

SCHEDULE 5
INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 Defined Terms

In this Schedule, in addition to the terms defined elsewhere in this Agreement:

"Off The Shelf Software" means software generally available through commercial suppliers on standard terms and conditions;

"use", in respect of Intellectual Property, will include acts of copying, executing, processing and translating the material in question and incorporating such material with other materials, solely for the purposes of Operation and Maintenance and the term **"right to use"** will be construed accordingly.

2. INTELLECTUAL PROPERTY RIGHTS

2.1 Third Party Intellectual Property

The Concessionaire will not use in the performance of this Agreement or incorporate into the System any Intellectual Property which is subject to the rights of, or known claims by, any Person that conflict with the use of such Intellectual Property for the purposes of the System unless the Concessionaire has entered into agreements with such Person licensing to the Concessionaire the right to use such Intellectual Property or is actively defending such claim in good faith.

2.2 Intellectual Property Licences

Except for commercial software used for general business applications, the Concessionaire will ensure that all licenses for the use of Project Intellectual Property which the Concessionaire obtains from any Person and incorporates in the System will:

- 2.2.1 be non-exclusive and irrevocable (with a right of assignment or sublicense for use in operating and maintaining the System) provided that the licence may be on payment terms no less favourable than those offered to other licensees in the usual distribution practices of such third party licensor or, in the case of Intellectual Property licensed from an Affiliate of the Concessionaire, on commercially reasonable terms;
- 2.2.2 permit the use of Project Intellectual Property for the sole purpose of Operation and Maintenance;
- 2.2.3 contain to the extent reasonably practicable on commercially reasonable terms, provisions to minimize the impact upon the Project or RAVCO of:
 - 2.2.3.1 any default by the licensor of Project Intellectual Property (or any portion thereof) under any such license agreement;

2.2.3.2 the bankruptcy or insolvency of such licensor; and

2.2.3.3 the expiry or termination of any such license.

2.3 Project Data and Project Intellectual Property Rights

Subject to Section 2.5 of this Schedule, the Concessionaire will:

- 2.3.1 ensure that rights of the Concessionaire under any third party license agreements respecting Confidential Information, Project Data, Project Intellectual Property (other than Off The Shelf Software) and ownership rights of the Concessionaire, if any, therein will be fully transferable to RAVCO or its nominee without transfer cost, solely and to the extent necessary for RAVCO to complete the Work or carry out Operation and Maintenance after the Transfer Date;
- 2.3.2 obtain all necessary licences, permissions and consents, and take all requisite actions, to permit the Concessionaire to transfer its rights in any Confidential Information, Project Data and Project Intellectual Property (other than Off The Shelf Software) to RAVCO as required by this Agreement, solely for the purposes of RAVCO completing the Work or carrying out Operation and Maintenance;
- 2.3.3 ensure that there are no restrictions under third party licence agreements on RAVCO's ability to use the transferred rights in respect of Confidential Information, Project Data and any Project Intellectual Property (other than Off The Shelf Software) for the purposes of completing the Work or carrying out Operation and Maintenance after the Transfer Date, subject to:
 - 2.3.3.1 payment by RAVCO after the Transfer Date of any reasonable maintenance fees consistent with those which the Concessionaire was required to pay to the licensor prior to the Transfer Date;
 - 2.3.3.2 commercially reasonable industry standard licensing restrictions such as confidentiality and restrictions on re-sale;
- 2.3.4 transfer, or cause the transfer of, its rights under any third party license agreements and its rights as owner of such Confidential Information, Project Data and Project Intellectual Property (other than Off The Shelf Software), to RAVCO or its nominee in accordance with Section 25.3 of this Agreement, to the extent necessary for RAVCO to complete the Work and or carry out the Operation and Maintenance;
- 2.3.5 make available to RAVCO, at RAVCO's request to the extent the Concessionaire Has Knowledge, the particulars of all Off The Shelf Software which is Project Intellectual Property in sufficient detail to enable RAVCO to locate and independently purchase such Off The Shelf Software.

2.4 Source Code and Documentation

Within 60 days of any Project Intellectual Property (other than Off The Shelf Software) being incorporated into the System, the Concessionaire will:

- 2.4.1 advise RAVCO of such Project Intellectual Property that has been incorporated into the System;
- 2.4.2 deliver final source codes and detailed software documentation for such Project Intellectual Property to an escrow agent acceptable to the licensor, the Concessionaire and RAVCO, each acting reasonably, to be held by that escrow agent pursuant to an agreement containing commercially reasonable terms which conforms to the terms of similar agreements commonly used in respect of the licensing of such Intellectual Property and which will provide for the following:
 - 2.4.2.1 the costs of the escrow agent will be borne by the Concessionaire until the Transfer Date; and
 - 2.4.2.2 the escrowed material will be released, or made accessible, to RAVCO (at no cost to RAVCO) instead of the Concessionaire at any time after the Transfer Date when and if such material would otherwise be released, or made accessible, to the Concessionaire in an accordance with the terms of such escrow agreement.

2.5 Concessionaire's Proprietary Information

- 2.5.1 The Concessionaire is not obliged to transfer to RAVCO rights in respect of:
 - 2.5.1.1 Confidential Information or Intellectual Property that is proprietary to the Concessionaire, a Project Contractor or Subcontractor that is not required for Operation and Maintenance; and,
 - 2.5.1.2 software that is generally used in the design and planning of rapid transit projects, such as but not limited to, software for train simulation studies, power studies, computer-aided drafting, project management and structural design analyses.

3. INTELLECTUAL PROPERTY CLAIMS

3.1 Infringement

The Concessionaire will:

- 3.1.1 to the extent reasonably possible, avoid infringing the Intellectual Property rights of any Person during the performance of the Work, the carrying out Operation and Maintenance or otherwise in connection with the Project; and
- 3.1.2 promptly use reasonable commercial efforts to resolve any Claim of infringement made in respect of any Project Intellectual Property.

3.2 Limitation on Acceptance by RAVCO

RAVCO's acceptance of any aspect of the System, including the Design, the Equipment or any materials which the Concessionaire supplies to the System, will not be construed to relieve the Concessionaire of any obligation under this Agreement.