

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- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1 of this Schedule 26;
 - (b) in accordance with the Project Agreement;
 - (c) in accordance with the requirements of Schedule 16 – Quality Management;
 - (d) in accordance with the requirements of Good Industry Practice;
 - (e) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (f) in accordance with the most stringent of Project Co's, the Construction Contractor's, the OM&R Contractor's (or, as applicable, any Maintenance and Rehabilitation Contractor's and any Operations Contractor's) normal business practices;
 - (g) in accordance with Canadian GAAP;
 - (h) in chronological order;
 - (i) in electronic format in accordance with the Region's designated record keeping system;
 - (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; and
 - (k) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the System or otherwise on the Lands, in addition to retaining and maintaining records referred to in Section 2.1 of this Schedule 26 in electronic format on the Region's E-Builder system or the Region's designated record keeping system, and shall maintain a log to include a listing of prior versions and current versions of the records referred to in Section 2.1 of this Schedule 26.
- 1.3 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.

- 1.4 Any drawings (including, without limitation, the Record 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 Region, and shall conform to the Output Specifications, Good Industry Practice and the CAD Standards. Where by prior agreement the Region 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.
- 1.5 Records may, with the consent of the Region, not to be unreasonably withheld or delayed, be stored in electronic form if the Region has access thereto and will continue to have access thereto, such that the Region will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8 of this Schedule 26, Project 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 Project Co shall notify the Region if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, the Region may elect to require Project Co to deliver such records to the Region, in which case Project Co shall, at the expense of the Region, deliver such records (with the exception of Sensitive Information) to the Region in the manner and to the location as the Region shall specify; or
 - (b) if the Region fails to notify Project Co of its election pursuant to Section 1.7(a) of this Schedule 26 within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to the Region in the manner and to the location that the Region shall reasonably specify. The Region shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 of this Schedule 26 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute 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.

- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a Region 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 Region; 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.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to the Region a report, as reasonably requested by the Region in connection with the Region'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 Region or that may be owing by the Region 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.
- 1.11 Project Co shall provide to the Region not later than 45 days after the end of the first three fiscal quarters in each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's unaudited financial statements in respect of that period, and no later than 120 days after the end of each fiscal year, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and IFRS, 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 financial statements and other 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 Region as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 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 Region Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the Record Drawings) or submissions in accordance with Schedule 10 – Review Procedure;

- (d) any documents relating to Development Approvals and other Project 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 System, the Public Infrastructure or the Lands, including any roadways and tracks;
- (f) any notices, reports, results and certificates relating to Substantial Completion and Final Completion of the Design and Construction Works and completion of the Project Co Commissioning;
- (g) any notices, reports, results and certificates relating to Public Infrastructure Component Acceptance in respect of each Public Infrastructure Component and Public Infrastructure Works Acceptance in respect of completion of all Public Infrastructure and completion of all acceptance testing relating thereto;
- (h) any notices, reports, results and certificates relating to OMSF/Test Track Readiness Completion in respect of the OMSF/Test Track Work and completion of OMSF/Test Track Commissioning in order to achieve OMSF/Test Track Readiness Completion by the Scheduled OMSF/Test Track Readiness Date;
- (i) all operation and maintenance manuals;
- (j) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (k) all formal notices, reports or submissions made to or received from the Region in connection with the provision of the Maintenance and Rehabilitation Services and Operations Services, the monitoring of performance, the availability of the System and the Public Infrastructure, and payment adjustments;
- (l) all certificates, licences, registrations or warranties related to the performance of the Maintenance and Rehabilitation Services and Operations Services;
- (m) all warranty claims made (including those made in respect of the Vehicles) and list of all major modifications, repairs and replacements of any part of the System and the Public Infrastructure;
- (n) the invoices for Monthly Service Payments;
- (o) all invoices for Milestone Payments together with all documentation submitted to the Region in connection with such payments set forth in Schedule 21 – Construction Period Payments;
- (p) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (q) any documents related to decisions resulting from the Dispute Resolution Procedure;

- (r) any documents related to a Project Co Change in Ownership or Change in Control;
- (s) any documents relating to any Refinancing;
- (t) 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;
- (u) the financial accounts of Project Co referred to in Section 1.11 of this Schedule 26 above;
- (v) such documents as the Region may reasonably require relating to Business Opportunities in which the Region has a right or interest;
- (w) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
- (x) any documents relating to insurance and insurance claims;
- (y) all records relating to any capital and maintenance of the System completed after Substantial Completion, including any changes to the System that affects configuration management of the System;
- (z) a daily log of all Design and Construction Works and Public Infrastructure Works; and
- (aa) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1 of this Schedule 26.