
DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST¹

This Declaration of Trust is made as of March •, ~~2017~~, 2017², by Computershare Trust Company of Canada³, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the “**Trustee**”).

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage and dispose of certain property ~~and~~ for certain ~~purposes~~ Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS (\$100) contributed by it⁴ on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1 INTERPRETATION

1.1 Definitions

In this Declaration:

(a) “**Administrative Services Agent**” means the agent, ~~if any,~~ appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) “**Administrative Services Agreement**” means any agreement in furtherance of the purpose of the Trust described in section 2.1 of the Declaration that may be entered into from time to time by the Trust with an Administrative Services Agent, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.⁵

(c) “**Assets**” means, collectively, the following:

(i) the \$100 Canadian referred to above;

¹ A basic question is the degree of detail required at 3/31 with respect to (1) identification of payees and related criteria, processes (and by whom) and requirements (2) ascertaining the basis for determining entitlements (e.g., allocations among LDCs) (3) Board governance, selection and processes (including voting/non-voting participation and minimum required Government representation) (4) degree of delegation to the administrative services agent (if almost complete, then will benefit from clear path to such delegation and degree of appropriate oversight) (5) tie-in to the TPA (nature of Government’s rights, as contracting party, donor or residual beneficiary). The degree of detail on these items will need to be sufficient to enable the Government to confidently fund the Project with few if any residual strings on the Trust’s activities post 3/31. (as long as monies are transferred by year –end and province has relinquished ability to control direction or use of the funds except w.r.t. principles), final details of how the trust should be left to be worked out by the trustees)

² Timing under consideration.

³ Is a reach-out to Computershare underway?

⁴ Consider if the initial settlement impacts the Government’s accounting considerations. According to Public Sector Accounting Standards, monies paid by year-end to non-controlled entity would have to be expensed, even where conditions (eligibility criteria) have not been satisfied.

⁵ Likely that Computershare will want an initial administrative services agreement to address the initial issues and documentation matters. Is HO able to act as administrative agent for this purpose?

[12887993.112887993.5](#)

LEGAL_1:43234626.4

- (ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);
- (iii) all property which may at any time be substituted therefor;
- (iv) all capital depreciations to or acquisitions by the Trust;
- (v) all income of the Trust; and
- (vi) all proceeds of disposition of any of (i) through (v) above;

but excludes anything paid out or distributed (whether out of income or in the course of administration or pursuant to the provisions of this Declaration.

(d) “**Beneficiary**” means each individual that, as of a time of determination, satisfies each of the following criteria:

- (i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an **Electricity Invoice** electricity invoice issued in respect of that residence; and
- (ii) the individual is not a HAP Eligible Person; and
- (iii) ~~[the individual has at any time in the prior 12 month period been more than 90 days in arrears in the payment of any amount owing by him or her under an Electricity Invoice.]~~ **[NTD: this section is an example of a bright line test to identify beneficiaries with some precision. Alternates to be discussed.]**

(e) “**Declaration**” means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time.

(f) “**Eligible Measures**” means the measures described in Schedule A. **[NTD: consider using the HAP Program list, plus heat pumps].**

(g) “**Electricity Invoice**” ~~means an invoice for electricity and related services and amounts issued by a Local Distribution Company in respect of a residence located in Ontario.~~

petschna
2017-03-14 17:15:20

Trustees need to have discretion on the beneficiaries. 3.1 has discretion now. start off broad to describe eligible then Trustees id who will actually get.

Commented [NP1]: KPMG to comment re: control

⁶ Need certainty as to time of identification and satisfaction of eligibility criteria.

⁷ Consider adding process related details so there is certainty regarding the beneficiaries. Consider designating the trustees as the decision-maker as to whether a Person is in fact a beneficiary. The approach here may be more appropriately thought of as the “Beneficiary-eligible Class”. The consequence of naming too broad a class of beneficiaries is that the broad group of individuals will have legal standing to challenge the administration of the trust, leading to potential claims by disinterested ratepayers.

⁸ Consider narrowing this group of potential beneficiaries.

⁹ Input required.

Commented [NP2]: Blakes will address through supplementary agreements.

Commented [NP3]: Sounds good.

(g) ~~(h)~~ “**Final Distribution Date**” means ~~●~~¹⁰ [NTD: to discuss residual interest in Trust Assets]¹¹

Commented [NP4]: Wording should reflect low expectation of relevance/likelihood to support accounting.

(h) ~~(i)~~ “**HAP Eligible Person**” [means an “Eligible Person” as defined in Section 3.1 of the document entitled “Conservation First Framework LDC Took Kit” published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016]. [NTD: to be discussed]¹²

(i) ~~(j)~~ “**Local Distribution Company**” means a distributor of electricity to residences located in Ontario.

(j) ~~(k)~~ “**Minister of Energy**” means the Minister under the Ontario *Electricity Act, 1998*, S.O. 1998, as amended.

(k) ~~(l)~~ “**Person**” includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(l) “**Residual Beneficiary**” [to be discussed].¹³

(m) “**Transfer Payment Agreement**” means the Ontario transfer payment agreement dated as of ●, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

(n) “**Trust**” means Affordability Fund Trust, a trust established under the laws of the Province of Ontario pursuant to this Declaration.

(o) “**Trustee**” ~~has the meaning given in the recitals in this Declaration; means Computershare Trust Company of Canada or such person or persons as from time to time assume the role of trustee pursuant to section [●] below.~~

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words “hereto,” “herein,” “hereof,” “hereunder” and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

¹⁰ [Is it possible to leave discretion to the Trustees (or the Government) for an early wind-up, before a specified date? Accounting considerations?]

¹¹ Accounting input required.

¹² Consider if need to hard-code the HAP program at a point in time. What would happen if the HAP program disappeared?

¹³ Accounting considerations.

Commented [NP5]: As little as possible discretion should be left for the Province. Should be at the discretion of the Trustees.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Time of the Essence

~~Time shall be of the essence of this Declaration.~~

1.7 ~~1.8~~ Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 ~~1.9~~ Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee which is discovered after the taking of such action.

SECTION 2 CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of  providing funding to or for the benefit of the Beneficiaries as provided in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Trustee determines that the Assets are to be disbursed to the Beneficiaries in accordance with this Declaration.

Commented [NP6]: Exercising discretion as to how to provide funding (which beneficiaries, how much, appropriate criteria, etc.)

petschna
2017-03-14 17:55:56

\$ to beneficiaries or to 3rd parties for the benefit of

Commented [NP7]: Should Trustees have the option of changing the name? Perhaps this can be the initial name to be confirmed by the Trustee Board, once established?

SECTION 4 POWERS OF THE TRUSTEE

4.1 General

Subject to the limitations and restrictions¹⁸ set out in this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted by this Declaration. The enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject only to the limitations in this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

[NTD: Should the Trust Declaration specify that LDCs will be engaged to help with implementing the purpose?]

Commented [NP9]: Input will be sought, but Trustees hold ultimate decision making authority.

The Trustee shall have the following specific powers and authorities:

(a) *Transfer Payment Agreement.* The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ~~(a)~~ ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange, lease, grant an option and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any deed, conveyance, transfer, lease or other document or instrument in connection with the foregoing.

(c) ~~(b)~~ ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold, manage and use the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable and the Trustee shall have the power to invest the Assets in such investments, and to change such investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

¹⁸ These need to be fleshed out to the point that the Government is satisfied at the time of funding that implementation of the Project is certain and consistent, assuming no ability of the Government to second-guess the scope of the unfettered discretion otherwise vested in the Trustees.

Commented [NP10]: Should be ok given general accountability provisions and principles.

(d) ~~(e)~~ ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time:

- (i) to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for any of them. The Trustee may pay remuneration from the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the foregoing, the Trustee may appoint, employ or retain any Person:
 - (A) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the entering into, amending, performance and enforcement of the Transfer Payment Agreement and any related agreements and contracts,
 - (B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust,
 - (C) to act as attorney in fact, agent or trustee in the purchase, holding or sale or other disposition of Trust Property and in the handling, prosecuting or settling of any claims of the Trust,
 - (D) to value the Assets and determine the net income of the Trust; and
- (ii) to enter into, perform, enforce and amend agreements including, without limitation, Administrative Services Agreements, providing for or relating to the appointment or employment of any of such Persons referred to above containing such terms and provisions (including terms and provisions as to the payment of reasonable fees and expenses) as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(e) ~~(d)~~ ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(f) ~~(+)~~ **Power to Collect, etc.** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(g) ~~(+)~~ **Power to Pay Trustee's Fees.** The Trustee shall be entitled to receive reasonable fees from the Assets as compensation for its services under this Declaration [such fees not to exceed \$[•] on an annual basis], without the approval of any Beneficiary or any court. The Trustee shall be entitled, in its sole and absolute discretion, to withdraw from time to time funds for such purpose from any account of the Trust.

(h) ~~(+)~~ **Power to Pay Taxes.** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(i) ~~(+)~~ **Power to Appoint Auditors.** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.¹⁹

(j) ~~(+)~~ **Form of Accounts.** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(k) ~~(+)~~ **Title to Assets.** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.²⁰

(l) ~~(+)~~ **Delegation of Discretion.** The Trustee shall have the power to delegate the right and power to exercise or concur in the exercise of any discretion or power conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers ~~or~~ employees.

¹⁹ Consider specifying audit format, to be consistent with Government requirements.

²⁰ Consider if this is appropriate.

[agents](#) or to such other Person as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, an Administrative Services Agent and its employees, officers and directors under an Administrative Services Agreement.

(m) ~~⊕~~ **Additional Powers.** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, will be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5 CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee will act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and will exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the “**Standard of Care**”). To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care.²¹ Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

Subject to Section 5.1, the Trustee will not be personally liable in tort, contract or otherwise to ~~the Trust,~~ any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and will not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal²² capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where there the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.²³

²¹ Consider whether trustee should be excused from standard of care in choosing and overseeing delegates.

²² Under consideration. “individual capacity”?

²³ Scope of trustee exculpation to be considered.

5.3 Liability of Trustee under Contracts

~~Any~~Subject to the Trustee conducting itself in accordance with the Standard of Care²⁴, any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the “**Representatives**”), the ~~Trust indemnifies, defends~~Trustee shall indemnify, defend and saves harmless the Trustee and its respective Representatives out of the Assets from ~~and~~, against and in respect of any and all liabilities, ~~including those~~ arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the “**Liabilities**”) of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9 [or of the Standard of Care²⁵ by or on the part of the Trustee or its Representatives]. Further, except as provided in Section 5.2, the Trustee will not be liable ~~to the Trust~~, to any Beneficiary or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets.²⁶ Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

²⁴ Consider level of exculpation.

²⁵ Consider if further exculpation is appropriate.

²⁶ To be discussed, in term of rights contemplated in the TPA to receive claw-back rights.

Commented [NP11]: See TPA references to indemnity (deleted?)

Commented [NP12]: Claw back right to be carefully worded to reflect that Province has given up control.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; **and** (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; (c) the advice and actions of the [Administrative Services Agent and any Local Distribution Company]. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.²⁷

5.7 Resignation of Trustee²⁸

If the Trustee wishes to resign from its role as trustee under this Declaration and be discharged from the trusts and powers reposed in and conferred upon it by this Declaration, it shall give ninety (90) days' prior written notice thereof to the Minister of Energy (or such lesser period as the Minister of Energy may otherwise consent to). Notwithstanding such notice, such resignation shall become effective, and the Trustee shall be discharged from the trusts and powers reposed in and conferred upon it under this Declaration, only upon the appointment of, and the written acceptance of such appointment by, a successor trustee in accordance with Section 5.8. If no successor trustee shall have been appointed or shall have accepted appointment within ninety (90) days after the giving of such notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee at the expense of the Trust.

[NTD: Should this include a mechanism for the removal of a Trustee as referred to in 5.8 and 5.9?]²⁹ 

5.8 Appointment of Successor Trustee³⁰

In the event of the resignation or removal of the Trustee, the [Minister of Energy] shall appoint a successor trustee or trustees by instrument in writing and shall give written notice of such appointment to the Trustee resigning. [NTD: Is it acceptable that new Trustees be chosen by the Minister?]

petschna
2017-03-14 16:44:24

Trustees themselves should develop governance framework which would presumably address this issue.

²⁷ Consider how delegation ought to work, given reliance on the LDCs and Admin for key items such as beneficiary identification and the quantification and administration of their entitlements.

²⁸ Sections 5.7 and 5.8 need to address the mechanism for the replacement of Computershare with individual trustees and then the potential replacement of one or more of such trustees in the future should one or more resign or be removed.

²⁹ Accounting considerations will apply if the Government wishes to have discretion to cause the removal of the Trustees. (Government should not have this control. Trustees to self-regulate).

³⁰ This section should map out the specific criteria applicable to the selection of the individual trustees that the Board of Trustees. The individual governance rules and requirements applicable to Board decisions require significant consideration, so the degree of detail at this time will need to balance practical issues (pre-individual selection) against the need for Government certainty. This should be discussed in detail.

petschna
2017-03-14 16:44:46

agreed.

[NTD: Include mechanism for replacement of Computershare by individual Trustees.]

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed will continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee will not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee will automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act will execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee ceasing to act, will be satisfied from the Assets.

5.11 Execution of Documents

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust.³¹

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees.
[NTD: Quorum details to be added?]³²

SECTION 6 AMENDMENTS AND SUPPLEMENTS

6.1 Amendment

[NTD: Acceptable subject to government consent requirements in TPA?]

³¹ This should probably be extended to the Administrative Services Agent.

³² Board mechanics and governance to be added. Is there a suitable Government precedent, or would the provisions applicable to a Pension Board be a good place to start?

The Trustee shall have the power³³ in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may³⁴:

- (a) add additional Trustees;
- (b) include provisions for the management of the Trust by the Trustees including the requirements and procedures for meetings of Trustees;
- (c) include provisions for the replacement of Trustees;
- (d) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any replacement Administrative Services Agent;
- (e) specify procedures for the identification of Beneficiaries and the exchange of information with Local Distribution Companies in connection with identifying Beneficiaries who will be the recipients;³⁵
- (f) specify procedures for the transfer of funds from the Trust to, or for the benefit of, Beneficiaries;
- (g) [NTD: other expected amendments]

6.2 Automatic Amendment

~~Upon the Trustee ceasing to be a trustee of the Trust, this Declaration will be automatically amended, without any action required to be taken or documentation entered into, to delete any reference to the name of the Trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust.~~

6.2 6.3 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

³³ Practically, Computershare will need a path to feel comfortable with amendments post-March 31. Either provide for detailed criteria (subject to advice and input as to confirming satisfaction of the criteria), all within the failsafe rights of the Trustee, or consider providing for an agreed path to accept the changes that are specified by a third party (if the Government, then likely an accounting issue).

³⁴ Other items may include indemnification and exculpatory provisions of trustees, permitted delegations, rights of termination, creation of residual beneficiary rights in the future, defining classes of beneficiaries, etc.

³⁵ Consider formation of an initial advisory group and the scope of acceptable input to the extent that the Government is represented on that group.

SECTION 7 TERMINATION

7.1 Duration

Subject to Section [7.3](#), ~~and Section 7.2,~~ the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.³⁶

7.2 [\[Termination for Non-Performance\]](#)

[\[NTD: Should there be some mechanism to address non-performance by Tr](#)

7.3 ~~7.2~~ Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion³⁸, may determine and adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs not later than [\[December 31, 2037/ the Final Distribution Date\]](#) (the “Termination Date”). **[Upon the termination of the Trust, the Trustee shall distribute the remaining Assets in cash or in kind or partly in each to the Residual Beneficiary.]** [\[NTD: treatment of residual assets to be discussed.\]](#)³⁹

7.4 [Distribution of Assets on Final Distribution Date](#)

[If the Trust holds Assets on the Final Distribution Date, such assets shall be paid to the Residual Beneficiary⁴⁰ on such date.](#)

SECTION 8 ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

³⁶ [Consider early termination scenarios.](#)

³⁷ [Consider in light of TPA rights \(tie-in\) and accounting considerations.](#)

³⁸ [Consider tie-in to any TPA right of the Government to cause the replacement.](#)

³⁹ [Accounting considerations.](#)

⁴⁰ [Confirm approach, and consider accounting.](#)

The Trustee has executed this Declaration as of the date first written above.

**COMPUTERSHARE TRUST COMPANY
OF CANADA, as Trustee**

By:

Name:

Title:

By:

Name:

Title:

SCHEDULE A
ELIGIBLE MEASURES

Commented [NP13]: Delete costs, insert language so as reflected as suggestions/guidance for consideration.

<u>Basic Measures</u>			<u>Eligible Measure Cost Cap</u>
<u>Block Heater Timer (just timer)– rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark</u>			<u>\$24.20</u>
<u>Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain “live”, independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.</u>			<u>\$45.00</u>
<u>Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).</u>			<u>\$16.50</u>
<u>Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).</u>			<u>\$17.15</u>
<u>Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type</u>			<u>\$16.50</u>
<u>Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.</u>			<u>\$12.10</u>

<u>Basic Measures</u>			<u>Eligible Measure Cost Cap</u>
Hot Water Tank Pipe Insulation - $\frac{1}{2}$ " inside diameter – foam, meets ASTM–C547-00, minimum $\frac{3}{4}$ " thick			<u>\$0.23 per foot</u>
Hot Water Tank Pipe Insulation - $\frac{3}{4}$ " inside diameter - – foam, meets ASTM–C547-00, minimum $\frac{3}{4}$ " thick			<u>\$0.26 per foot</u>
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap			<u>\$31.68</u>
<u><11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))</u>			<u>\$10.00</u>
<u><14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))</u>			<u>\$14.00</u>
<u><23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly: 17W – 23W ENERGY STAR® Qualified LED A Shape (100W))</u>			<u>\$25.00</u>
<u><16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)</u>			<u>\$28.00</u>
<u><16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)</u>			<u>\$35.00</u>

<u>Basic Measures</u>			<u>Eligible Measure Cost Cap</u>
<u><23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)</u>			<u>\$38.00</u>
<u><6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®)</u>			<u>\$25.00</u>
<u>Qualified LED MR 16 / PAR 16 - GU 10 Base)</u>			
<u><11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LEDMR</u>			<u>\$25.00</u>
<u>ENERGY STAR® LED Wet Location Rated PAR lamp < 23 Watt (minimum 1100 Lumen output)</u>			<u>\$45.00</u>
<u>Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)</u>			<u>\$75.00</u>
<u>Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)</u>			<u>\$100.00</u>
<u>Indoor Drying Rack</u>			<u>\$30.00</u>

<u>Extended Measures</u>			<u>Eligible Measure Cost Cap</u>
<u>Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/freezer, no through the door ice service</u>			<u>\$770.00</u>
<u>Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/freezer, no through the door ice service</u>			<u>\$825.00</u>
<u>Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service</u>			<u>\$770.00</u>
<u>Replace freezer with ENERGY STAR qualified freezer -</u>			<u>\$650.00</u>

<u>Extended Measures</u>			<u>Eligible Measure Cost Cap</u>
<u>12-14.4 cubic foot freezer</u>			
<u>Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer</u>			<u>\$650.00</u>
<u>Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark</u>			<u>\$234.00</u>
<u>Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA</u>			<u>\$294.00</u>

<u>Extended Measure s</u>			<u>Eligible Measure Cost Cap</u>
<u>certification mark</u>			
<u>Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark</u>			<u>\$384.00</u>
<u>Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day)</u>			<u>\$264.00</u>
<u>Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier</u>			<u>\$318.00</u>

<u>Extended Measure</u> <u>s</u>			<u>Eligible Measure Cost</u> <u>Cap</u>
<u>Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier</u>			<u>\$374.00</u>
<u>Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of</u>			<u>\$85.00</u>
<u>Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C</u>			<u>\$102.00</u>

<u>Weatherization Measures</u>			<u>Eligible Measure Cost Cap</u>
<u>Comprehensive Draftproofing (caulking, and weather stripping, and application of lifespan of 20 years plus</u> <u>If one or two component polyurethane foams are used, the products and installations must conform to:</u> ☐ <u>CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied Polyurethane Air Sealant Foam, Part 1: Material Specification.</u> ☐ <u>CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.</u> ☐ <u>CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Polyurethane Air Sealant Foam, Part 1: Material Specification</u> ☐ <u>CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.</u> <u>Attic Insulation (including installation):</u>			<u>\$0.86/ kWh</u> <u>(Applied to one year's worth of energy savings)</u>
<u>cellulose: CAN/ULC-S703-01 Amendment 1 Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: Standard for Thermal Insulation Mineral</u>			

<u>Weatherization Measures</u>			<u>Eligible Measure Cost Cap</u>
<u>for Buildings</u>			
<u>Wall Insulation (including installation):</u>			
<u>cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre</u>			
<u>mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings</u> <u>Vapour Barrier:</u> <u>69009-CAN/CGSB-51.34-m86</u> <u>If one or two component polyurethane foams are used, the products and installations must conform to:</u> ☐ <u>CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification.</u> ☐ <u>CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.</u>			

<u>Weatherization Measures</u>			<u>Eligible Measure Cost Cap</u>
<u>Polyurethane Air Sealant Foam, Part 1: Material Specification</u> ☐ <u>CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material</u>			

[NTD: Add details pertaining to heat pumps]

Document comparison by Workshare Compare on Tuesday, March 14, 2017
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