

SCHEDULE 26

RECORD PROVISIONS

1 General Requirements

- 1.1 DB Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1 ;
 - (b) in accordance with the Project Agreement;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of DB Co's and the Construction Contractor's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format in accordance with the City's designated record keeping system;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable DB Co to comply with DB Co's obligations under Section 26 of the Project Agreement; and
 - (j) in a form that is capable of audit.
- 1.2 DB Co shall retain and maintain all records on the Site in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on the City's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. DB Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As-Built Drawings and Record Drawings) required to be made or supplied pursuant to this Project Agreement on the most updated version of the applicable software and editable in updated base software format (native files in a standard format), and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by DB Co to City, and shall conform to the Output Specifications, Good Industry Practice, and the CAD Standards. All drawings are to be submitted via City's electronic control management system, with one hard copy provided to the City. DB Co shall make or supply drawings and other documents in such form as has been agreed by the Parties

and shall include secure back up facilities. The City shall provide DB Co access to the City's electronic control management system.

- 1.5** Records shall be stored in electronic format within the City's electronic control management system where DB Co shall have access thereto and will continue to have access thereto, such that City will be able to read, copy, download, and search same without licence or payment.
- 1.6** Subject to Sections 1.7 and 1.8, DB Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a minimum period of at least 7 years or such longer period as required by Applicable Law.
- 1.7** DB Co shall notify City if DB Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, City may elect to require DB Co to deliver such records to City, in which case DB Co shall, at the expense of City, deliver such records (with the exception of Sensitive Information) to City in the manner and to the location as City shall specify; or
 - (b) if City fails to notify DB Co of its election pursuant to Section 1.7(a) within such 60 day period, DB Co may, at its expense, destroy such records.
- 1.8** In the event of a termination of this Project Agreement in accordance with its terms, DB Co shall deliver all records that DB Co retains and maintains pursuant to this Schedule 26 to City in the manner and to the location that City shall reasonably specify. City shall make available to DB Co all the records DB Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. DB Co may deliver true copies of original records required by:
- (a) statute to remain with DB Co;
 - (b) DB Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) DB Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9** Where the termination of this Project Agreement arises:
- (a) as a result of a City Event of Default or pursuant to Section 36.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by City; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Final Completion Date or the Termination Date, as applicable (unless a longer period is required by Applicable Law), shall be borne by DB Co.

1.10 Within 30 days after the end of each calendar year (or partial year for the first and last year) of the Project Term, DB Co shall deliver to City a report, as reasonably requested by City in connection with City's financial reporting, detailing to the best of DB Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that DB Co has or may have against City or that may be owing by City to DB Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.

1.11 DB Co shall provide to the City:

- (a) as soon as available and, in any event, within 60 days after the end of the first three fiscal quarters in each fiscal year, the unaudited consolidated financial statements of DB Co, including an unaudited balance sheet and an unaudited statement of income, for each such fiscal quarter, all prepared in accordance with the Applicable Accounting Standards (as defined in the Lending Agreement); and
- (b) as soon as available and, in any event, no more than 120 days after the end of each fiscal year, the annual audited financial statements of DB Co, prepared in accordance with the Applicable Accounting Standards (of the relevant jurisdiction in which the statements are produced) applied on a basis consistent with that of the preceding year,

and all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 42 of the Project Agreement, shall be treated by the City as Confidential Information of DB Co.

2 Records To Be Kept

2.1 Without limiting any other requirement of this Project Agreement, DB Co shall prepare, retain and maintain at its own expense:

- (a) the Project Agreement and the Project Documents, including all amendments to such agreements;
- (b) all records relating to the appointment and replacement of the City Representative and the DB Co Representative;
- (c) any documents, drawings (including, without limitation, the As-Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
- (d) any documents relating to Development Approvals and other DB Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
- (e) all records relating to any statutory inspections of the Project or the Site, including any roadways;
- (f) a complete record of construction, including:

- (i) Construction Access Management Plan and all sub-plans;
 - (ii) Traffic and Transit Management Plans and all sub-plans;
 - (iii) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in Schedule 15 – Output Specifications), including (but not limited to) baseline readings, routine monitoring records, and tunnel construction monitoring records;
 - (iv) records of all pre-construction inspections and post-construction inspections (as described in Schedule 15 – Output Specifications), including a log identifying corrective actions;
 - (v) records of all geotechnical and environmental investigations performed by DB Co (as described in Schedule 15 – Output Specifications), including (but not limited to) records pertaining to the decommissioning of any monitoring wells and the location of any well casings;
 - (vi) Works progress photography;
 - (vii) construction notices or other communications with adjacent businesses, property owners or tenants;
 - (viii) planned and unplanned interruptions of Utility Infrastructure;
 - (ix) a complaints log including responses and any corrective action; and
 - (x) any other items as requested by the City from time to time.
- (g) any notices, reports, results and certificates relating to Substantial Completion and Final Completion and completion of the DB Co Commissioning;
 - (h) all operation and maintenance manuals;
 - (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events, and Relief Events;
 - (j) all documents submitted in accordance with Schedule 22 - Variation Procedure;
 - (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
 - (l) any documents related to a DB Co Change in Ownership or Change in Control;
 - (m) any documents relating to any Refinancing;
 - (n) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) DB Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;

- (ii) DB Co's liabilities or payments for capital taxes based on or measured by the capital of DB Co;
- (iii) the withholdings of any payments by DB Co; or
- (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (o) the financial accounts of DB Co referred to in Section 1.11 above;
- (p) [not used];
- (q) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by DB Co with respect to the Works;
- (r) any documents relating to insurance and insurance claims;
- (s) all Jointly Developed Materials; and
- (t) all other records, documents, information, notices or certificates expressly required to be produced or maintained by DB Co pursuant to this Project Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by DB Co pursuant to Section 2.1.