

**SCHEDULE 13**

**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- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 13, as follows:
- (a) in accordance with this Section 1 of this Schedule 13;
  - (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 Saskatchewan Information and Privacy Commissioner;
  - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the OM&R Provider's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format using a project management software support system providing five (5) licences for the Ministry's use;
  - (i) 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 35 of this Project Agreement; and
  - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Bypass or otherwise on the Site, in addition to retaining and maintaining records referred to in Section 2.1 of this Schedule 13 in electronic format using a project management software support system.
- 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 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 Ministry, and shall conform to the Technical Requirements, Good Industry Practice and the Ministry's Drafting Standards Manual. Where by prior agreement the Ministry 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 Ministry, not to be unreasonably withheld or delayed, be stored in electronic form if the Ministry has access thereto and will continue to have access thereto, such that the Ministry 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 13, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 13 for a minimum period of the greater of:

- (a) 7 years; and
- (b) 6 years following Substantial Completion of that portion of the Bypass to which the records relate or, if the records relate to the Project generally, 6 years following Substantial Completion,

or such longer period as required by Applicable Law.

1.7 Project Co shall notify the Ministry if Project Co wishes to destroy any records referred to in this Schedule 13, 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 Ministry may elect to require Project Co to deliver such records to the Ministry, in which case Project Co shall, at the expense of the Ministry, deliver such records (with the exception of Sensitive Information) to the Ministry in the manner and to the location as the Ministry shall specify; or
- (b) if the Ministry fails to notify Project Co of its election pursuant to Section 1.7(a) of this Schedule 13 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 13 to the Ministry in the manner and to the location that the Ministry shall reasonably specify. The Ministry shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 of this Schedule 13 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 Ministry Event of Default or pursuant to Section 46.3 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 Ministry; 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 Ministry a report, as reasonably requested by the Ministry in connection with the Ministry'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 Ministry or that may be owing by the Ministry 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 Ministry not later than 60 days after the end of each fiscal quarter part or all of which falls in a Contract Year, a copy of Project Co's unaudited consolidated financial statements, in respect of that period, and not later than 120 days after the end of such fiscal year, a copy of Project Co's audited financial statements, in respect of that period, in each case, 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 51 of this Project Agreement, shall be treated by the Ministry 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 Ministry Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 9 - Review Procedure;
  - (d) any documents relating to Development Approvals 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 Bypass or the Site, including any roadways;
- (f) any notices, reports, results and certificates relating to Phase One Substantial Completion, Phase One Final Completion, Substantial Completion and Final Completion of the 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 Ministry in connection with the provision of the OM&R Work, the monitoring of performance, the availability of the Bypass, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the performance of the OM&R Work;
- (k) the invoices for Monthly OM&R Payments;
- (l) all documents submitted in accordance with Schedule 19 - 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 GST and PST 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* (Saskatchewan) 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 Section 1.11 of this Schedule 13 above;
- (r) such documents as the Ministry may reasonably require relating to Business Opportunities in which the Ministry 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 Project Operations;
- (t) any documents relating to insurance and insurance claims;
- (u) all Jointly Developed Materials; and
- (v) 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 13.

23480392.1