

SCHEDULE 35

INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 Definitions: In this Schedule 35, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 35 – Intellectual Property) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Assigned Intellectual Property**” has the meaning given in Section 2.5(a).
- (b) “**Assignee**” has the meaning given in Section 2.5(a).
- (c) “**Assignor**” has the meaning given in Section 2.5(a).
- (d) “**City Intellectual Property**” means:
 - (i) Intellectual Property that is Owned, created, developed or acquired by 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 City and Project Co to be Owned by Project Co;
 - (iii) any other Project Data that is specified in a Variation or by separate agreement of City and Project Co to be Owned by City; and
 - (iv) subject to Section 49.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, City or any Subcontractor alone, jointly with each other or with any other person;

and which is used by 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.

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

- (f) **“City Supplied Third Party Intellectual Property”** means Intellectual Property, Owned by a person other than City, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by City to Project Co under the Project Agreement for the purpose of performing the Works and the Project, including any Background Information.
- (g) **“City Trade-Marks”** means the Trade-Marks Owned by the City.
- (h) **“Copyleft Licence”** means any licence that requires, as a condition of use, modification and/or distribution of Copyleft Materials, that such Copyleft Materials, or other software or content incorporated into, derived from, used, or distributed with such Copyleft Materials: (i) in the case of software, be made available or distributed in a form other than binary (e.g., source code form), (ii) be licensed for the purpose of preparing derivative works, (iii) be licensed under terms that allow the products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be redistributable at no license fee. Copyleft licences include the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, and all Creative Commons “sharealike” licenses.
- (i) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (j) **“Deliverable”** means any item required to be supplied or delivered by Project Co to the City within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedures.
- (k) **“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 Works (excluding the Vehicles) or any part of the work delivered as part of the Project Operations;
 - (iii) necessary for the undertaking, completion and performance of the Project Operations or any Equivalent Activity; or
 - (iv) necessary for the Use by the City or a subsequent Licensee of any Deliverable, the Works, or any part of the work delivered as part of the Project Operations 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.
- (l) **“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 Ownership of which is acquired for the purposes of the Project or the Project Operations; and
- (iii) created or designed based on functional, design and performance specifications provided by the City, or City Personnel, or City Parties;

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

- (m) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (n) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the Works other than as is comprised or contained within the Vehicles.
- (o) **“Equivalent Activity”** means any activity, undertaking or operation relating to the Works done by the City, any permitted assignee of the City pursuant to Section 57.2 of the Project Agreement and/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 the Project Operations.
- (p) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and approved by the City and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (q) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and the City are designated as a beneficiary party.
- (r) **“Escrow Materials”** means:
 - (i) with respect to Software, the Source Materials for that Software; and
 - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software.
- (s) **“Escrow Provider”** means:
 - (i) Project Co in respect of the Project Co Licensed Software;
 - (ii) the applicable Subcontractor in respect of any Subcontractor Licensed Software;
 - (iii) the applicable third party licensor in respect of any Third Party Licensed Software;
 - (iv) Project Co in respect of the Project Co Embedded Software;
 - (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software; and
 - (vi) the applicable third party licensor in respect of any Third Party Embedded Software.

- (t) **“Expanded Purposes”** means (i) the Permitted Purposes; and (b) for any other purpose of the City.
- (u) **“Licence”** means a non-exclusive license or sub-license, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 35.
- (v) **“Licensed Intellectual Property”** means, with respect to any Licence, the Intellectual Property that is within the scope of that Licence as provided for in this Schedule 35.
- (w) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 35, the City or any permitted assignee under Section 57.2 of the Project Agreement that is the holder of that Licence at the relevant time.
- (x) **“Licensor”** means Project Co in respect of the Project Co Licenced Software, the applicable Subcontractor in respect of any Subcontractor Licenced Software, or the applicable third party licensor in respect of any Third Party Licensed Software.
- (y) **“Limited Modification Rights”** in respect of a Software or an Embedded Software, means the right to configure, customize or modify such Software or Embedded Software, without access to the Source Materials thereto, in order to have complete and unrestricted access to, or otherwise Use, all the functionalities within such Software or Embedded Software that is licensed to the City under this Schedule 35.
- (z) **“Modification”** means all corrections, modifications, changes, enhancements, improvements, supplements, customizations or derivative works, and includes the Limited Modification Rights, and **“Modify”** means to make a Modification.
- (aa) **“Open Source Licence”** means any licence meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar licence, including any licence approved by the Open Source Initiative, or any Creative Commons Licence. For the avoidance of doubt, Open Source Licences include Copyleft Licences.
- (bb) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (cc) **“Operational and Maintenance Data”** means the data, logs and recordings created or generated during the operation and maintenance of the Expanded Trillium Line, whether stored in a data warehouse, Vehicle or any other location, including all CCTV recordings, voice recordings (PA, radio, telephone, intercom), SCADA logs, S&TCS logs, IAC logs, Vehicle logs, PVIS messages and other logs and reports related to the operation and maintenance of the Expanded Trillium Line.
- (dd) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.

- (ee) **“Permitted Purposes”** means:
- (i) during the Project Term, performance of the City’s obligations and the exercise of the City’s rights under the Project Agreement and any other agreements relating to the Project;
 - (ii) during the Project Term, the City’s participation in Project Operations and any activity, undertaking or operation within the Project Scope, including its participation in the design, construction, operation, maintenance, repair, correction and renovation of the Works;
 - (iii) after the Project Term, any Equivalent Activity;
 - (iv) both during and after the Project Term, the use, integration and interoperation of the Works with:
 - (A) any existing or other transit projects undertaken by or on behalf of the City or interfacing with the City projects, including any Integrated System Extension; and
 - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, renovation of the Works and any Integrated System Extension;but, for clarity, not any system that is not the Works or an Integrated System Extension;
 - (v) both during and after the Project Term, the integration and interoperation of the Works with any existing or other transit projects undertaken by or on behalf of the City or interfacing with the City projects;
 - (vi) 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 Works and any Integrated System Extension 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.
- (ff) **“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, such Subcontractor’s Personnel.
- (gg) **“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.
- (hh) **“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, City Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, Intellectual Property of the Revenue Vehicle Supplier or Third Party Intellectual Property;
 - (ii) the Project Co Licensed Software;
 - (iii) the Project Co Embedded Software;
 - (iv) Project Co’s Technical Information;
 - (v) the Project Intellectual Property;
 - (vi) the Project Data, excluding: (A) all Operational and Maintenance Data; and (B) any other Project Data 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) Subject to Section 49.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City, City Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (ii) **“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.
- (jj) **“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.
- (kk) **“Project Data”** means:
 - (i) all Design Data;

- (ii) all drawings, reports, documents, plans, formulae, calculations and other data prepared by Project Co relating to the performance of the Maintenance and Rehabilitation Services;
 - (iii) all Operational and Maintenance Data; and
 - (iv) any other materials, documents and/or data prepared by or on behalf of Project Co or Subcontractors in relation to the Project Operations or the Project Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (ll) **“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 Works, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (mm) **“Project Scope”** means the scope of the Project, including the performance of all Project Operations, as defined by the terms of the Project Agreement.
- (nn) **“Project Software”** or **“Software”** means any Project Co Licensed Software, Subcontractor Licensed Software and Third Party Licensed Software, but does not include Embedded Software.
- (oo) **“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 and Rehabilitation Services or that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (pp) **“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.
- (qq) **“Source Materials”** means:
- (A) 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;
 - (B) 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

- (C) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software.
- (rr) **“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.
- (ss) **“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, City Supplied Third Party Intellectual Property, Project Co Intellectual Property, Intellectual Property of the Vehicle Manufacturer or Third Party Intellectual Property;
 - (ii) the Subcontractor Licensed Software;
 - (iii) the Subcontractor Embedded Software;
 - (iv) the Subcontractor’s Technical Information; and
 - (v) subject to Section 49.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City, City Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (tt) **“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.

- (uu) “**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.
- (vv) “**System Architecture and Look and Feel**” means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licensed whether by Project Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the System, including without limitation all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design whether in respect of the stations, stops, landscape and urban design elements, furniture, fit and finish, or any other aspect of the System.
- (ww) “**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.
- (xx) “**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.
- (yy) “**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.
- (zz) “**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.
- (aaa) “**Trade-Mark Licence Agreement**” means the trademark licence agreement entered into between Project Co and the City providing for the license by the City of City Trade-Marks to Project Co, being substantially in the form of Appendix A attached to this Schedule 35.
- (bbb) “**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 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 35 pursuant to which a Licence is granted.

2. OWNERSHIP

2.1 Project Co Intellectual Property: Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property. For certainty, nothing in this Schedule 35 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 3.1.

2.2 City Intellectual Property: The City shall be and remain the sole and exclusive Owner of City Intellectual Property. For certainty, nothing in this Schedule 35 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 3.2.

For greater clarity and without limiting the City's Ownership rights, Project Co acknowledges and agrees that the City shall be entitled to Use and Modify the Developed Intellectual Property (other than 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) in any manner and for any purpose whatsoever, including without limitation in connection with the Expanded Purposes.

2.3 Subcontractor Intellectual Property: 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.

2.4 City Supplied Third Party Intellectual Property: As between the City and Project Co, but subject to any agreement to the contrary between the City and the Owner of any City Supplied Third Party Intellectual Property, the Owner of any City Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any City Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 35 shall transfer to Project Co or any Subcontractor any Ownership of, or grant to Project Co or any Subcontractor any right in respect of, City Supplied Third Party 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 or any City Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

2.5 Assignments

(a) If, notwithstanding Section 2.1, 2.2, 2.3 or 2.4 or Section 49.4 of the Project Agreement, either party (the "**Assignor**") retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the "**Assignee**") pursuant to Section 2.1, 2.2, 2.3, or 2.4 or Section 49.4 of the Project Agreement 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 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 35.

- (b) If and to the extent that the assignment pursuant to Subsection 2.5(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 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 35, 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 2.5(a) or 2.5(b) with respect to: (i) City Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data 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 such property; and (ii) the Intellectual Property of the Revenue Vehicle Supplier and City Supplied Third Party Intellectual Property and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the Revenue Vehicle Supplier or the Licensor, as applicable, remains at all times the sole and exclusive Owner of all such property.

2.6 Personnel: The City and Project Co shall, and Project Co shall 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 that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 35 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3 or 2.4 and Section 49.4 of the Project Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest 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 2.6(a) in favour of the assignee and its successors, assigns and licensees.

3. LICENCES

3.1 Licence by the City to Project Co

- (a) Subject to Subsection 3.1(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;

- (ii) a limited Licence to Use City Supplied 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.
- (b) Subject to Subsection 3.1(d), Project Co may sublicense its rights under the Licence granted in Subsection 3.1(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.
- (c) Except as provided in Subsection 3.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Subsection 3.1(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 Supplied Third Party Intellectual Property pursuant to Subsection 3.1(a) shall be subject to the terms and conditions of the license agreement between the City and the licensor of City Supplied Third Party Intellectual Property. The City will provide to Project Co a copy of any such third party license agreement (which may be redacted as to financial and other terms not relevant to use of City Supplied 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 City Supplied 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 license agreement (as set out in the copy of the third party license 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 City Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.
- (e) [Intentionally deleted].
- (f) The Licence granted to Project Co under: Subsection 3.1(a)(i), and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the expiry or termination of Project Co's services and other obligations under the Project Agreement; Subsections 3.1(a)(ii) and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the earlier of: (A) expiry or termination of Project Co's services and other obligations under the Project Agreement; and (B) the termination of the contract in respect of the applicable City Supplied Third Party Intellectual Property or the City's licence or sublicense rights thereunder.
- (g) The Licences granted to Project Co under Section 3 do not include licences to any City Trade-Marks. The use of any City Trade-Marks shall be governed by the terms of the Trade-Mark Licence Agreement.

3.2 Licence by Project Co to the City

- (a) Project Co hereby grants to the City a Licence to:

- (i) Use and Modify the 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, and have Limited Modification Rights to, the Project Co Licensed Software that is Delivered and the Subcontractor Licensed Software that is Delivered and only in respect of the modules that are Delivered; and
- (iii) Use, and have Limited Modification Rights to, the 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. Subject to Section 3.11, the Licenses granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software.

In addition and notwithstanding any other provision of this Schedule 35, Project Co hereby grants to the City a Licence to Use and Modify any System Architecture and Look and Feel that is not owned by the City pursuant to this Schedule 35, for the Expanded Purposes.

- (b) The Licence granted pursuant to this Section 3.2 will be irrevocable (except as provided in Subsection 3.2(d)), perpetual, royalty free, fully paid-up (upon payment of the fees specified in the Project Agreement for 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, capacity, authorized system or otherwise, as part of or in connection with the Works, or in the case of the System Architecture and Look and Feel, in connection with the Expanded Purposes.
- (c) The Licence granted pursuant to this Section 3.2 may be transferred, assigned, sublicensed and otherwise disposed of by the City subject to and in accordance with Section 57.2 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.
- (d) The Licence granted pursuant to this Section 3.2 may not be terminated except (i) in the event of 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, and such failure is not remedied by the Licensee within sixty (60) days after notice by Project Co to the Licensee demanding that such failure be remedied and (ii) in case of wilful breach of the Licence provided by the Revenue Vehicle Supplier only under the Revenue Vehicle Supply Contract by the Licensee or any authorized sublicensee, provided that any such termination shall apply only to the Licensed Intellectual Property to which such failure applied and not to any other Licensed Intellectual Property. Except as specifically provided in this Subsection 3.2(d), Project Co shall not be entitled to terminate or rescind the Licence granted under this Section 3.2, and if the Licensee commits any other breach of or default under this Schedule 35 or the Project Agreement, 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 3.2 as may exist at law or in equity, it being acknowledged by Project Co that except as provided in this Subsection 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 35 by the City shall constitute a repudiation of the Licence granted under this Section 3.2 by the City.

- (e) 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, except in respect of the System Architecture and Look and Feel in connection with the Expanded 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 35, 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.
- (f) The Licensee may Use Project Software that is licensed pursuant to this Section 3.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (g) 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 3.2 or otherwise this Schedule 35. All such copies shall be Owned by Owner of the original Licensed Intellectual Property and licensed to the Licensee pursuant to this Section 3.2. Except as permitted by this Schedule 35, 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.
- (h) 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.
- (i) Where the City has the right to Modify any Licensed Intellectual Property, Project Co shall ensure that all authors of such Licensed Intellectual Property have waived all moral rights that such authors may have therein in favour of the City and its successors, assigns and licensees.

3.3 Licences with Subcontractors

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 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.

3.4 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 Works 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 license agreement that:
 - (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Subsection 3.2(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; 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 license 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 license 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 license agreement that complies with Subsection 3.4(a).
- (c) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the Works or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies the City may have against Project Co, Project Co will at its sole cost and expense take all necessary steps to comply with this Section 3.4 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 Works without any degradation thereof or adverse effect thereon, and which will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.

3.5 Non-Assertion: Project Co agrees not to assert, and to cause 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 cause its Subcontractors not to sue, the City or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the Works or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of Project Co or any Subcontractor.

- 3.6 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 Project Software is delivered and tangible copies or embodiments of any Licensed Intellectual Property other than Project 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. 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 license therefor to the City and City Parties 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.
- 3.7 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 35.
- 3.8 Conflicting Software Licences:** All software referenced in this Schedule 35 will be licensed in accordance with this Schedule 35, and any form of software license agreement used or provided by a licensor in association with 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 license agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software license agreement that is required in order to install or use the software.
- 3.9 Trade-Marks and Names:** Except as expressly set forth: (a) in the Trade-Mark Licence Agreement; (b) the Project Agreement; or (c) otherwise in a writing executed by each of the City and Project Co, neither Party shall use any Trade-Marks owned by the other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.
- 3.10 Open Source.** Project Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, City Intellectual Property, City Supplied Third Party Intellectual Property, or the Intellectual Property of the Revenue Vehicle Supplier without the prior written consent of the City.
- 3.11 Escrow Agreements**
- (a) If requested by the City (which for the purposes of this Section 3.11 includes any permitted assignee under Section 57.2 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 or Embedded Software (an "**Escrowed Deliverable**") on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or Embedded Software to comply with this Section 3.11, 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 Operations, Software Maintenance and Support (if purchased by or on behalf of the

- City) or any other services performed by the Escrow Provider for the City, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by the City including all Modification thereto made for the benefit of the City.
- (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; or
 - (v) 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 or any of its representatives 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.
- (e) Project Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to the City if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on the City, including without limitation, any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, Project Co shall cause the Escrow Agent to comply with all such obligations.
- (f) Project Co hereby grants, and Project Co shall ensure that all Escrow Providers grant to the City as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope, 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 notwithstanding any contradictory term or condition in the Licence applicable to the Escrowed Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Subsection 3.11(f)(v);
 - (iii) 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) make only those copies of the Escrow Materials that the City reasonably requires for the purposes set out in Subsections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
 - (v) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of the City as reasonably required for the purposes set out in Subsections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and 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.
- (g) The Licence granted pursuant to Subsection 3.11(f) will:
- (i) where the Escrow Provider is Project Co or a Subcontractor, form part of the Licence granted pursuant to Section 3.2; or
 - (ii) where the Escrow Provider is a third party, form part of the license granted by such third party to the City;
- and in either case remain in effect for so long as such licence remains in effect.
- (h) Except where the City (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), 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 3.11.
- (i) The City will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of the City. The Escrow Provider shall have no responsibility or liability arising from any failure of the City to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) 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 in such Modifications.

3.12 Modifications: Notwithstanding the granting of any licence pursuant to this Schedule 35, where the City has made any Modification to the Project Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of Project Co or a

Subcontractor or otherwise authorized by Project Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights,

then,

- (i) any warranty provided by Project Co under the Project Agreement shall not apply solely in respect of such Modification;
- (ii) Project Co and the Subcontractors shall not be liable in respect of any Direct Losses arising in connection with such Modifications where such Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications; and
- (iii) the indemnity obligations of Project Co set out in Section 54.1(g) of the Project Agreement shall not apply in respect of any such Modifications where the Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications.

Appendix A

Form of Trade-Mark Licence Agreement

TRADE-MARK LICENSE AGREEMENT

THIS TRADE-MARK LICENSE AGREEMENT, effective as of [DATE] (the “**Agreement**”), is between [the City] (the “**Licensor**”), and [●] (the “**Licensee**”), and Licensor and Licensee are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. Licensor and Licensee are parties to a Project Agreement dated [DATE] (the “**Project Agreement**”);
2. Capitalized terms used but not defined herein have the meanings assigned to them in the Project Agreement and Schedule 35 thereto;
3. Licensor owns the trade-marks shown on Exhibit A (the “**Marks**”);
4. Licensee proposes to use the Marks in [Ontario] (the “**Territory**”) for the Limited Purpose set forth below; and
5. Subject to the terms and conditions set forth herein, Licensor is willing to grant to Licensee, and Licensee is willing to accept, a non-exclusive license to use the Marks pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant:** Licensor grants to Licensee, and Licensee accepts, a limited, non-transferable, non-exclusive, royalty-free right and license to use the Marks in the Territory for the sole purpose of and only to the extent necessary for the performance by Licensee of the Project Scope and its obligations under the Project Agreement (the “**Limited Purpose**”).
2. **No Right to Sublicense:** Licensee acknowledges and agrees that it does not have the right to sublicense the use of the Marks to any party without the express written consent of Licensor.
3. **Ownership:** Licensee acknowledges Licensor’s ownership of the Marks, and agrees that its use of the Marks shall enure to Licensor’s benefit.
4. **Licensee Covenants:** Licensee acknowledges that Licensor is the owner of all rights in the Marks, and, except as otherwise expressly permitted by this Agreement, Licensee shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Licensor in and to the Marks. Nothing in this Agreement grants, nor shall Licensee acquire, any right, title or interest in or to the Marks or any goodwill associated with the Marks, other than those rights

expressly granted hereunder. Licensee shall affix to all materials that contain or bear one or more of the Marks such legends and notices as Licensor may reasonably require. At Licensor's request, Licensee shall publish a public notice in the following form, or in any other form prescribed by Licensor from time to time, in appropriate publications addressed to the general public: "[MARK] is a trade-mark owned by [LICENSOR] used under license by [LICENSEE]". Licensee undertakes to comply with all relevant laws and regulations pertaining to trade-marks and marking requirements. Licensee shall execute all documents and provide all assistance reasonably required by Licensor to apply for, obtain and maintain registrations for the Marks, and to enforce rights in, and defend any proceedings brought against applications or registrations for, the Marks.

5. **Restrictions On Use:** Notwithstanding anything contained in this Agreement or otherwise, Licensee shall use the Marks only in accordance with the design, description and/or appearance of the Marks as shown on Exhibit A. Licensee may not change or modify the Marks nor join the mark with any other words or designs. Licensee agrees to abide by any reasonable guidelines provided by Licensor from time to time in connection with the use of the Marks.
6. **Quality Standards and Control:** Licensee agrees that use of the Marks by Licensee in association with any products or services (the "**Products**" and "**Services**") will meet or surpass the standards set by Licensor and conveyed to Licensee from time to time for the character and quality of such Products and Services.
7. **Inspection:** At the request of the Licensor, the Licensee shall provide to Licensor for Licensor's review, comment and approval samples of the any Products and sample copies of materials associated with the Products or Services or used to advertise/promote the Products or Services.
8. **Breach of License:** Licensor may notify the Licensee if it objects to any proposed or actual use of the Marks if in Licensor's sole judgment (acting reasonably) Licensor believes that the Marks is being used or proposed to be used in a manner that erodes the goodwill associated with the Marks or otherwise reduces the value of the Marks. If Licensee is so notified, the Parties shall attempt to settle any dispute and Licensee shall, if directed by Licensor to do so, cease using or cease from using the Marks until the time such dispute has been settled between the Parties or otherwise finally determined.
9. **Infringement:** Licensee shall promptly notify Licensor upon becoming aware of any infringement or dilution of the Marks and shall cooperate fully with Licensor to stop such infringement or dilution. Licensor, in its sole discretion, will take any action that it deems necessary to protect the validity of the Marks, and Licensee hereby waives any rights that it may have pursuant to Section 50(3) of the *Trade-marks Act*.
10. **Indemnification:** Licensor does not assume any liability to Licensee, or third parties, for Licensee's goods or services, including the Products and Services, and Licensee shall defend, indemnify and hold harmless Licensor and its affiliates, successors and assigns, and their respective officers, directors, employees, agents, lawyers and representatives from and against any and all claims, causes of action, suits, damages, losses, liabilities, costs and expenses (including, but not limited to, reasonable lawyer fees and expenses), which may be sustained or suffered as a result of any such third party claims or arising from a breach of this Agreement by

Licensee including, without limitation, any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party.

11. **Breach/Use Outside Limited Purpose:** In the event that Licensee breaches any of the terms of this Agreement, including use of the Marks outside the Limited Purpose or Territory as determined by Licensor in its sole discretion, but acting reasonably, Licensor shall have the option to terminate this Agreement immediately, and if so terminated, all subsequent use by Licensee will be unauthorized and subject to legal action. Upon the termination of this Agreement for any reason, all rights in the Marks granted to Licensee hereunder shall automatically revert to Licensor, Licensee shall have no further rights in the Marks, and Licensee shall immediately change its use of the Marks to uses that do not consist of or include the Marks or any words similar to the Marks. In the event of an unauthorized use of the Marks by Licensee, Licensee consents to the immediate entry of a court injunction preventing Licensee's further use of the Marks.
12. **Termination:** This licence granted to Licensee will terminate upon the expiry or termination of Licensee's services and other obligations under the Project Agreement.
13. **No Agency:** The Parties hereto are independent contractors with respect to each other, and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
14. **Assignment:** Licensee may not convey, sublicense, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement without the prior written consent of Licensor, which consent may be unreasonably withheld.
15. **Headings:** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.
16. **Notices:** All notices, requests, demands and other communications made in connection with this Agreement shall be made in the manner set out in the Project Agreement.
17. **Entire Agreement:** This Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral, written, express or implied, between Licensor and Licensee.
18. **No Waiver:**
 - (a) No waiver made or given by a Party under or in connection with this Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
 - (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The

single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

19. **Successors:** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.
20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** The Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of the Project Agreement which was so faxed.

[Remainder of page intentionally blank – Next page is the signature page.]

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

City of Ottawa

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

[LICENSOR]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

EXHIBIT A

Trade-marks

[To be completed once trade-marks identified.]