ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust ~~and not in its personal capacity~~

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the trustee of the ~~Recipient~~Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the principles and terms of the Declaration of Trust (defined below).

CONSIDERATION[1]

In consideration of the mutual covenants and considerations contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

Commented [NP1]: Some are just expressed expectations

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms, Conditions/Expectations/Guidance
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

Commented [NP2]: Consider reference to administrative agreement and Trust Declaration.

COUNTERPARTS

Commented [NP3]: Not a gift. To be used by the Trustees in accordance with principles.

[1] Consider if the contributed funds are a gift, in which case this contractual consideration clause and certain other provisions will be modified. For example, if a gift, the nature of the remedies in Article 9.0 will take the form of a revocation right. All of this will need to be tested with the Government's accounting practice.

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

Date

Name: ~~Segre~~Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

Date

Name:

Title:

by:

Date

Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.1 INTERPRETATION AND DEFINITIONS

1.2 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Recipient~~ Affordability Fund 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 ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~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 ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

1.3 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the ~~Recipient~~Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.2 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the ~~Recipient~~Affordability Fund Trust; and

(b) The ~~Recipient~~Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.3 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.4 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0~~; and~~.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date. Furthermore, the Province may terminate the Agreement upon the termination of the Declaration of Trust.

Commented [NP4]: Province cannot have discretion to terminate at sole discretion = control

4.1 FUNDS AND CARRYING OUT THE PROJECT

4.2 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides[2] at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.3 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 8.2];

4.4 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project as outlined in the principles reflected in the Declaration of Trust.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.[3]

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[4]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

[NTD: Confirm deletion of former 5.0 "Acquisition. ... goods, services, or both ... process that promotes best value for money." and former 6.0 Conflict of Interest.]

5.1 REPORTING, ACCOUNTING AND REVIEW

5.2 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

5.3 Record Maintenance. The Recipient will keep and maintain:

(a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and

(b) all non-financial documents and records relating to the Funds or otherwise to the Project[5].

Commented [NP5]: This seems to be a general operating principle (= control). Perhaps it can be reworded to focus on retaining support for expenditures to support future audit, any by the province in accordance with accountability provisions.

[2] Consider terminology.
[3] Consider accounting direction and elaborate? no accounting issue
[4] Consider adding exculpatory provision.
[5] Insert standard of care?

5.4 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, ~~review~~inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 5.2;

(b) keep any copies made pursuant to section 5.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds.

Commented [NP6]: Could refer to records retained as required above.

5.4 **Disclosure.** To assist in respect of the rights set out in section 5.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

5.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

5.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

6.0 COMMUNICATIONS REQUIREMENTS

6.1 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

7.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

7.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

8.0 [INSURANCE][6]

8.1 **[Recipient's Insurance.** The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person ~~that is a trust~~ similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:

(a) the [Indemnified Parties][7] as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;

(b) a cross-liability clause;

[6] Consider appropriate scope for insurance and adapt language.
[7] Definition deleted for the time being.

(c) contractual liability coverage; and

(d) a 30 day written notice of cancellation.

8.2 **Proof of Insurance.** The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 8.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.][**NTD: what risks are to be insured?]**

9.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

9.1 **Events of Default.** An Event of Default will occur if the Recipient breaches[8] any representation, warranty, covenant or other term of this Agreement.

9.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;[9]

(c) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;[10]

(d) demand the repayment of an amount equal to any Funds the Province provided to the Recipient[11]; and

(e) terminate the Agreement[12] at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

9.3 **Opportunity to Remedy.** If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default[13], the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

9.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 9.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

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[8] Consider replacing this broad language with more standard, detailed language for events of default.
[9] Under consideration. This may take the form of a right to revoke the gift, as a contractual obligation to pay remaining amounts (as this suggests) or a reversionary interest in the Declaration of Trust on specified terms and conditions. Input from the Government's accounting perspective will be instructive. The approach will impact the remedies available to the Government, and the strength of this right.
[10] This contractual remedy would not have a clear equivalent in the "trust" context, if a gift. The donor would not typically have rights in the event that the trustee misapplies the gift. Further consideration of this recoupment provision is needed, including to determine if the Government requires this right in this context.
[11] See earlier footnotes.
[12] This is not an effective remedy from the Government's perspective, since the funds will be disbursed on Day 1 and the rights run in favour of the Government.
[13] Consider more conventional, detailed remedial language.

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(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 9.2.

9.5 **When Termination Effective.** Termination[14] under this Article will take effect as set out in the Notice.

10.1 **REPAYMENT**

10.2 **Debt Due[15].** If, pursuant to the Agreement:

(a) the Province demands the payment of any Funds or an amount equal to any Funds from the Recipient; or

(b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not their return or repayment has been demanded by the Province,

Commented [NP7]: Can amount repayable be restricted to situations of recourse, and only after notice?

such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

10.3 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

10.4 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"?]**.

10.5 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.[16]

11.1 ~~9.0~~ **NOTICE**

11.2 ~~9.1~~ **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

11.3 ~~9.2~~ **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

[14] Reconsider, since emphasis is not on a right for the Government to terminate the Agreement.

[15] This is consistent with the idea that the TPA is a contract, rather than a gift. If a contract, the premise will be that the trust property is AFT's contract right to obtain and apply the funds subject to the TPA, whereby the Government retains an interest in the funds. Will this work for accounting purposes? Government interest following transfer is in monitoring that funds are used in accordance with principles with general accountability provisions in place to monitor and provide recourse. Province is not to control, or be perceived to control, use of the funds or the Trust itself.

[16] Consider the nature of any countervailing payments if the funds are paid on Day 1.

11.4 ~~9.3~~ **Postal Disruption.** Despite section ~~9.2~~11.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

12.1 **INDEMNITY** [17]

12.2 **Indemnification.** The Recipient hereby agrees to indemnify [from the Funds][18] and hold harmless the [Indemnified Parties] from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or willful misconduct of the Province.

12.3 **Recipient's Participation**. The Recipient will, at its expense, to the extent requested by the Province, participate in or conduct the defense of any proceeding against any Indemnified Parties and any negotiations for their settlement.

12.4 **Province's Election**. The Province may elect to participate in or conduct the defense of any proceeding by providing Notice to the Recipient of such election without prejudice to any other rights or remedies of Province under the Agreement, at law or in equity. Each Party participating in the defense will do so by actively participating with the other's counsel.

12.5 **Settlement Authority**. The Recipient will not enter into a settlement of any proceeding against any Indemnified Parties unless the Recipient has obtained the prior written approval of Province. If the Recipient is requested by the Province to participate in or conduct the defense of any proceeding, the Province will co-operate with and assist the Recipient to the fullest extent possible in the proceeding and any related settlement negotiations.

12.6 **Recipient's Co-operation**. If the Province conducts the defense of any proceedings, the Recipient will co-operate with and assist the Province to the fullest extent possible in the proceedings and any related settlement negotiations.

Commented [NP8]: Thought this was going to be deleted?

13.0 ~~10.0~~ **SEVERABILITY OF PROVISIONS**

13.1 ~~10.1~~ **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

14.0 ~~11.0~~ **WAIVER**

14.1 ~~11.1~~ **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article ~~9.0~~11.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

[NTD: Confirm removal of old Sections 13 and 14 (Funds at End of Year and Funds on Expiry).]

15.1 ~~12.0~~ **INDEPENDENT PARTIES**

15.2 ~~12.1~~ **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that

[17] Indemnity provision was struck out by Hydro One. Is it needed? Can include non-recourse language such that indemnification is limited to Trust Assets as contemplated by 5.3 of Declaration of Trust?
[18] Consider if these words are needed. The limitation should operate by virtue of the fact that the Government's counterparty is a "trust"

Commented [NP9]: Thought it was supposed to be deleted?

might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

16.0 ~~13.0~~ **ASSIGNMENT OF AGREEMENT OR FUNDS**

16.1 ~~13.1~~ **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

17.0 ~~14.1~~ **LIMITATION OF LIABILITY**

17.1 ~~14.2~~ This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient**~~, whether in tort, contract or otherwise~~**.]** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

18.0 ~~15.1~~ **GOVERNING LAW**

18.1 ~~15.2~~ **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

19.0 ~~16.0~~ **FURTHER ASSURANCES**

19.1 ~~16.1~~ **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

19.2 **Declaration of Trust.** The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.[19]

Commented [NP10]: Can this be control? KPMG to review.

20.1 **JOINT AND SEVERAL LIABILITY**

20.2 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

21.1 ~~17.0~~ **RIGHTS AND REMEDIES CUMULATIVE**

21.2 ~~17.1~~ **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.[20]

22.1 ~~18.0~~ **ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES**

22.2 ~~18.1~~ **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the

[19] Confirm in light of accounting considerations. KPMG to review.
[20] The import of this provision will depend on the character of the payment (revocable gift or contingent payment obligation owed by AFT).

Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

23.1 ~~19.0~~ **SURVIVAL**

23.2 ~~**19.1**~~ **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 5.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 5.2, 5.3, 5.4, 5.5, 5.6, Article 6.0, [Article 8.0], Article 10.0, Article ~~11.0~~12.0, Article ~~12.0~~13.0, Article ~~15.0, Article 18.0~~16.0, Article 19.0~~.~~, Article 20.0. **[NTD: References to be updated/confirmed.]**

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$~~200,000,000~~200,000,000[21]
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date of the Trust. **[NTD: Expiration Date should be after the Final Distribution Date of the Trust so that reporting, etc. remains in place.]**
Insurance	[$2,000,000][22]
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

Commented [NP11]: KPMG to review re: control

[21] Confirm is this is correct. Will the entire amount be funded on Day 1, or might there be additional installments over time? Where not controlled, amounts flowed by year-end will be expensed, regardless of whether conditions/eligibility criteria exist.

[22] Under consideration.

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the implementation of the Requirements (as defined below) and, after implementation of the Requirements, the distribution of the Funds in accordance with the Declaration of Trust.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.[23]

1. Procedures shall be developed and implemented[24] for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

2. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

3. An administrative services agreement with Hydro One Limited or another Person shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.[25]

4. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including~~, without limitation,~~ an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. [26] Funds[27] may be expended to pay the expenses of the Trustee in completing the Requirements.

If the Province does not provide notice in writing to the Recipient within **[120]** days of the Effective Date that the Requirements have been completed to the satisfaction of the Province, then the Province may provide written notice to the Recipient that the Recipient has not accomplished the Project, upon receipt of

[23] Consider degree of detail required by the Government, in terms of the terms and procedures for the program. This description is quite open-ended. The Government should assume that, once the Day 1 funds are disbursed, these will be the only "string" to make sure that the Government's intentions are satisfied. Note that even this formulation may not be consistent with the applicable accounting requirements. To the extent that this description is too vague from the Government's perspective, additional details should be provided to increase clarity and confirmation of expectations.
[24] Confirm in light of accounting considerations. Can the Government maintain discretion over these items post 3/31? See above. Language will need to align with intent.
[25] Confirm in light of accounting considerations. Consider if these "plumbing" items need to be confirmed by the Government.
[26] Confirm in light of accounting considerations.
[27] Confirm source of these funds. Will these be deducted from the trust property, or is there some sort of reimbursement contemplated?

LEGAL_1:43328419.5

Commented [NP12]: AG has raised concerns in the past where agreements could be subject to material change, unless changes would be administrative in nature only. Language in this section appears heavily weighted to 'control' and subject to the Province's discretion, even after the funds may have flowed.

Commented [NP13]: Wording has caused issues previously. Province needs to relinquish control and there can be little or no likelihood of material changes to the nature of the arrangement.

Commented [NP14]: Would prefer to avoid language referencing 'government satisfaction'. Preference is to use wording consistent with guidance on one-time transfers/trusts.

which the Recipient will terminate the Trust in accordance with the Trust Declaration and return the Funds to Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy[28].

The Project will be completed subject to the requirements of the Budget.

Commented [NP15]: Not sure what this means. Ensure no requirement for Province to 'approve' the Trust's Budget, or that the province is directing financing or operating policies and procedures of the Trust.

[28]Confirm in light of accounting considerations. Consider other possible remedies including requiring the Trustee to be replaced..

Commented [NP16]: Should be left up to the other Trustees. Trust must report back to the Province and recourse actions exist, so should be self-regulated.

SCHEDULE "D"

Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to ~~delivery of the program by an electricity distributor to its eligible customers~~the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any LDC [to a Beneficiary]) (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. Only actual (excluding HST) incurred expenditures are eligible for reimbursement.

3. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with to the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

4. Overhead expenses that are not directly related to the Recipient and establishment of the Affordability Fund should not be reimbursed.

5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. In the event of that the Recipient performs any procurements, it is expected that all procurements are expected to reflect the principles of Ontario's Public Service Procurement Directive.

Commented [NP17]: Should adhere to is 'controlling' terminology

Commented [NP18]: Cannot 'dictate' operational or financial policies

Commented [NP19]: Avoid controlling language

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ X

SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria.[29] Quarterly Report requirements ~~include~~will be determined from time to time by the Province, and initially will include[30]:
  - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
  - Total Affordability Fund interest accrued to date
  - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
  - Any challenges or modifications required to the application, funding, or eligibility processes/rules
  - Key activities planned for the upcoming quarter

Requirements for Annual Report[31]

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

[29] Confirm in light of accounting considerations.. Report backs are ok.1
[30] Under consideration.
[31] Under consideration.

- A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
- Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
- Lesson learned.
- Electricity distributor and customer feedback
- Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
- Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
- Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

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Document comparison by Workshare Compare on Tuesday, March 14, 2017 11:20:31 AM

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Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	58
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	225