

SCHEDULE 26**RECORD PROVISIONS****1. GENERAL REQUIREMENTS**

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in this Schedule 26, as follows:
- (a) in accordance with this Schedule 26;
 - (b) in accordance with the Project Agreement;
 - (c) in accordance with the requirements of Schedule 11;
 - (d) compatible with the City's records management systems;
 - (e) in a form that is capable of audit;
 - (f) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (g) in accordance with the most stringent of Project Co's, the Construction Contractors' and the Maintenance Contractor's normal business practices;
 - (h) in accordance with Canadian GAAP;
 - (i) in chronological order; and
 - (j) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 37 of this Project Agreement.
- 1.2 Project Co shall provide and keep updated technical documentation including manufacturing drawings to a level of detail suitable for assembly, maintenance, repairs, overhaul and operation. The technical documentation will also be used by the City or Independent Certifier to conduct design or safety audits and reviews. Technical documentation and manufacturing drawings shall record the final 'As-Built', installed, tested and commissioned system and shall provide sufficient information for the continued safe operation and maintenance of the System. For clarity, Project Co's obligations in this Section 1.2 shall apply only to documentation produced or maintained by Project Co pursuant to its obligations under this Agreement.
- 1.3 For all software Project Co shall provide sufficient information to allow a complete understanding of the functionality and interface requirements. The level of detail shall be sufficient to permit complete verification of all operational, reliability and safety criteria. All supporting design drawings and specifications shall identify the codes and standards with which the design is compliant. Software shall be formally managed using a source

code configuration management tool. For clarity, Project Co's obligations in this Section 1.3 shall apply only to documentation produced or maintained by Project Co pursuant to its obligations under this Agreement.

- 1.4 Project Co shall retain and maintain all records it generates and receives on their system or otherwise on the Site.

2. RECORDS MANAGEMENT PLAN

- 2.1 Project Co shall develop and implement a records management system in accordance with the requirements of this Schedule 26. The records management system shall, at a minimum, include the records management areas covered in Section 4 of this Schedule 26 and be consistent with the practices and principles of the ISO 9001:2008 Standard and any other applicable standards specified in this Schedule 26.
- 2.2 Project Co shall prepare and submit to the City Representative the records management plan outlining the records management system and procedures as per Schedule 10.
- 2.3 Project Co shall produce a configuration management plan, which will form part of the records management plan. The configuration management plan shall identify the methods and procedures that shall be used to achieve the requirements of the configuration management system. The plan shall identify how the interfaces with the multidiscipline teams, design, project construction, sub-suppliers, and management teams are controlled, and the associated procedures, systems and techniques employed to carry out this effectively and efficiently.
- 2.4 Project Co shall ensure that consultants or sub-contractors that are retained where there is a records management responsibility are informed of the document and data control requirements.

3. REQUIREMENTS FOR DOCUMENTS SUBMITTED TO THE CITY

- 3.1 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be on the most updated version of the applicable software and editable in updated base software format, 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 Project Co to the City, and shall conform to the Output Specifications and the City's computer-aided design and drafting standards. Where by prior agreement the City and Project Co have agreed to accept DVD or other storage media, Project 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.
- 3.2 Any drawings or documents that were supplied to the City then at a later date revised shall also be supplied to the City.
- 3.3 Records may, with the consent of the City, not to be unreasonably withheld or delayed, be stored in electronic form if the City has access thereto and will continue to have access

thereto, such that the City will be able to read, copy, download, and search same without licence or payment. Records shall also be available in such a fashion conducive to mass download/upload onto City records management systems.

4. RETENTION OF DOCUMENTS

4.1 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.

4.2 Subject to Sections 4.3 and 4.4 of this Schedule 26, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in this Schedule 26 for a minimum period of the greater of:

- (a) the duration of the Project Agreement; and
- (b) in respect of records before December 31, 2019, such period as ends on December 31, 2026,

or such longer period as required by Applicable Law.

4.3 Project Co shall notify the City if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 4.2 or under Applicable Law for their retention has expired. The Parties agree that:

- (a) within 60 days of such notice, the City may elect to require Project Co to deliver such records to the City, in which case Project Co shall, at the expense of the City, deliver such records (with the exception of Sensitive Information) to the City in the manner and to the location as the City shall specify; or
- (b) if the City fails to notify Project Co of its election pursuant to Section 4.3(a) of this Schedule 26 within such 60 day period, Project Co may, at its expense, destroy such records.

4.4 In the event of termination of this Project Agreement prior to or upon the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to the City in the manner and to the location that the City shall reasonably specify. The City shall make available to Project Co all the records Project Co delivers pursuant to this Section 4.4 of this Schedule 26 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:

- (a) Applicable Law to remain with Project Co;
- (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
- (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.

- 4.5 Where the termination of this Project Agreement arises:
- (a) as a result of a City Event of Default or pursuant to Section 47.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by the 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 Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

5. RECORDS TO BE KEPT

- 5.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules 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 Project 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 to be obtained by Project Co (or otherwise transferred to Project Co on completion of any part of the DB Co Works), and other Project Co Permits, Licences and Approvals, 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 tracks and roadways;
 - (f) any notices, reports, results and certificates relating to Milestone Acceptances, Substantial Completion, Revenue Service Availability and Final Completion of the Design and Construction Works and completion of the Project Co Commissioning;
 - (g) all operation and maintenance manuals;
 - (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
 - (i) all formal notices, reports or submissions made to or received from the City in connection with the provision of the Maintenance Services, the monitoring of performance, the availability of the System Infrastructure, and payment adjustments;

- (j) all certificates, licences, registrations or warranties related to the performance of the Maintenance Services;
- (k) the invoices for Milestone Payments, the Revenue Service Availability Payment and Monthly Service Payments;
- (l) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Project 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) Project Co’s liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (q) the financial accounts of Project Co referred to in this Schedule 26;
- (r) such documents as the City may reasonably require relating to Business Opportunities in which the City has a right or interest;
- (s) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the activities within the Project Scope;
- (t) any documents relating to insurance and insurance claims;
- (u) all records relating to Project Intellectual Property, Developed Intellectual Property and Project Data and Drawings;
- (v) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement; and

- (w) all complaints, inquiries and suggestions received from third parties during the Construction Period and Project Co's responses.
- 5.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to this Schedule 26.
- 5.3 Prior to, or as soon as possible after, completion of the DB Co Works for each of the Stage 2 East System and the Stage 2 West System, the City shall transfer to Project Co, or ensure that DB Co transfers to Project Co, any equivalent or analogous documents prepared by DB Co as part of the DB Co Works and which Project Co reasonably needs to hold for the purposes of delivering its obligations in respect of Maintenance Services for the Stage 2 System.

6. ADDITIONAL SUBMITTAL REQUIREMENTS

- 6.1 Within 30 days after the end of each Contract Year, Project Co shall deliver to the City a report, as reasonably requested by the City in connection with the City's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against the City or that may be owing by the City to Project 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.
- 6.2 Project Co shall provide to the City not later than 30 days after the end of each fiscal quarter and 120 days after the end of each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 52 of this Project Agreement, shall be treated by the City as Confidential Information of Project Co.