analysis, configuration, customization, verification or monitoring of such Software or Embedded Software;
- (hh) **“Source Materials”** means, with respect to any Software or Embedded Software:
- (i) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or such other language as is acceptable to the City, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
 - (ii) a complete copy, in English or such other language as is acceptable to the City, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer’s notes, technical or otherwise, for the Software or Embedded Software as may be required for a person other than the licensor of the Software or Embedded Software, using a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the licensor, which will include, to the extent such items have been or are created for such Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms and which shall be deemed to include those materials, as revised from time to time; and
 - (iii) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software.
- (ii) **“Subcontractor Embedded Software”** means computer software that is Owned by a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;

- (ii) is not licensed separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (jj) **“Subcontractor Intellectual Property”** means, with respect to each Subcontractor:
- (i) Intellectual Property that is Owned, created, developed or acquired by that Subcontractor:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not City Intellectual Property, Project Co Intellectual Property or Third Party Intellectual Property;
 - (ii) the Subcontractor Licensed Software (including the Source Materials therefor);
 - (iii) the Subcontractor Embedded Software;
 - (iv) the Subcontractor’s Technical Information; and
 - (v) all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City or any Subcontractor alone, jointly with each other or with any other person.
- (kk) **“Subcontractor Licensed Software”** means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software and is delivered, supplied or otherwise provided by the Subcontractor under the Project Agreement, the Subcontract as or as part of any Deliverable.
- (ll) **“Subcontractor Personnel”** means, with respect to any Subcontractor, persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with the performance of that Subcontractor’s obligations under the Project Agreement or the Subcontract, including the Subcontractor’s consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the Subcontractor and its direct and indirect consultants, contractors and subcontractors.
- (mm) **“Technical Information”** means technical information relating to any Equipment supplied or Intellectual Property licensed under the Project Agreement, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of such Equipment or Intellectual Property.
- (nn) **“Third Party Embedded Software”** means computer software that is not Owned by the City, Project Co or a Subcontractor and that:

- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licensed separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (oo) **“Third Party Intellectual Property”** means Intellectual Property Owned by a person other than the City, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable, including Third Party Licensed Software and Third Party Embedded Software.
- (pp) **“Third Party Licensed Software”** means any computer software that is not Owned by the City, Project Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable.
- (qq) **“Use”** means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property and the Intellectual Property Rights therein could do, including to load, transmit, access, execute, use, store, display, copy, adapt, translate, incorporate into other materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 41 pursuant to which a Licence is granted.

1.2 Other: A reference in this Schedule 41 to a section or paragraph number is to the section or paragraph of this Schedule 41 bearing that number, unless expressly stated otherwise.

2. SUMMARY OF OWNERSHIP AND LICENCES

2.1 Summary Table: The following is a summary of the Ownership and Licences granted in respect of each category of Intellectual Property referred to in this Schedule 41.

IP Category	City	Project Co	Subcontractor
City Intellectual Property	Ownership	Licence to Use and Modify for the Project	Licence to Use and Modify for the Project
City Third Party Intellectual Property	Licence Rights	Licence to Use and Modify for the Project	Licence to Use and Modify for the Project
Project Co Intellectual Property (excluding items listed separately below)*	Licence to Use and Modify for the System	Ownership	Licence to Use and Modify for the Project (if required for Subcontractor’s work)
Project Co Licensed Software*	Licence to Use for the System	Ownership	Licence to Use for the Project (if required for Subcontractor’s work)

IP Category	City	Project Co	Subcontractor
Project Co Embedded Software*	Licence to Use for the System within the Equipment in which it is embedded	Ownership	Licence to Use for the Project (if required for Subcontractor's work)
Source Materials for Project Co Licensed Software and Project Co Embedded Software	Licence to Use and Modify for the System upon release from escrow	Ownership	Not applicable.
Subcontractor Intellectual Property (excluding items listed separately below)*	Licence to Use and Modify for the System	Licence to Use and Modify for the Project	Ownership
Subcontractor Licensed Software	Licence to Use for the System	Licence to Use for the Project	Ownership
Subcontractor Embedded Software	Licence to Use for the System within the Equipment in which it is embedded	Licence to Use for the Project	Ownership
Source Materials for Subcontractor Licensed Software and Subcontractor Embedded Software	Licence to Use and Modify for the System upon release from escrow	Not applicable	Ownership
Developed Intellectual Property	Unless otherwise agreed, Ownership	Unless otherwise agreed, Licence to Use and Modify for the Project	Licence to Use and Modify for the Project (if required for Subcontractor's work)
Project Intellectual Property	Licence to Use and Modify for the System	Ownership	Licence to Use and Modify for the Project (if required for Subcontractor's work)
Project Data and Drawings	Unless otherwise agreed, Licence to Use and Modify for the System	Unless otherwise agreed, Ownership	Licence to Use and Modify for the Project (if required for Subcontractor's work)
Third Party Intellectual Property	Subject to third party licence agreement, licence to Use and	Subject to third party licence agreement, licence to Use and	Subject to third party licence agreement, licence to Use and

IP Category	City	Project Co	Subcontractor
	Modify for the System	Modify for the Project	Modify for the Project

*Subject to the restriction in relation to “Permitted Purposes” set out in section 4.2(b) below.

2.2 Conflicts: In the event of any conflict between the summary table in section 2.1 and any other provision of this Schedule 41, the latter provision shall govern.

3. OWNERSHIP

3.1 Project Co: Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property, provided that nothing in this Schedule 41 shall transfer to Project Co any Ownership of, or grant to Project Co any right in respect of, City Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property, except for the Licence granted under section 4.1.

3.2 City: The City shall be and remain the sole and exclusive Owner of the City Intellectual Property, provided that nothing in this Schedule 41 shall transfer to the City any Ownership of, or grant to the City any right in respect of, the Project Co Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any City Intellectual Property, except for the Licence granted under section 4.2.

3.3 Subcontractor: As between the City and Project Co, but subject to any agreement to the contrary between Project Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.

3.4 Assignments

(a) If, notwithstanding section 3.1, 3.2 or 3.3, either party (the “**Assignor**”) retains, acquires or owns any right, title or interest, including any Intellectual Property Rights, in or to anything that is to be Owned by another person (the “**Assignee**”) pursuant to section 3.1, 3.2 or 3.3, as applicable, (the “**Assigned Intellectual Property**”), then the Assignor will assign, and for no further consideration and without any further act or formality does hereby irrevocably assign, to the Assignee all of the Assignor’s worldwide right, title and interest in and to the Assigned Intellectual Property, including all Intellectual Property Rights therein, free and clear of all liens, claims, charges or encumbrances, but subject to any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 41.

(b) If and to the extent that the assignment pursuant to subsection 3.4(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest, including Intellectual Property Rights, in and to the Assigned Intellectual Property that is retained, acquired or owned by

the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 41, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee’s ownership of the Trust Rights.

- (c) Project Co will include in each Subcontract provisions equivalent to subsections 3.4(a) and 3.4(b) with respect to City Intellectual Property, Developed Intellectual Property, Project Data and Drawings and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the City remains at all times the sole and exclusive Owner of all City Intellectual Property, including Developed Intellectual Property, Project Data and Drawings agreed to be Owned by the City and any Modifications thereto.

3.5 Personnel: The City and Project Co shall, and Project Co will include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:

- (a) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest, including all Intellectual Property Rights, that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 41 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to sections 3.1, 3.2 and 3.3 and the assignment by that party pursuant to section 3.4 include all right, title and interest, including all Intellectual Property Rights, of its Personnel; and
- (b) by duly executed written agreement, irrevocably waive all non transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to subsection 3.5(a) in favour of the assignee and its successors, assigns and licensees.

3.6 Residuals: Notwithstanding any other provision of the Project Agreement to the contrary, Project Co and each Subcontractor and their respective Personnel shall be free to use and employ their general skills, know how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of the Project and any services performed hereunder, provided that:

- (a) Project Co and each Subcontractor will, and will require their respective Personnel to, not disclose or use the City’s Confidential Information except as expressly permitted pursuant to the terms of the Project Agreement; and

- (b) nothing in this section 3.6 shall be deemed to grant to Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel any right or licence in respect of any City Intellectual Property.

3.7 Use and Modification of Project Data and Drawings: Notwithstanding the Ownership by Project Co or the City of the Project Data and Drawings, the City agrees that:

- (a) the City will not, nor will it permit any other person to, Use or Modify the Project Data and Drawings other than for the Permitted Purposes, without the prior written consent of Project Co; and
- (b) the City will defend, indemnify and save harmless Project Co and Project Co Personnel from and against any Claims and Direct Losses that may be suffered or incurred by Project Co or any Project Co Personnel as a result of the Use or Modification of the Project Data and Drawings other than for the Permitted Purposes.

4. LICENCES

4.1 Licence by City to Project Co

- (a) Subject to subsection 4.1(d), the City hereby grants to Project Co:
- (i) a royalty free, fully paid-up, limited Licence to Use and Modify City Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement, including any Vehicle and Fixed Equipment Warranties;
- (ii) a limited Licence to Use and Modify City Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement, including any Vehicle and Fixed Equipment Warranties.
- (b) Subject to subsection 4.1(d), Project Co may sublicense its rights under the Licence granted in subsection 4.1(a) to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of its obligations under its Subcontract, including any warranty obligations thereunder.
- (c) Except as provided in subsection 4.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under subsection 4.1(a) without the prior written consent of the City, which consent may be given or refused by the City in its absolute and unfettered discretion.
- (d) The Licence of any City Third Party Intellectual Property pursuant to subsection 4.1(a) shall be subject to the terms and conditions of the licence agreement between the City and the licensor of the City Third Party Intellectual Property. The City will provide to Project Co a copy of any such third party licence agreement (which may be redacted as to financial and other terms not relevant to use of the City Third Party Intellectual Property by Project Co and Subcontractors), or where prohibited from doing so by obligations of

confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of the City Third Party Intellectual Property by Project Co and Subcontractors. Project Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party licence agreement (as set out in the copy of the third party licence agreement or summary thereof provided by the City to Project Co) to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract. If requested by the City, Project Co will, and will require any Subcontractor to, execute and deliver to the City and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of the City Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership. If Project Co or its Subcontractors are unable to, or will incur additional costs in order to, comply with any such third party licence agreement or refuse to enter into an agreement with the third party licensor on the terms contemplated in the preceding sentence, the System will be altered through the Variation Procedure to permit Project Co and its Subcontractors to comply with such third party licence agreement and to address the additional costs of compliance, or to exclude the use of such City Third Party Intellectual Property.

- (e) The Licence granted to Project Co under subsection 4.1(a), and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the expiry or termination of Project Co Services and other obligations under the Project Agreement, including in respect of the Vehicle and Fixed Equipment Warranties.
- (f) The City shall ensure that the Licence of the Intellectual Property Owned by DB Co (to the extent it falls within the definition of the City Third Party Intellectual Property) shall not be terminated pursuant to Schedule 24 – Intellectual Property of the DB Co Works Agreement by reason of any failure by the City to make payments due to DB Co under such agreement.

4.2 Licence by Project Co to the City

- (a) Project Co hereby grants to the City a Licence to:
 - (i) Use and Modify Project Co Intellectual Property (excluding Project Co Licensed Software and Project Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licensed Software and the Subcontractor Embedded Software) that is Delivered;
 - (ii) Use Project Co Licensed Software that is Delivered and the Subcontractor Licensed Software that is Delivered; and
 - (iii) Use Project Co Embedded Software and the Subcontractor Embedded Software as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated;

for the Permitted Purposes. The Licences granted pursuant to this section 4.2 in respect of Software and Embedded Software apply to the only object code versions thereof, unless and until the Source Materials for any such Software or Embedded Software are released pursuant to the applicable Escrow Agreement and section 4.5, upon which the Licence granted in respect of such Source Materials pursuant to subsection 4.5(e) shall also apply.

- (b) The Licence granted pursuant to this section 4.2 is limited as follows:
- (i) with respect to Project Co Intellectual Property and Subcontractor Intellectual Property (excluding the Subcontractor Licensed Software and the Subcontractor Embedded Software) that is Delivered in relation to or as part of the Design and Construction Works for the Stage 1 System only, the reference to “Permitted Purposes” in section 4.2(a) shall be interpreted as if the Stage 2 Maintenance Services Variation had not been entered into;
 - (ii) [not used].
- (c) The Licence granted pursuant to this section 4.2 will be irrevocable (except as provided in subsection 4.2(d)), perpetual, royalty free, fully paid-up (upon payment of the first Milestone Payment, Monthly Service Payment or Annual Service Payment (as applicable) in respect of the Deliverable which consists of or incorporates the Licensed Intellectual Property in respect of which the Licence is granted), and permit Use by the City on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, authorized system or otherwise, as part of the System.
- (d) The Licence granted pursuant to this section 4.2 may be transferred, assigned, sublicensed and otherwise disposed of by the City subject to and in accordance with section 59.2 of the Project Agreement, provided that the Licence in respect of Project Co Embedded Software and Subcontractor Embedded Software may only be transferred together with the Equipment in which such software is included, embedded or otherwise incorporated.
- (e) The Licence granted pursuant to this section 4.2 may not be terminated except in the following circumstances:
- (i) the failure of the Licensee to pay the applicable fees as provided for in the Project Agreement for the specific Deliverable which consists of or incorporates the Licensed Intellectual Property; or
 - (ii) the Use or Modification by the Licensee of the Licensed Intellectual Property in any manner or for any purpose not permitted by this Schedule 41;

and in each case such failure is not remedied or such breach is not ceased by the Licensee within 30 days after notice by Project Co to the Licensee demanding that such failure be remedied or such breach cease, provided that any such termination shall apply only to the

Licensed Intellectual Property to which such failure or breach applied and not to any other Licensed Intellectual Property. Except as specifically provided in this subsection 4.2(d), Project Co shall not be entitled to terminate or rescind the Licence granted under this section 4.2, and if the Licensee commits any other breach of or default under this Schedule 41, whether material or not and whether that breach or default is or is not capable of being remedied, Project Co's rights and remedies in respect of that breach or default shall be limited to such rights and remedies other than termination or rescission of the Licence granted under this section 4.2 as may exist at law or in equity, it being acknowledged by Project Co that except as provided in this subsection 4.2(d) the Licence granted under this section 4.2 is perpetual and irrevocable. No breach of or default under this Schedule 41 by the City shall constitute a repudiation of the Licence granted under this section 4.2 by the City.

- (f) The Licensee may provide and disclose the Licensed Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee in connection with the Permitted Purposes, and any such employee, contractor, subcontractor, service provider, outsourcer or other person may exercise all rights to Use and Modify the Licensed Intellectual Property as may be granted by the Licensee to such person within the scope of the Licence granted by Project Co to the Licensee pursuant to this Schedule 41, provided that the Licensee shall be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other person to whom the Licensee provides and discloses the Licensed Intellectual Property, including a breach by any such person of the City's obligations of confidentiality in respect of any Confidential Information that is or is part of Licensed Intellectual Property.
- (g) The Licensee may Use Software that is licensed pursuant to this section 4.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (h) The Licensee may make copies of the Licensed Intellectual Property as may be reasonably necessary for Use and Modification of the Licensed Intellectual Property in accordance with the Licence granted pursuant to this section 4.2. All such copies shall be Owned by Owner of the original Licensed Intellectual Property and licensed to the Licensee pursuant to this section 4.2. Except as permitted by this section 4.2 or the Escrow Agreement, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any Project Co Intellectual Property, Project Co Licensed Software, Project Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licensed Software or Subcontractor Embedded Software.
- (i) The Licensee will not remove from any Licensed Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.
- (j) Project Co will provide maintenance and support for any Project Co Licensed Software and the Subcontractor Licensed Software on terms and conditions acceptable to the City.

4.3 Licences with Subcontractors

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under section 4.2 in respect of the Subcontractor Intellectual Property.
- (b) Project Co will be responsible to obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Project Co to perform its obligations under the Project Agreement, on such terms as are not in breach of or conflict with the Project Agreement.
- (c) Project Co will be responsible to grant to each Subcontractor the right to Use and Modify City Intellectual Property and Project Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with the Project Agreement.

4.4 Third Party Intellectual Property: Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the System or any Deliverable any Third Party Intellectual Property unless:

- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a licence agreement that:
 - (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in section 4.2, including being assignable in accordance with subsection 4.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to the City and an Escrow Agreement in accordance with section 4.5; or
 - (ii) has been approved by the City in writing, which approval may be given or refused by the City in its absolute and unfettered discretion;

and such licence agreement, if not entered into with the City directly, has been assigned or is freely assignable to the City;

- (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a licence agreement, but may be used by the City or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a licence agreement that complies with subsection 4.4(a).

If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the System or any Deliverable other than in compliance with this section 4.4, then in addition to any other rights and remedies the

City may have against Project Co, Project Co will at its sole expense take all necessary steps to comply with this section 4.4 or, if Project Co is unable to do so, to remove such Third Party Intellectual Property and replace it with Project Co Intellectual Property that provides the same functionality and performance as such Third Party Intellectual Property and which will operate within the System without any degradation thereof or adverse effect thereon, and which will be subject to either: (i) the acceptance testing specified in this Project Agreement that applied to all or part of the Deliverable in which the Third Party Intellectual Property was previously embedded or included in the System; or (ii) if no acceptance testing was specified in this Project Agreement as applying to the Deliverable in which the Third Party Intellectual Property was previously embedded or included in the System, acceptance testing of a nature and extent as would be suitable and acceptable in similar circumstances. Upon acceptance thereof, it will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to section 4.2.

4.5 Escrow Agreements

- (a) If requested by the City (which for the purposes of this section 4.5 includes any permitted assignee under section 59.2 of the Project Agreement), at any time during the Project Term, Project Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software, Embedded Software, Equipment or Vehicle (an “**Escrowed Deliverable**”) on terms that comply with this section 4.5, or amend its existing Escrow Agreement for such Software, Embedded Software, Equipment or Vehicle to comply with this section 4.5, and add the City as a beneficiary under the Escrow Agreement.
- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to the City as part of the Project Co Services, Software Maintenance and Support (if purchased by the City) or any other services performed by the Escrow Provider for the City, and in the case of Software the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by the City after a relevant Modification has been made.
- (c) The City will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by the City to which the Escrow Materials relate; in addition, the City may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with the City and the Escrow Agent in the performance of those verification services.
- (d) The City will have the right to obtain from the Escrow Agent a copy of the Escrow Materials upon any of the following events:
 - (i) the Escrow Provider is bankrupt;

- (ii) a trustee, receiver, manager, receiver-manager, custodian or Person having similar authority is appointed for the Escrow Provider or its business and assets and is not released or removed within 30 days after the appointment;
 - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
 - (iv) the Escrow Provider ceases to carry on business;
 - (v) an Escrow Provider Event of Default has occurred; or
 - (vi) in the case of Software, if the City is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given the City notice that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within thirty (30) days after receipt of notice from the City demanding that the Escrow Provider do so; or
 - (vii) in the case of an Escrowed Deliverable other than Software, the Escrow Provider ceases to manufacture and supply the replacements for the Escrowed Deliverable or replacement parts for the Escrowed Deliverable that are within the scope of the Escrow Materials for that Escrowed Deliverable.
- (e) Upon the release of the Escrow Materials to the City, the Escrow Provider grants to the City a Licence to:
- (i) Use the Escrow Materials to enable the City to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licensed Intellectual Property in accordance with the Licence applicable thereto;
 - (ii) make Modifications to the Escrow Materials, subject to the City's indemnity obligations under Sections 56.2(a)(i) and 56.2(a)(iii) of the Project Agreement and subsections 3.7(b) and 4.5(i);
 - (iii) in the case of Escrow Materials for Software and Embedded Software, recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions shall be deemed to form part of the Software or Embedded Software and be subject to the terms hereof;
 - (iv) in the case of Escrow Materials for Equipment and Vehicles, Use the Escrow Materials to design and manufacture, or to have designed, manufactured and supplied, replacement Equipment or Vehicles or parts therefor;
 - (v) make only those copies of the Escrow Materials that the City reasonably requires for the purposes set out in subsections 4.5(e)(i), (ii) and (iii); and

- (vi) reveal the Escrow Materials, or any part thereof, only to agents, employees or independent contractors of the City as reasonably required for the purposes set out in subsections 4.5(e)(i), (ii) and (iii), provided that such agents, employees and independent contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by the City of its obligations of confidentiality in respect of the Escrow Materials.
- (f) The Licence granted pursuant to subsection 4.5(e) will:
- (i) where the Escrow Provider is Project Co or a Subcontractor, form part of the Licence granted pursuant to section 4.2; or
 - (ii) where the Escrow Provider is a third party, form part of the licence granted by such third party to the City;
- and in either case remain in effect for so long as such licence remains in effect.
- (g) The Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this section 4.5.
- (h) The City will pay all fees charged by the Escrow Agent in association with the addition and maintenance of the City as a beneficiary under the Escrow Agreement.
- (i) If the City receives the Escrow Materials, then as between the City and Project Co and notwithstanding any other provision of the Project Agreement, the City will own all Modifications to the Escrow Materials made by or for the City and all Intellectual Property Rights in such Modifications and will indemnify Project Co in respect of any claims made against Project Co as a result of the Modifications unless (i) such Modification was made during the Project Term pursuant to an agreed Variation Confirmation between the Parties or (ii) Project Co or one or more of its Subcontractors otherwise made all or part of the Modifications to the Escrow Materials.
- 4.6 Non-Assertion:** Project Co agrees not to assert, and to require its Subcontractors not to assert, any Intellectual Property Right against the City or any Licensee that would have the effect of diminishing the rights granted to the City or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will require its Subcontractors not to sue, the City or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the System, any Deliverable or any part of the Work within the scope of the Permitted Purposes infringes any Intellectual Property Right of Project Co or any Subcontractor.
- 4.7 Deliveries:** Project Co will deliver to the City all Licensed Intellectual Property at the times specified in the Project Agreement, or where no time is specified, on or before the Final Completion Date or the Termination Date, whichever is first to occur. The media on which Software is delivered and tangible copies or embodiments of any Licensed

Intellectual Property other than Software and will be the property of the City, notwithstanding Project Co's, a Subcontractor's or a third party's Ownership of the Licensed Intellectual Property and the Intellectual Property Rights therein. If any Licensed Intellectual Property requires software in order to Use that Licensed Intellectual Property, Project Co will ensure that such software will be commercially available to the City at a reasonable license fee, or if such software is not commercially available, Project Co will at its cost provide such software and a licence therefor to the City on terms and conditions that do not result in any impairment of the City's Use of the Licensed Intellectual Property in accordance with the Licence therefor.

- 4.8 Pass Through Obligations:** Project Co is responsible to include in all contracts with Project Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for Project Co to grant, or obtain for the City, the Ownership, Licences, rights and benefits provided for in this Schedule 41 and, where required in accordance with this Schedule 41 to deposit or have deposited Escrow Materials for Escrowed Deliverables supplied by such Subcontractors in accordance with section 4.5.
- 4.9 Conflicting Software Licences:** All software referenced in this Schedule 41 will be licensed in accordance with this Schedule 41, and any form of software licence agreement used or provided by a licensor in association with the any such software will be of no force or effect and will not be binding on the City or any other Licensee, even if by its terms such software licence agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software licence agreement that is required in order to install or use the software.
- 4.10 Trademarks and Names:** Neither Party shall use any Trade-Marks owned by the other Party without obtaining a trade-mark licence on terms and conditions mutually satisfactory to the City and Project Co, each acting reasonably, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used except with the prior written consent of the other Party.