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**ONTARIO TRANSFER PAYMENT AGREEMENT  
SKILLS DEVELOPMENT FUND – CAPITAL STREAM**

**THE AGREEMENT** is effective as of the [•]

(the “**Agreement**”)

**B E T W E E N :**

**His Majesty the King in right of Ontario,  
as represented by the Minister of Infrastructure and the Minister of Labour,  
Immigration, Training and Skills Development**

(the “**Province**”)

- and -

**The Corporation of the Town of Orangeville**

(the “**Recipient**”)

**CONSIDERATION**

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

**1. ENTIRE AGREEMENT**

**1.1 Schedules to the Agreement**

(a) The following schedules form part of this Agreement:

- Schedule A - Interpretation and Definitions;
- Schedule B - Project Specific Information;
- Schedule C - Key Performance Indicators;
- Schedule D - Payment Plan and Timeline;
- Schedule E - Reports;
- Schedule F - Eligible Costs; and
- Schedule G - Early Disposition Adjustment Amount.

1.2 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral or written, express or implied, concerning the subject matter of this Agreement.

## 2. CONFLICT OR INCONSISTENCY

### 2.1 **Conflict or Inconsistency**

- (a) In the event of a conflict or inconsistency between or among any of the provisions of this Agreement, the following rules will apply:
- (i) the Parties will interpret the schedules to this Agreement in so far as possible in a way that preserves the intention of the Parties as expressed in the body of this Agreement; and
  - (ii) where it is not possible to interpret the schedules to this Agreement in a way that is consistent with the provisions of the body of this Agreement, the body of this Agreement shall prevail over the provisions of the schedules to the extent of any such conflict or inconsistency.

## 3. COUNTERPARTS

3.1 **One and the Same Agreement.** This Agreement may be executed in one or more counterparts. Any set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

## 4. AMENDING THE AGREEMENT

4.1 **Amending the Agreement.** This Agreement may only be amended by a written agreement duly executed by the Parties.

## 5. ACKNOWLEDGEMENTS

### 5.1 **Acknowledgement**

- (a) The Recipient acknowledges and agrees that:
- (i) by receiving the SDF Contribution it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the *Broader Public Sector Accountability Act, 2010* (Ontario), the *Public Sector Salary Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario);

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- (ii) the SDF Contribution is:
    - (A) to assist the Recipient to carry out the Project and not to provide goods or services to the Province; and
    - (B) funding for the purposes of the *Public Sector Salary Disclosure Act, 1996* (Ontario);
  - (iii) the Province is in no way responsible for carrying out the Project or ensuring that the Project is completed;
  - (iv) the Province is bound by FIPPA 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 FIPPA;
  - (v) pursuant to the *Financial Administration Act* (Ontario), any payment of the SDF Contribution is subject to an appropriation from the Ontario Legislature. If the Province does not receive the necessary appropriation, the Province is not obligated to make any such payment and the Province will:
    - (A) terminate the Agreement immediately without liability, penalty, or costs, by giving Notice to the Recipient; and
    - (B) cancel further instalments of the payment of the SDF Contribution; and
  - (vi) payment of the SDF Contribution by the Province does not deem the Project or the Recipient's program delivery during the Intended Use Period or following the completion of the Project to be a pre-apprenticeship program approved by the Minister of Labour, Immigration, Training and Skills Development within the meaning of clause 1(1)(c) of O. Reg 877/21.

## 6. REPRESENTATIONS, WARRANTIES, AND COVENANTS

### 6.1 Recipient Representations and Warranties

- (a) The Recipient represents and warrants to the Province, recognizing that the Province is relying upon such representations and warranties in entering into this Agreement, as of the date hereof, as follows:
  - (i) the Recipient is a validly existing legal entity under the laws of the jurisdiction of its formation and has all requisite power and authority to own its properties and assets (including all Project Assets), to carry on its business where and as it is currently being conducted and as proposed to be carried on. The Recipient is registered, licensed or otherwise qualified to conduct business in the Province of Ontario;

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- (ii) the Recipient has the requisite power, authority and capacity to enter into this Agreement and the execution, delivery and performance by the Recipient of this Agreement has been duly authorized by all necessary action and does not contravene any provision of the Recipient's constating, formation or governance documents or violate any Applicable Law;
  - (iii) this Agreement has been duly executed and delivered by the Recipient and constitutes a legal, valid and binding obligation of the Recipient, enforceable against the Recipient in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Applicable Law limiting the enforcement of creditors' rights generally and by general principles of equity;
  - (iv) no Restricted Person has Direct or Indirect Power or Control over the Recipient and no Restricted Person has Direct or Indirect Power or Control over the decisions, management, actions or policies of the Recipient or in relation to the operation, management and ownership of the Project and Project Assets;
  - (v) to the knowledge of the Recipient, following the exercise of reasonable due diligence, no Restricted Person has a direct or indirect Economic Interest in the Recipient or the Project;
  - (vi) the Recipient has all requisite experience, capacity and expertise necessary to carry out, or cause the carrying out of, the Project in a timely and professional manner in accordance with the terms of this Agreement;
  - (vii) the Recipient is not in breach of or contravening any Applicable Law in such a manner or to an extent so as to constitute a Material Adverse Effect;
  - (viii) the Recipient has sufficient financial capacity and capability to undertake and complete the Project and to (A) fund at least 30% of the Eligible Costs of the Project, and (B) if required to do so in accordance with the terms of this Agreement, to repay 100% of the SDF Contribution;
  - (ix) no Event of Default, or any event that would constitute an Event of Default but for a requirement that a set amount of time pass or that a notice be provided or both, has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement;
  - (x) there is no claim, suit, action or proceeding affecting the Recipient, pending or, to the knowledge of the Recipient, threatened before any Governmental Authority or arbitrator that constitutes a Material Adverse Effect;
  - (xi) the Recipient has a written code of conduct and ethical responsibilities applicable to all persons in the Recipient's organization involved in carrying out the Project or using the SDF Contribution or both and has procedures and policies in place

to ensure the Recipient manages the SDF Contribution prudently and effectively and in accordance with the terms of this Agreement;

- (xii) the Recipient either (A) owns the Project Assets and has good and valid legal and beneficial title to all Project Assets, or (B) where a Project Asset is not owned by the Recipient, the Recipient has a valid contractual right (whether by lease agreement or otherwise) to the use, control and enjoyment of such Project Asset (collectively, “**Project Asset Lease Agreements**” and each, a “**Project Asset Lease Agreement**”) and all such contractual rights are valid and subsisting, in full force and effect, unamended by oral or written agreement, and the Recipient is entitled to the full benefit and advantage of all such contractual arrangements in accordance with their terms. Each Project Asset Lease Agreement is in good standing and there has not been any default by any party under any Project Asset Lease Agreement nor is there any dispute between the Recipient and the counterparty or counterparties to any Project Asset Lease Agreement that could reasonably impact the Recipient’s possession, use and enjoyment of the Project Assets during the Term. To the extent applicable, the Recipient has all necessary consents and approvals under each Project Asset Lease Agreement required in connection with the Project. The Recipient has obtained from each mortgagee of each owner of any Project Asset that is subject of a Project Asset Lease Agreement whose mortgage ranks in priority to that Project Asset Lease Agreement an agreement not to disturb the Recipient’s possession while the Recipient is not in default under the particular Project Asset Lease Agreement. For each Project Asset Lease Agreement, either (X) the Project Asset Lease Agreement has a term length equal to or greater than the Term, or (Y) the Recipient has an irrevocable, unilateral contractual right in favour of the Recipient to extend the duration of the Project Asset Lease Agreement term length to, at a minimum, be equal to the Term; and
- (xiii) unless otherwise specifically provided for in this Agreement, all information the Recipient provided to the Province in support of its request for SDF Capital Stream funds via the Recipient’s application materials or otherwise (including information relating to any eligibility requirements, financial capacity and the Recipient’s Sources and Uses Attestation) was true and complete at the time the Recipient provided it to the Province and, as of the date hereof, there have been no material changes to the accuracy or completeness of any such information previously provided to the Province in connection with the Recipient’s application for SDF Capital Stream funds.

## **6.2 Supporting Proof**

- (a) Upon the request of the Province, the Recipient will provide the Province with proof of the matters referred to in Article 6.

## **6.3 Recipient General Covenants**

- (a) The Recipient shall:

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- (i) comply at all times during the Term with the terms of this Agreement and Applicable Law, and cause all contractors involved with the Project, and where applicable, the Guarantor, to comply with their respective obligations, covenants and agreements, in compliance with this Agreement and Applicable Law;
  - (ii) maintain its corporate or other legal form, rights and powers under the laws of its jurisdiction of formation/existence and duly qualify and remain duly qualified to own and operate its assets (including the Project Assets) and to carry on its business as now conducted and as proposed to be conducted in connection with the Project and in accordance with Applicable Law (including, if applicable, all registrations, licenses or other qualifications or approvals required under Applicable Law for the Recipient to conduct business in the Province of Ontario);
  - (iii) not authorize, take, omit from taking or ratify any action, and not engage in any conduct or allow any personnel of the Recipient to engage in any conduct, that constitutes a Material Adverse Effect;
  - (iv) notify the Province promptly in writing upon the Recipient becoming aware of any Material Adverse Effect;
  - (v) if applicable, take all action necessary to ensure that the Recipient remains in good standing pursuant to each Project Asset Lease Agreement and exercise all contractual rights, options and entitlements to ensure that each Project Asset Lease Agreement has an ultimate term length equal to, at a minimum, the Term;
  - (vi) be accountable to the Province for the use of the SDF Contribution in accordance with the terms of this Agreement; and
  - (vii) ensure that it is registered in Transfer Payment Ontario (TPON) by following the instructions on Ontario.ca and thereafter ensure that all deliverables the Recipient is required to provide to the Province pursuant to the terms of this Agreement are uploaded to TPON within the time frame prescribed for delivery for each such item as provided for in this Agreement.

## 7. TERM OF THE AGREEMENT

### 7.1 Term

- (a) The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless (i) terminated earlier pursuant to Section 5.1(a)(v), Article 17 or Article 18, or (ii) extended in connection with a Force Majeure Event in accordance with Section 30.1 (the “**Term**”). For certainty, the Expiry Date shall automatically be extended by a period of duration equal to any approved increase in timeframe for the completion of the Project Milestone set out in Section 8.6(a)(iii).

## 8. FUNDS AND CARRYING OUT THE PROJECT

### 8.1 Funds Provided

- (a) Provided that the Recipient is in compliance with the terms of this Agreement, the Province will:
- (i) provide the Recipient with the SDF Contribution up to the Maximum SDF Commitment for the sole purpose of the Recipient's carrying out the Project;
  - (ii) provide the Recipient with the SDF Contribution solely in accordance with the payment plan and timelines set forth in Schedule D; and
  - (iii) deposit the SDF Contribution into a bank account the Recipient designates in writing provided that the account:
    - (A) resides at a Canadian financial institution; and
    - (B) is in the name of the Recipient.
- (b) Despite Section 8.1(a)(iii), the Recipient acknowledges and agrees that the Province is under no obligation to make inquiries or to verify or confirm the accuracy of the bank account information provided to the Province under the apparent authority of the Recipient and the Province may rely solely upon the account/routing/transit number or similar identifying number provided to the Province by the Recipient.
- (c) The Recipient represents and warrants to the Province that it has carefully reviewed the definitions and examples of Eligible Costs and Ineligible Costs in light of the Project's funding requirements and further acknowledges and agrees that the Province is under no obligation whatsoever to provide any funding for Eligible Costs in excess of the Maximum SDF Commitment and any cost overruns in connection with the Project are the sole responsibility of the Recipient.

### 8.2 Limitation on Payment of SDF Contribution

- (a) Notwithstanding Section 8.1:
- (i) the Province is not obligated to provide any portion of the SDF Contribution to the Recipient until the requirements of Section 8.8(b) have been satisfied, if applicable, and the Recipient provides (i) with respect to a Design Development Payment, the design drawings described in Section 8.6(a)(i), and (ii) with respect to the balance of the SDF Contribution, evidence of the Project's achievement of Substantial Performance and the reports and deliverables required to be delivered upon Substantial Performance pursuant to Sections 8.5 and 12.2 and the Province's receipt of a Letter of Credit in accordance with Section 14.1; and

- (ii) no portion of the SDF Contribution shall be payable during the occurrence of an Event of Default or following the expiration or termination of this Agreement.

### **8.3 Use of SDF Contribution and other Government Financial Support**

- (a) The Recipient will use the SDF Contribution only for the purpose of paying or satisfying Eligible Costs and not use the SDF Contribution to satisfy any cost or expense other than Eligible Costs.
- (b) The Recipient acknowledges and agrees that:
  - (i) the SDF Contribution shall not exceed 49% of the total Eligible Costs;
  - (ii) the Recipient shall fund at least 30% of the total Eligible Costs from the Recipient's own funding sources, which, for certainty, may include third-party financing;
  - (iii) notwithstanding Section 8.3(d), the Recipient shall not be permitted to receive additional direct financial assistance from any instrumentality of the Province of Ontario in any form whatsoever in respect of Eligible Costs; and
  - (iv) notwithstanding the funding restrictions set forth in this Section, debt financing for the Project provided by Canada Infrastructure Bank shall not be deemed to be Other Government Support and this Section 8.3(b) shall not restrict the Recipient's receipt or use of those funds, including in connection with satisfying Eligible Costs.
- (c) The Recipient will promptly notify the Province within 15 Business Days, (i) in the event of any change to the amount of any Other Government Support set out in the Sources and Uses Attestation or (ii) upon the Recipient's receipt of additional funding for Eligible Costs from the Province of Ontario (other than the SDF Contribution).
- (d) The Recipient is permitted to receive Other Government Support for costs and expenses within the nature of Eligible Costs. However, total government support (calculated including the SDF Contribution, which, pursuant to Section 8.3(b)(i), shall not exceed 49% of total Eligible Costs) cannot exceed 70% of the total Eligible Costs of the Project (the "**Government Support Cap**"). In the event the Recipient receives any Other Government Support in excess of the Government Support Cap during the Term or receives additional funding for Eligible Costs from the Province of Ontario (other than the SDF Contribution), the Province may, in its sole and absolute discretion, (i) reduce the SDF Contribution for the Project by an amount up to 100% of any amount in excess of the Government Support Cap, or (ii) require the Recipient to repay to the Province an amount equal to 100% of any amount in excess of the Government Support Cap (up to the total amount of the SDF Contribution) (such amount, the "**Excess Government Support Amount**") within three months of the Recipient receiving notification from the Province pursuant to this Section 8.3(d). Failure to repay the Excess Government Support Amount within three months shall constitute an Event of Default.



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#### 8.4 Calculation of SDF Contribution

- (a) Following the Project's achievement of Substantial Performance, the Province will calculate the SDF Contribution based on the Eligible Costs set forth in the Eligible Costs Certification Report submitted to the Province by the Recipient and provide Notice to the Recipient of the approved SDF Contribution, which shall be no greater than the Maximum SDF Commitment. The Province shall provide Notice of the SDF Contribution amount within 120 days of the Recipient's submission of the reports and documentation required pursuant to Section 8.4(d) and Schedule E.
- (b) Eligible Costs shall be calculated net of any costs (including taxes) for which the Recipient has received, will receive, or elects to receive, a rebate, credit, refund or funding from a Governmental Authority (other than the Province and, if applicable, debt financing from Canada Infrastructure Bank). Eligible Costs shall be net of all discounts, rebates, deductions, credits and other price reductions and benefits provided to the Recipient which relate to the Eligible Costs incurred.
- (c) Where any Eligible Cost has been paid to a non-arm's length supplier of the Recipient or to the Recipient's own personnel or an Affiliate of the Recipient, the Recipient shall provide (i) invoices or other similar documentation in connection with all such Eligible Costs and (ii) an independent auditor's report substantiating that such goods or services were provided at a cost equivalent to that of an arms' length supplier providing such goods and services. For certainty, no corporate overhead, mark-up or profit (or any similar or analogous cost or compensation) payable to any non-arm's length supplier of the Recipient or the Recipient's own personnel or an Affiliate of the Recipient shall be recoverable as an Eligible Cost.
- (d) The Recipient shall ensure that the Eligible Costs Certification Report prepared by the Cost Consultant certifies that all submitted Eligible Costs: (i) are supported by invoices or other similar documentation; (ii) are net of all discounts, rebates, deductions, credits and other price reductions and benefits provided to the Recipient as well as accounts or trades payable; (iii) are otherwise in compliance with Section 8.4(c); and (iv) with respect to Eligible Costs that are "Administrative Costs" as defined in Schedule F, such Eligible Costs do not exceed 5% of the sum of the costs and expenses in all other categories of Eligible Costs (not including Administrative Costs) submitted by the Recipient for funding in connection with the SDF Contribution as set forth in the Eligible Costs Certification Report. The Recipient shall ensure that evidence of the Cost Consultant's accreditation and a copy of the Cost Consultant's valid license to practice in the Province of Ontario issued by the Association for the Advancement of Cost Engineering (AACE) International Institute or such other issuer reasonably acceptable to the Province in its sole and absolute discretion is attached to the Eligible Costs Certification Report. The Recipient shall provide any additional documentary evidence and records that the Province requires in connection with the Province's review of the Eligible Costs and the Eligible Costs Certification Report.
- (e) The Recipient may, at any time within 180 days of the delivery of the Eligible Costs Certification Report, deliver a further updated Eligible Costs Certification Report

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capturing any additional Eligible Costs incurred following the Recipient's submission of the initial Eligible Costs Certification Report. Upon receipt of an updated Eligible Costs Certification Report delivered in accordance with this Section 8.4(e), the Province will recalculate the total SDF Contribution and provide notice to the Recipient of any adjustment to the SDF Contribution amount. Any increase to the SDF Contribution shall be added to the portion of the SDF Contribution to be paid to the Recipient during the Intended Use Period and, for certainty, shall not exceed the Maximum SDF Commitment.

### **8.5 Completion of Project**

- (a) The Recipient is solely responsible for completing the Project and achieving Substantial Performance.
- (b) The Recipient shall, at its own cost and risk:
  - (i) obtain, maintain, and, as applicable, renew all Permits, Licences, Approvals and Agreements which may be required for the performance of the Project;
  - (ii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms and conditions; and
  - (iii) provide or cause to be provided all security, including all letters of credit, that may be required in connection with any Permits, Licences, Approvals and Agreements.
- (c) The Recipient shall prepare and submit all supporting materials as required by the applicable Governmental Authorities in connection with all Permits, Licences, Approvals and Agreements. The Recipient shall ensure that all such applications and supporting materials are in compliance with all applicable Governmental Authority requirements and comments and in accordance with Good Industry Practice.
- (d) The Recipient shall be responsible for all levies, fees, charges and costs associated with the Permits, Licences, Approvals and Agreements.
- (e) Promptly following the Project's achievement of Substantial Performance, the Recipient shall deliver or cause to be delivered to the Province a certificate of substantial performance published in accordance with the *Construction Act* (Ontario).

### **8.6 Project Milestones**

- (a) The Recipient will:
  - (i) within six months of the Effective Date, deliver to the Province copies of all detailed design drawings (including tender-ready drawings and construction specifications) prepared by the Architect of Record. The Recipient shall ensure that evidence of the Architect of Record's accreditation and a copy of the

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Architect of Record's valid license to practice in the Province of Ontario issued by the Ontario Association of Architects is attached to the detailed design drawings;

- (ii) within 12 months of the Effective Date, commence construction on the Project and within 30 days of the construction start date, provide Notice to the Province setting out the date upon which construction on the Project commenced. Where construction on the Project commenced prior to the Effective Date, the Recipient shall provide Notice to the Province of the date upon which construction commenced on the Effective Date. Construction will be deemed to have commenced on the occurrence of both:
  - (A) the first occurrence at any part of the lands associated with the Project of any of: (i) preparatory works and operations initiated by the Recipient, including clearing, grubbing and grading activities; (ii) activities necessary to secure any part of the lands, to install signage, or for the movement and staging of personnel, equipment, supplies and incidentals at any part of the lands for the establishment of all offices, buildings and other facilities necessary for work on the Project; or (iii) commencing construction activities at any part of the lands; and
  - (B) the completion and submission of an approved registration form and any other notices or documents required under the *Occupational Health and Safety Act* (Ontario) prior to commencing work on the Project; and
- (iii) ensure the Project achieves Substantial Performance within five years of the date construction on the Project is deemed to have commenced in accordance with Section 8.6(a)(ii),

(each of the items in Sections 8.6(a)(i) through 8.6(a)(iii), individually a “**Project Milestone**” and together, the “**Project Milestones**”).

- (b) In the event the Recipient expects to be unable to achieve a Project Milestone within the timing stipulated for such Project Milestone in Section 8.6(a), the Recipient shall provide Notice to the Province no less than 30 days prior to the required completion date of such Project Milestone. The Notice shall provide a detailed explanation for the delay, a detailed remediation plan and a proposed date by which the relevant Project Milestone shall be achieved (such notification, a “**Project Milestone Failure Notification**”). The Province, in its sole and absolute discretion, may accept, reject or propose modifications to any Project Milestone Failure Notification. If accepted by the Province, failure to achieve the Project Milestone by the date proposed in the Project Milestone Failure Notification (or otherwise agreed to in writing by the Recipient and the Province) for achievement of the relevant Project Milestone shall be considered an Event of Default. For certainty, if a Project Milestone Failure Notification is rejected by the Province in accordance with this Section 8.6(b), failure to achieve the associated Project Milestone within the timing set forth in Section 8.6(a) shall be an Event of Default.

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## 8.7 Design Development Payment

- (a) Following the Recipient's satisfaction of the requirements set forth in Section 8.6(a)(i) to the reasonable satisfaction of the Province, the Recipient may request that the Province issue a portion of the SDF Contribution, up to a maximum amount of \$100,000, in connection with Eligible Costs associated with the completion of the design drawings described in Section 8.6(a)(i) (a "**Design Development Payment**").
- (b) In order to request a Design Development Payment, the Recipient shall submit to the Province a payment application prepared by the Cost Consultant that:
  - (i) identifies the amount of Eligible Costs incurred by the Recipient in connection with the requirements of Section 8.6(a)(i);
  - (ii) identifies the requested amount of the Design Development Payment;
  - (iii) provides complete copies of invoices substantiating all such Eligible Costs in connection with the requested Design Development Payment amount; and
  - (iv) provides evidence of the Cost Consultant's accreditation and attaches a copy of the Cost Consultant's valid license to practice in the Province of Ontario issued by AACE International Institute or such other issuer reasonably acceptable to the Province in its sole and absolute discretion.
- (c) The Province shall pay the Design Development Payment in accordance with Section 8.1(a) within 180 days of the date the Province confirms to the Recipient that the Recipient's payment application delivered in accordance with Section 8.7(b) is satisfactory.
- (d) The Parties acknowledge and agree that any Design Development Payment forms part of the SDF Contribution and is not in addition to the SDF Contribution.

## 8.8 Indigenous Consultation

- (a) The Recipient will promptly notify the Province:
  - (i) of contact by Indigenous Communities regarding the Project; or
  - (ii) of any Indigenous archaeological resources that are discovered in relation to the Project,and, in either case, the Recipient agrees that the Province may direct the Recipient to take such actions as the Province may require. The Recipient will comply with the Province's direction.
- (b) If the Province determines that consultation with Indigenous Communities is required, the Recipient will comply with directions provided by the Province to consult with

Indigenous Communities that might be affected by the Project. The Province may also require the Recipient to suspend certain site activities pending completion of the required consultation. The Province has no obligation to pay the SDF Contribution for any Project requiring consultation until the Province is satisfied that any legal duty to consult has been met.

- (c) Provided that the Recipient has been exercising reasonable, good faith efforts to comply with its obligations in this Section 8.8, the time frames for achieving Project Milestones set forth in Section 8.6 may be reasonably extended by the duration of any delay that is the sole result of delays resulting from any legal duty to consult that are outside of the direct control of the Recipient. In such a scenario, the Recipient shall provide a Project Milestone Failure Notification and the Province shall exercise its discretion to accept reasonable modifications to the timeline for achievement of a Project Milestone that are the result of delays as described in this Section 8.8(c).

## 9. RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

### 9.1 Acquisition

- (a) For all Eligible Costs in connection with goods and services for which the Recipient applies the SDF Contribution, the Recipient will ensure that such goods and services are acquired by the Recipient through a process that promotes the best value for money.

### 9.2 Disposition and Control of Project Assets

- (a) During the Term, the Recipient shall ensure that it maintains Asset Control at all times. For the purposes of this Agreement, "**Asset Control**" means, with respect to all Project Assets, either:
- (i) the Recipient owns the Project Assets and has good and valid legal and beneficial title to all Project Assets; or
  - (ii) where a Project Asset is not owned by the Recipient, the Recipient is party to a Project Asset Lease Agreement that complies at all times with the requirements set out in Section 6.1(a)(xii) with respect to Project Asset Lease Agreements and the Recipient complies at all times with Section 6.3(a)(v).
- (b) During the Term, the Recipient shall not, without the Province's prior written consent, which may be conditioned (including by requiring assignment and novation of this Agreement to any potential assignee of a Project Asset) or withheld in the Province's sole and absolute discretion:
- (i) sell, lease, sublease, license, or otherwise dispose of any Project Asset; provided, for certainty, that leasing, subleasing or licensing arrangements with respect to a Project Asset with a training service provider that are in furtherance

of the Project and the Recipient's achievement of the Minimum KPI Standard shall be permitted with the written consent of the Province;

- (ii) consent to or otherwise agree to any of the foregoing; or
- (iii) voluntarily terminate a Project Asset Lease Agreement or allow for a Project Asset Lease Agreement to be terminated as a result of the occurrence of a Recipient default under the terms of any such Project Asset Lease Agreement,

(the occurrence of any of the events described in Sections 9.2(b)(i) to 9.2(b)(iii), without the consent of the Province, an "**Early Disposition**").

### **9.3 Early Disposition Adjustment Amount**

- (a) In the event of an Early Disposition, the Recipient shall return all SDF Contribution amounts paid to the Recipient as of the date of the Early Disposition. In the event an Early Disposition occurs during the Intended Use Period, the Recipient shall also pay to the Province, concurrently with the repayment of all SDF Contribution amounts, the Early Disposition Adjustment Amount calculated in accordance with Schedule G.
- (b) In the event the Province exercises its sole discretion to grant its consent to a transaction impacting the Recipient's Asset Control in accordance with Section 9.2(b), and provided the Recipient fully complies with all conditions and requirements established by the Province in connection with providing its consent to such transaction, the Province may in its sole and absolute discretion waive the requirement for a Recipient to comply or fully comply with Section 9.3(a).

## **10. CONFLICT OF INTEREST**

### **10.1 Conflict of Interest Includes**

- (a) For the purposes of this Article 10, a conflict of interest includes any circumstances where:
  - (i) the Recipient;
  - (ii) a Project Partner; or
  - (iii) any person who has the capacity to influence the Recipient's decisions,has outside commitments, relationships, or financial interests that could interfere, or could be seen by a reasonable person to interfere, with the Recipient's objective, unbiased, and impartial judgment relating to the Project, the use of the SDF Contribution, or both.

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## 10.2 **No Conflict of Interest**

- (a) The Recipient will carry out the Project and use the SDF Contribution without an actual, potential, or perceived conflict of interest unless:
  - (i) the Recipient:
    - (A) provides Notice to the Province disclosing the details of the actual, potential, or perceived conflict of interest; and
    - (B) requests the consent of the Province to carry out the Project with an actual, potential, or perceived conflict of interest;
  - (ii) the Province provides its consent to the Recipient carrying out the Project with an actual, potential, or perceived conflict of interest; and
  - (iii) the Recipient complies with any terms and conditions the Province may prescribe in its consent.

## 11. **INTENDED USE AND KEY PERFORMANCE INDICATORS**

### 11.1 **Intended Use**

- (a) The Recipient shall ensure that the Project operates in accordance with its Intended Use throughout the Intended Use Period.
- (b) During the Intended Use Period, the Recipient may submit to the Province no more than three written proposals for modifications to either the Intended Use of the Project or the KPIs for the Project (each written proposal, an “**Intended Use Proposal**”). Each Intended Use Proposal shall provide a detailed explanation and rationale for the proposed change to either the Intended Use of the Project or the KPIs. All Intended Use Proposals shall be prepared at the Recipient’s sole cost and expense and any such costs shall not constitute Eligible Costs. Any proposed modification to the Intended Use of the Project or the KPIs must be consistent with the SDF Capital Guideline. The Province may accept or reject, in whole or in part, any Intended Use Proposal in its sole and absolute discretion.
- (c) If the Province accepts all or any portion of an Intended Use Proposal in accordance with Section 11.1(b), the Parties shall amend, modify or replace Schedule B or Schedule C accordingly to reflect any modification or revision to the Intended Use of the Project or the KPIs.

### 11.2 **Key Performance Indicators**

- (a) The Recipient shall ensure that:

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- (i) during the first year of the Intended Use Period, the Project achieves at least 50% of the Training Volume Target as set out in Schedule C; and
  - (ii) during the second to fifth years of the Intended Use Period, the Project achieves at least 80% of the applicable Training Volume Target as set out in Schedule C in each such annual period,
- (collectively, the “**Minimum KPI Standard**”).
- (b) In the event the Recipient’s Interim KPI Report reasonably suggests that the Project is expected to fail to meet the Minimum KPI Standard for a particular annual period, the Recipient will submit a written remediation plan that provides a detailed explanation for the current performance status of the Project and the measures the Recipient shall implement or cause to be implemented to ensure the Project achieves the Minimum KPI Standard (such plan, a “**KPI Remediation Plan**”). The Province shall have the opportunity to review and comment on the KPI Remediation Plan and the Recipient shall revise the KPI Remediation Plan to reflect the reasonable feedback of the Province.
  - (c) The Recipient acknowledges and agrees that:
    - (i) failure to achieve at least 25% of the Project’s Training Volume Target in any annual period during the Intended Use Period shall, in the sole and absolute discretion of the Province, constitute an Event of Default (a “**KPI Standard Failure**”); and
    - (ii) failure of the Project to achieve the Minimum KPI Standard in any two consecutive annual periods shall, in the sole and absolute discretion of the Province, constitute an Event of Default.

## 12. MONITORING, REPORTING, ACCOUNTING, AND REVIEW

### 12.1 Province Includes

- (a) For the purposes of this Article 12, “**Province**” includes any auditor, agent or authorized representative the Province may identify, including for clarity a third party engaged by the Province.

### 12.2 Reporting Requirements

- (a) The Recipient will:
  - (i) at the Recipient’s sole cost and expense, submit to the Province via the TPON online portal:
    - (A) all Reports in accordance with the timelines and content requirements set out in Schedule E; and



- (B) any other reports, documents or information in accordance with any timelines and content requirements the Province may reasonably specify from time to time; and
- (ii) ensure that all Reports and other reports are:
  - (A) completed to the satisfaction of the Province; and
  - (B) signed by an authorized signing officer of the Recipient.

### **12.3 Record Maintenance**

- (a) The Recipient will keep and maintain in accordance with Applicable Law and this Agreement, proper accurate and complete books of account and such other records and material, information and data as may be necessary or customarily prepared or maintained in connection with the Project, this Agreement and Eligible Costs, and to allow and facilitate the purposes of the Province's rights of inspection and audit contemplated by this Agreement (collectively, the "**Agreement Records**"). Without limiting the generality of the foregoing, Agreement Records shall include all financial records (including invoices and evidence of payment and copies of associated agreements, purchase orders and bills of sale to which such invoices relate) relating to Eligible Costs, the SDF Contribution or otherwise relating to the Project in a manner consistent with either the International Financial Reporting Standards (IFRS), Accounting Standards for Private Enterprises (ASPE), Accounting Standards for Non-Profit Organizations (ASNPO), Public Sector Accounting Standards (PSAS) or any comparable accounting standards that apply to the Recipient which are validated by CPA Ontario.
- (b) Unless otherwise directed in writing by the Province, the Recipient will maintain the Agreement Records until the latest of:
  - (i) the date that is seven years after the Expiry Date;
  - (ii) the date on which all disputes, claims, suits, actions or proceedings and other matters relating to this Agreement are resolved; and
  - (iii) such later date as necessary to comply with Applicable Law.

### **12.4 Audit and Inspection**

- (a) The Province may, at its own expense, upon forty-eight hours' Notice to the Recipient and during normal business hours enter upon the Recipient's premises (physically or virtually) to audit and inspect from time to time during the Term and for a period of seven years thereafter all Agreement Records (in any form or notation and however stored).
- (b) Subject to the provisions of Article 20, the Province will have all rights and authority necessary or incidental to conducting any audit or inspection pursuant to this

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Agreement, including the right to make copies of and take extracts from any Agreement Records and any and all other books of account and other records material, information and data (financial or otherwise and in any form or notation and however stored) provided or made available to the Province in connection with this Agreement or the Project. The Province will use commercially reasonable efforts to ensure that any audit or inspection conducted pursuant to this Article 12 will not unreasonably interfere with the Recipient's ability to complete the Project in accordance with the terms of this Agreement.

### **12.5 Cooperation**

- (a) The Recipient will, and will cause the Recipient's personnel, contractors and subcontractors to, at all times cooperate with and provide such assistance to the Province as the Province reasonably requires in order to exercise and carry out the Province's rights in this Article 12, including by:
- (i) ensuring that the Province has access to the records and documents pertaining to the Project wherever they are located;
  - (ii) assisting the Province to copy records and documents pertaining to the Project;
  - (iii) providing to the Province, in the form the Province specifies (acting reasonably), any information pertaining to the Project the Province identifies;
  - (iv) during the Intended Use Period, providing the Province with access to trainees for the purposes of the Province completing trainee satisfaction surveys; and
  - (v) carrying out any other activities in furtherance of the Province's audit and inspection rights the Province requests.

### **12.6 No Control of Records**

- (a) No provision of the Agreement will be construed to give the Province any control whatsoever over any of the Recipient's records.

### **12.7 Auditor General**

- (a) The Province's rights under this Article 12 are in addition to any rights provided to the Auditor General pursuant to Section 9.1 of the *Auditor General Act* (Ontario).

### **12.8 Access and Inspection**

- (a) The Recipient acknowledges and agrees that from and after the date hereof, and at all times until the end of the Intended Use Period, the Province shall on reasonable prior notice have full and free access to the Project site(s) for the purposes of inspecting the Project site(s) for the purposes of determining the Recipient's compliance with this Agreement. The Recipient may exercise reasonable control over such access for

reasons of safety and operational efficiency. For the purpose of such inspection, the Province may at all reasonable times perform any measurement, test or other observation or investigation. The Recipient shall provide reasonable cooperation (but without obligation to incur material expense) to facilitate any such measurements, tests or other observations or investigations. The Province shall conduct all such measurements, tests, observations and investigations in a manner that will not materially disturb, interfere with or disrupt the Project.

## **12.9 No Duty to Audit or Inspect; No Limitation on Rights or Remedies**

- (a) Notwithstanding the Province's rights contained in this Agreement, the Province will not have any duty or obligation to the Recipient or to any other person to conduct or cause to be conducted any audit, inspection or monitoring, and will not incur any liability or obligation whatsoever for:
- (i) not conducting or causing to be conducted any audit, inspection or monitoring;
  - (ii) not conducting or causing the same to be conducted carefully, completely or properly; or
  - (iii) not addressing or otherwise acting upon any matters or information resulting from or identified during any audit, inspection or monitoring.

The fact that any audit, inspection or monitoring may not have been conducted or caused to be conducted by the Province will not relieve the Recipient of any of its obligations, covenants, agreements or liability under this Agreement.

- (b) Nothing in this Article 12 will limit any of the Province's rights and remedies with respect to any circumstances, failures or other events upon which the Province may rely as a basis for the Province's increased monitoring or termination of this Agreement in accordance with its terms or any other recourse or remedy available to the Province whatsoever.
- (c) The Province's receipt of any document or record required or submitted by the Recipient under this Agreement shall not be deemed to connote acceptance or approval of its content, or derogate from or diminish the Recipient's obligations, and the Province shall not be liable or be under any obligation to the Recipient or any person whatsoever merely by reason of receipt of a Recipient's document or record.

## **13. COMMUNICATIONS REQUIREMENTS**

### **13.1 Acknowledge Support**

- (a) Unless the Province directs the Recipient to do otherwise, the Recipient will in each of its public-facing, Project-related publications and communications, whether written, oral, or visual:

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- (i) acknowledge the support of the Province for the Project;
  - (ii) ensure that any acknowledgement is in a form and manner as the Province directs and includes any logos or trademarks of the Province as the Province so directs; and
  - (iii) indicate that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province and will include a statement that “The Government of Ontario and its agencies are in no way bound by any recommendations contained in this publication”.
- (b) The Recipient shall seek the Province’s written consent at least 15 Business Days in advance of any media events, advertising, digital marketing, social media campaigns or publishing news releases relating to the SDF Contribution.
  - (c) The Recipient shall provide the Province with at least 15 Business Days prior written Notice of any public events being organized by the Recipient relating to the Project or the Project Milestones.

### **13.2 Project Signage**

- (a) Unless the Province directs the Recipient to do otherwise, at least 60 days prior to the date construction on the Project commences, the Recipient will provide, or will cause to be provided, to the Province for approval, stamped shop drawings of the sign fabrication, installation details and proposed location for government signage to promote the investment by the Province in the Project (“**Project Signage**”), together with a graphic design mock-up of the signage location(s) and confirmation that the Recipient has obtained all Permits, Licences, Approvals and Agreements required to install the Project Signage at the proposed location(s). The Recipient shall install such Project Signage within ten days of the Province’s approval of same and shall ensure such Project Signage remains installed at least 60 days following Substantial Performance.
- (b) Throughout the Term, the Recipient shall, at its own cost and expense which, for certainty, shall not be an Eligible Cost:
  - (i) ensure that all Project Signage is kept in good condition and visibly displayed;
  - (ii) ensure that all Project Signage is at least equivalent in size and prominence to project signage for contributions by other Governments;
  - (iii) replace any Project Signage that is damaged;
  - (iv) promptly remove graffiti on all Project Signage;
  - (v) provide personnel to install, remove and relocate Project Signage within two weeks, as requested by the Province from time to time in its sole discretion; and

- (vi) install, remove or relocate any Project Signage that is provided by the Province, as requested by the Province from time to time at its sole discretion.

### 13.3 Project Plaque

- (a) Within 60 days of the Project's achievement of Substantial Performance, the Recipient will provide, or will cause to be provided, to the Province for approval, stamped shop drawings of the plaque fabrication, installation details and proposed location for a plaque to recognize the work performed by construction workers and tradespeople on the Project ("**Project Plaque**"), together with a graphic design mock-up of the plaque location and confirmation that the Recipient has obtained all Permits, Licences, Approvals and Agreements required to install the Project Plaque at the proposed location.
- (b) The Recipient will include on the Project Plaque:
  - (i) an acknowledgement of Provincial support in accordance with Sections 13.1(a)(i) and 13.1(a)(ii); and
  - (ii) the name of every construction worker and tradesperson who worked on the Project for a minimum of 30 days and who has consented to have their name included on the Project Plaque. For greater certainty, the Recipient shall not disclose to the Province the names of the construction workers and tradespeople who provided their consent to have their names included on the Project Plaque for the purposes of the Province's approval under Section 13.3(a). If no construction workers or tradespeople provide consent to have their names included on the Project Plaque, the Recipient will include a general statement on the Project Plaque recognizing the contributions of all the construction workers and tradespeople who worked on the Project.
- (c) Throughout the Term, the Recipient shall, at its own cost and expense which, for certainty, shall not be an Eligible Cost:
  - (i) ensure that the Project Plaque is kept in good condition and visibly displayed;
  - (ii) repair any damage to the Project Plaque, or replace the Project Plaque if it cannot be repaired;
  - (iii) promptly remove graffiti on the Project Plaque;
  - (iv) provide personnel to install, remove and relocate Project Plaque within two weeks, as requested by the Province from time to time in its sole discretion; and
  - (v) install, remove or relocate the Project Plaque, as requested by the Province from time to time at its sole discretion.

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## 14. PERFORMANCE SECURITY

### 14.1 Recipient Performance Security

- (a) Following the Project's achievement of Substantial Performance, and prior to any portion of the SDF Contribution (other than any Design Development Payment, if applicable) being paid to the Recipient, the Recipient shall deliver to the Province an irrevocable standby letter of credit issued by an Approved Bank in a form acceptable to the Province (the "**Letter of Credit**"). The Letter of Credit will:
- (i) be the amount calculated in accordance with Schedule B;
  - (ii) remain in effect over the Intended Use Period; and
  - (iii) be callable at the Approved Bank's counters in Toronto, Ontario, or such other location consented to by the Province in the Province's sole and absolute discretion.
- (b) Without limiting any other provision of this Agreement, the Letter of Credit will serve as collateral and security in the hands of the Province and may be drawn upon by the Province to satisfy:
- (i) the payment of all debts and liabilities, present and future, direct and indirect, absolute and contingent, matured and not matured, in each case, at any time owing by the Recipient to the Province pursuant to this Agreement;
  - (ii) the payment or reimbursement of all Direct Losses suffered or incurred by any Province Indemnified Parties or for which any of the foregoing is or may be responsible and in respect of which the Recipient is required to indemnify the Province Indemnified Parties pursuant to this Agreement; and
  - (iii) the payment or reimbursement of all Direct Losses suffered or incurred by the Province directly or indirectly in connection with enforcing its rights and remedies against the Recipient under this Agreement.
- (c) Further, and without limiting the generality of any other provision of this Agreement, the Province will be entitled to draw upon the full amount of the Letter of Credit in accordance with Section 18.3(a)(vii) in the event the Recipient has not repaid the SDF Contribution (together with any interest owing thereon in accordance with Article 19) within the timeframe provided by the Province to the Recipient.
- (d) To the extent reasonably practicable in the circumstances, the Province will endeavour to provide Notice to the Recipient of its intent to draw upon the Letter of Credit. Notwithstanding the foregoing, the Province will not be required to provide the foregoing Notice and any failure of the Province to provide such Notice (or any notice) of its intent to draw upon the Letter of Credit will not restrict, prevent or invalidate any draw by the Province under the Letter of Credit.

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- (e) The Province reserves the right to require at any point during the Term that for the remainder of the Term, the Recipient shall ensure that a valid and binding Third Party Guarantee from a party of sufficient financial strength, capacity and stability, as determined by the Province acting in its sole discretion, in favour of the Province from the Guarantor and in a form required by the Province, is in place and enforceable by the Province. Any demands made and amounts paid by the Guarantor to the Province under the Third Party Guarantee of Guarantor is without prejudice to the Province's right to make continuing claims against the Recipient in relation to matters for which the Third Party Guarantee of Guarantor is provided.
- (f) All Performance Security will be obtained and maintained by the Recipient at the Recipient's sole cost and expense.
- (g) The Performance Security shall be released by the Province on the later of:
- (i) the date which is 15 Business Days following the date on which:
    - (A) this Agreement terminates pursuant to Article 17; or
    - (B) the Term expires in accordance with Section 7.1; and
  - (ii) if there are any claims outstanding against the Recipient as at the date of such termination or expiry, including any claims arising in respect of such termination or expiry, the date which is 15 Business Days following the date on which the last such claim is finally determined or resolved.

## 15. INDEMNITY

### 15.1 Indemnification by Recipient

- (a) The Recipient will indemnify and save harmless the Province and the Crown and each of the directors, officers, employees, agents and representatives of the Province and each of the ministers, employees, agents and representatives of the Crown (collectively, the "**Province Indemnified Parties**" and each a "**Province Indemnified Party**") from and against any and all Direct Losses suffered, sustained or incurred by any of them or for which any of them is or may be responsible directly or indirectly arising directly or indirectly out of or resulting from:
- (i) any inaccuracy or misrepresentation in any representation or warranty of the Recipient in this Agreement or in any document delivered to the Province by or on behalf of the Recipient pursuant to this Agreement;
  - (ii) any failure of the Recipient to perform or comply with any obligation, covenant or agreement of the Recipient in this Agreement;
  - (iii) any fraud, negligence or wilful misconduct of the Recipient or of any person for whom the Recipient is responsible under Applicable Law;

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- (iv) any loss or damage of a third party arising from the Project for:
    - (A) any infringement by the Recipient or of any person for whom the Recipient is responsible under Applicable Law of any intellectual property rights of third parties; or
    - (B) any death, personal injury and any physical loss or damage to property or assets of any third party;
  - (v) the performance by the Recipient of this Agreement and the completion of the Project not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or the requirements of Governmental Authorities, or the failure of the Recipient to obtain all necessary Permits, Licences, Approvals and Agreements required for the Project;
  - (vi) any breach or violation by the Recipient of any Applicable Law; and
  - (vii) the enforcement of any rights of any Province Indemnified Party under this Agreement and, in each case, any related investigation, defence, preparation of defence, dispute resolution, litigation and enquiries.

## 15.2 Limitations

- (a) Where any provision of this Agreement entitles a Party to recover damages or losses from the other Party, except as otherwise expressly indicated, the intent is to afford such Party the equivalent of the ordinary contractual measure of damages, that is, that such recovery will place such Party in the same position it would have been in but for the occurrence of the specified event that gives rise to the right to recover damages or losses from the other Party, subject to such Party's obligation to take all commercially reasonable measures to mitigate its damages.
- (b) Notwithstanding Section 15.2(a), the indemnities under this Agreement shall not apply and there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that loss claimed by the Province is:
  - (i) for punitive, exemplary or aggravated damages;
  - (ii) for loss of profit (but does not include the Province's rights to payments expressly provided for in this Agreement), loss of use, loss of production, loss of business, claims of customers or loss of business opportunity; or
  - (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by the Province,(collectively, "**Indirect Losses**").



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- (c) Every right to claim damages or indemnification or reimbursement or to set off or hold back any amount under this Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Agreement and shall not be construed in such manner as would allow a Party to recover the same loss or amount twice.

## 16. INSURANCE

### 16.1 Insurance

- (a) The Recipient has and will obtain and maintain in force throughout the Term, 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 carrying out a project similar to the Project would maintain and comprehensive commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, blanket contractual liability (including liability for damage to or losses relating to the performance by the Recipient of its obligations set forth herein) to an inclusive limit of not less than two million dollars per occurrence. The policy is to include the following:
- (i) the Province Indemnified Parties 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;
  - (ii) a cross-liability clause; and
  - (iii) a requirement for 30-day written notice of cancellation, termination, or material change.
- (b) The Recipient will ensure that all contractors engaged in the Project have and maintain in force insurance coverages, including property, general commercial liability, environmental liability and insurance coverages required in Canadian Construction Documents Committee (CCDC) standard form documents and as specified in CCDC 41 – CCDC Insurance Requirements or that are commercially reasonable having regard to the services being provided by such contractor. For certainty, the Recipient will ensure that all contractors incorporate this requirement into every level of contract thereunder (as applicable) for any part of the work or services being provided by any subcontractors and suppliers for the Project.
- (c) Upon completion of the Project, the Recipient will obtain and maintain 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 to cover the Project Asset(s) during the Intended Use Period, including property, comprehensive commercial general liability, and environmental liability insurance.

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## 16.2 Proof of Insurance

- (a) The Recipient will:
  - (i) provide to the Province, either:
    - (A) certificates of insurance that confirm the insurance coverage required by Section 16.1; or
    - (B) other proof that the Province requires in its sole and absolute discretion that confirms the insurance coverage required by Section 16.1; and
  - (ii) in the event of a proceeding, and upon the Province's request, the Recipient will provide to the Province a copy of any of the Recipient's insurance policies that relate to the Project or otherwise to the Agreement, or both.

## 17. TERMINATION

### 17.1 Termination by the Province

- (a) The Province may, at its option and sole and absolute discretion, terminate this Agreement in its entirety by Notice, with immediate effect on the date specified therein, upon the occurrence of an Event of Default. The Province will promptly notify the Recipient in writing of any such termination pursuant to Section 17.1(a). Notwithstanding the foregoing, the provision of or any delay or failure to provide any such Notice will not in any way derogate from or otherwise affect the Province's right to terminate this Agreement by Notice with immediate effect pursuant to this Section 17.1(a).
- (b) The Province may, at its option and sole and absolute discretion, terminate this Agreement at any time without liability, penalty, or costs upon 90 days' Notice to the Recipient.
- (c) If the Province terminates the Agreement pursuant to Section 17.1(a), the Province may take one or more of the following actions:
  - (i) cancel further instalments of the SDF Contribution; and
  - (ii) demand from the Recipient the repayment of any SDF Contribution paid to the Recipient prior to the date of termination.
- (d) If the Province terminates the Agreement pursuant to Section 17.1(b), the Province may take one or more of the following actions:
  - (i) cancel further instalments of the SDF Contribution;
  - (ii) demand from the Recipient the repayment of any portion of the SDF Contribution remaining in the possession or under the control of the Recipient; and

- (iii) require the Recipient to provide an auditable report of its reasonable costs to wind down the Project and do either or both of the following:
  - (A) permit the Recipient to offset reasonable costs, as determined by the Province, against the amount the Recipient owes pursuant to Section 17.1(c)(ii); and
  - (B) subject to Section 8.1(a)(i), provide a portion of the SDF Contribution to the Recipient to cover reasonable costs, as determined by the Province.

## 17.2 **Termination for Force Majeure**

- (a) Notwithstanding Section 30, where a Force Majeure Event has occurred and continues, or in the opinion of both Parties is highly likely to continue for a continuous period of at least 180 days and the Recipient is prevented, delayed or substantially hindered from performing and complying with all or any part of its obligations, covenants or agreements hereunder as a result of a Force Majeure Event, then either Party may, at its option and in its sole and absolute discretion, terminate this Agreement in its entirety by giving at least 60 Business Days prior written Notice to the other Party.

## 17.3 **Survival**

- (a) The expiry or termination of this Agreement does not relieve either Party from any of its obligations outstanding under this Agreement up to the effective date of such expiry or termination.
- (b) Except as otherwise provided in this Agreement, termination of this Agreement shall be without prejudice to, and shall not affect Sections 8.5(b) and 8.5(d), Sections 12.3 to 12.5, Article 14, Article 15, Section 17.3, Section 18.3, Article 19, Article 20, Article 23, Section 26.3, Article 27, Article 28, Article 29, Schedule A and any other applicable definitions, Schedule B, such other provisions as are necessary for the interpretation of any of the foregoing, and any other provisions which by their nature are intended to survive termination or expiry of this Agreement, and all of the foregoing provisions will survive such expiration or termination.

## 18. **EVENTS OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT**

### 18.1 **Events of Default**

- (a) Each of the following events will constitute an “**Event of Default**”:
  - (i) there is any inaccuracy or misrepresentation in any representation or warranty by or on behalf of the Recipient in this Agreement or in any document delivered to the Province by or on behalf of the Recipient pursuant to this Agreement, which inaccuracy or misrepresentation constitutes a Material Adverse Effect;

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- (ii) the Recipient fails to perform or comply with any one or more obligations, covenants or agreements of the Recipient in this Agreement, which failure constitutes a Material Adverse Effect;
  - (iii) the Recipient fails to perform or comply with any one or more of the obligations, covenants or agreements of the Recipient in Section 12.2(a)(i)(A);
  - (iv) the Recipient fails to perform or comply with Section 8.6 within the specified timeframes;
  - (v) the Recipient fails to perform or comply with Section 11.1(a);
  - (vi) the Recipient fails to perform or comply with any one or more obligations, covenants or agreements of the Recipient with respect to Performance Security, or any Performance Security ceases to be in full force and effect, and, in each case, such failure or circumstance is not cured within five Business Days after the earlier of (A) the date on which the Recipient becomes aware of such failure or circumstance and (B) the date on which the Province notifies the Recipient in writing of such failure or circumstance;
  - (vii) the occurrence of an Early Disposition without consent of the Province;
  - (viii) the occurrence of any KPI Standard Failure;
  - (ix) the failure of the Recipient to achieve the Minimum KPI Standard in any two consecutive annual periods;
  - (x) the Recipient's operations or its financial condition changes such that it no longer meets one or more of the eligibility requirements of the SDF Capital Stream and SDF Capital Guideline under which the Province provides the SDF Contribution;
  - (xi) the occurrence of any change in Direct or Indirect Power or Control of the Recipient, or where applicable, any Guarantor providing Performance Security, where such change in Direct or Indirect Power or Control is to a Restricted Person, and where such change in Direct or Indirect Power or Control to such Restricted Person has not been cured within ten days after the date on which the Direct or Indirect Power or Control occurred;
  - (xii) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver;
  - (xiii) the Recipient fails to perform or comply with Section 8.3; and
  - (xiv) the Recipient suffers or permits any transfer, assignment or other disposition of this Agreement or the rights, obligations, covenants and agreements hereunder in violation of or other than in compliance with Section 26.1.

## 18.2 Notification

- (a) The Recipient shall promptly notify the Province in writing upon the Recipient becoming aware of the occurrence of any Event of Default.

## 18.3 Consequences of Events of Default

- (a) If an Event of Default occurs, the Province may, in its sole and absolute discretion take one or more of the following actions at any time:
- (i) exercise its termination rights pursuant to Section 17.1(a);
  - (ii) provide the Recipient with an opportunity to remedy the Event of Default in accordance with Section 18.4;
  - (iii) suspend the payment of the SDF Contribution for such period as the Province determines appropriate;
  - (iv) cancel further instalments of the SDF Contribution;
  - (v) reduce the amount of the SDF Contribution;
  - (vi) demand from the Recipient the repayment of an amount equal to any SDF Contribution the Recipient used, but did not use in accordance with the Agreement;
  - (vii) demand from the Recipient the payment of an amount equal to 100% of the SDF Contribution provided to the Recipient; and
  - (viii) demand from the Recipient the payment of an amount equal to the costs the Province incurred or incurs to enforce its rights under the Agreement and the costs it incurs to collect any amounts the Recipient owes to the Province.

## 18.4 Opportunity to Remedy

- (a) If, pursuant to Section 18.3(a)(ii), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of the particulars of the Event of Default.
- (b) If the Province provides the Recipient with an opportunity to remedy the Event of Default pursuant to Section 18.3(a)(ii), and:
- (i) the Recipient does not remedy the Event of Default to the satisfaction of the Province in its sole discretion within 30 days of receipt of the Notice described in Section 18.4(a) or such other time period set forth in such Notice (the “**Remedial Period**”);

- (ii) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Remedial Period; or
- (iii) 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 Remedial Period or initiate any one or more of the actions provided for in Sections 18.3(a)(i), (iii), (iv), (v), (vi), (vii), and (viii).

## **19. DEBT DUE AND PAYMENT**

### **19.1 Debt Due**

- (a) If, pursuant to this Agreement:
  - (i) the Province demands from the Recipient the repayment of any SDF Contribution amount or any other amounts owing under the Agreement; or
  - (ii) the Recipient owes to the Province any SDF Contribution or any other amounts owing under the Agreement, whether or not the Province has demanded their payment,

such amounts will be deemed to be debts due and owing to the Province by the Recipient, and the Recipient will pay the amounts to the Province immediately, unless the Province directs otherwise.

### **19.2 Interest Rate**

- (a) The Province may charge the Recipient interest on any money owing to the Province by the Recipient under the Agreement at the then current interest rate charged by the Province of Ontario on accounts receivable.

### **19.3 Payment of Money to Province**

- (a) 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 set out in Schedule B.

### **19.4 Fails to Pay**

- (a) Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, His Majesty the King in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by His Majesty the King in right of Ontario.

## 20. CONFIDENTIALITY

### 20.1 Confidential Information

- (a) Except where required by Applicable Law, including Section 5.1(a)(iv), the Parties shall keep confidential and shall not disclose the contents of this Agreement, the transactions contemplated hereby or any information provided by the Parties to one another pursuant to this Agreement, without the consent of all Parties. Notwithstanding the foregoing, the Province may publicly disclose the Recipient's name, the amount of the SDF Contribution, a description of the nature of the Project, the date and value of this Agreement or any subsequent amendment, amounts advanced or paid and the skills development outcomes generated by the Project in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Recipient may publicly disclose that it is a Party to this Agreement and a description of the nature of the Project.

## 21. NOTICE

### 21.1 Notice in Writing and Addressed

- (a) Notice will be:
- (i) in writing;
  - (ii) delivered by email, postage-prepaid mail, personal delivery, or courier; and
  - (iii) addressed to the Province or the Recipient as set out in Schedule B, or as either Party later designates to the other by Notice.

### 21.2 Notice Given

- (a) Notice will be deemed to have been given:
- (i) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or
  - (ii) in the case of email, personal delivery or courier on the date on which the Notice is delivered.

### 21.3 Postal Disruption

- (a) Despite Section 21.2(a)(i), in the event of a postal disruption:
- (i) Notice by postage-prepaid mail will not be deemed to be given; and
  - (ii) the Party giving Notice will give Notice by email, personal delivery or courier.

## **22. CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT**

### **22.1 Consent**

- (a) When the Province provides its consent pursuant to the Agreement:
  - (i) it will do so by Notice;
  - (ii) it may attach any terms and conditions to the consent; and
  - (iii) the Recipient may rely on the consent only if the Recipient complies with any terms and conditions the Province may have attached to the consent.

## **23. SEVERABILITY OF PROVISIONS**

### **23.1 Invalidity or Unenforceability of Any Provision**

- (a) The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement.

## **24. WAIVER**

### **24.1 Waiver Request**

- (a) Either Party may, by Notice, ask the other Party to waive an obligation under the Agreement.

### **24.2 Waiver Applies**

- (a) If in response to a request made pursuant to Section 24.1 a Party consents to a waiver, the waiver will:
  - (i) be valid only if the Party that consents to the waiver provides the consent by Notice; and
  - (ii) apply only to the specific obligation referred to in the waiver.

## **25. INDEPENDENT PARTIES**

### **25.1 Parties Independent**

- (a) The Recipient is not an agent, joint venturer, partner, or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is or take any actions that could establish or imply such a relationship.



## **26. ASSIGNMENT OF AGREEMENT OR SDF CONTRIBUTION**

### **26.1 No Assignment**

- (a) The Recipient will not, without the prior written consent of the Province, which consent may be withheld or conditioned in the Province's sole and unfettered discretion, assign any of its rights or obligations under the Agreement. No assignment of this Agreement shall be effective until replacement Performance Security in form and substance reasonably satisfactory to the Province has been delivered to the Province.

### **26.2 Change in Ownership**

- (a) The Recipient shall provide the Province with Notice of any change in direct ownership of the Recipient and Notice of any material change in indirect ownership of the Recipient. For the purposes of this Section 26.2:
- (i) internal reorganizations which do not have the effect of changing the ultimate ownership of the Recipient; and
  - (ii) an initial public offering or the issuance of or trading of publicly traded securities of an entity that directly or indirectly holds an interest in the Recipient,

shall not be considered to be a material change in the ownership of the Recipient.

### **26.3 Agreement Binding**

- (a) All rights and obligations contained in the Agreement will extend to and be binding on:
- (i) the Recipient's heirs, executors, administrators, successors, and permitted assigns; and
  - (ii) the successors to His Majesty the King in right of Ontario.

## **27. GOVERNING LAW**

### **27.1 Governing Law**

- (a) 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.

## **28. FURTHER ASSURANCES**

### **28.1 Agreement into Effect**

- (a) The Recipient will:
- (i) provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains; and
  - (ii) 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.

## **29. RIGHTS AND REMEDIES CUMULATIVE**

### **29.1 Rights and Remedies Cumulative**

- (a) 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.

### **29.2 Contra Proferentem**

- (a) The Parties agree that each Party has had ample opportunity to obtain the legal and other professional advice that such Party deems necessary or desirable with respect to this Agreement and the transactions and documents contemplated herein and that in construing any provision in this Agreement or any document contemplated herein, the legal principle of “contra proferentem” shall not apply or be applied.

## **30. FORCE MAJEURE**

### **30.1 Force Majeure**

- (a) To the extent that and for so long as either Party is prevented or delayed by the Force Majeure Event from performing any obligation under this Agreement, that Party is relieved from any liability or consequence under this Agreement arising from its inability to perform or delay in performing that obligation.
- (b) If a Force Majeure Event wholly or partially prevents or delays the Recipient from proceeding with the Project, then, subject to this Section 30, the time frame for achieving the Project Milestones and the Term shall be adjusted proportionately to the period during which the Recipient is prevented or delayed by the Force Majeure Event from proceeding with the Project.

### **30.2 Force Majeure Procedure**

- (a) Upon either Party becoming aware of the occurrence of a Force Majeure Event that may prevent that Party from performing any obligation under this Agreement, that Party shall

in a timely manner give the other Party Notice of the Force Majeure Event, including reasonable details of the anticipated effect of the Force Majeure Event upon performance of this Agreement, and thereafter the Parties shall on an ongoing basis consult with each other with a view to remedying or mitigating the Force Majeure Event or otherwise addressing the consequences of the Force Majeure Event.

### 31. FAILURE TO COMPLY WITH OTHER AGREEMENTS

#### 31.1 Other Agreements

- (a) If the Recipient:
- (i) has failed to comply with any term, condition, or obligation under any other agreement with His Majesty the King in right of Ontario or one of His agencies (a “**Compliance Failure**”);
  - (ii) has been provided with notice of such Compliance Failure in accordance with the requirements of such other agreement;
  - (iii) has, if applicable, failed to rectify such Compliance Failure in accordance with the requirements of such other agreement; and
  - (iv) such Compliance Failure is continuing,

the Province may suspend the payment of the SDF Contribution for such period as the Province determines appropriate.

***[Remainder of page left intentionally blank.]***

The Parties have executed the Agreement on the dates set out below.

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as  
represented by the Minister of Infrastructure and the  
Minister of Labour, Immigration, Training and Skills  
Training**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Name:** Hon. Kinga Surma

**Title:** Minister of Infrastructure

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Name:** Hon. David Piccini

**Title:** Minister of Labour, Immigration, Training and  
Skills Development

**The Corporation of the Town of Orangeville**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Name:** Lisa Post

**Title:** Mayor

I have authority to bind the Recipient

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Name:** Raylene Martell

**Title:** Clerk

I have authority to bind the Recipient

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## SCHEDULE A

### INTERPRETATION AND DEFINITIONS

#### 1. INTERPRETATION

(a) For the purposes of interpretation:

- (i) words in the singular include the plural and vice-versa and words importing the use of any gender include all genders;
- (ii) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (iii) any reference to dollars or currency will be in Canadian dollars and currency;
- (iv) “include”, “includes” and “including” denote that the subsequent list is not exhaustive;
- (v) the term “will” means “shall”;
- (vi) “hereunder”, “herein”, “hereto” and “hereof”, when used in this Agreement, refer to this Agreement and not to a particular Section or clause of this Agreement;
- (vii) references to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute;
- (viii) references to persons shall include their successors and assigns (in the case of the Recipient, to the extent permitted hereunder). References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization;
- (ix) where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (x) “month” means “calendar month” and “day” means “calendar day”;
- (xi) references to any document, instrument or agreement, including this Agreement, (i) will include all exhibits, schedules and other attachments thereto, (ii) will include all documents, instruments or agreements issued or executed in

replacement thereof, and (iii) will mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, restated, amended and restated, modified or supplemented from time to time (to the extent permitted hereunder) and in effect at the given time; and

- (xii) unless otherwise provided in this Agreement, all accounting and financial terms used in this Agreement shall be interpreted and applied in accordance with either the International Financial Reporting Standards (IFRS), Accounting Standards for Private Enterprises (ASPE), Accounting Standards for Non-Profit Organizations (ASNPO), Public Sector Accounting Standards (PSAS) or any comparable accounting standards that apply to the Recipient which are validated by CPA Ontario.

## 2. DEFINITIONS

(a) In the Agreement, the following terms will have the following meanings:

- (i) **“Abnormal Weather”** means fire, lightning, storm, tempest, hurricane, tornado, cyclone, tidal wave, severe ice storm, flood, earthquake, or abnormally severe weather conditions (beyond the level of severity reasonably to be anticipated at the relevant location);
- (ii) **“Affiliate”** has the meaning given to such term in the *Business Corporations Act* (Ontario);
- (iii) **“Agreement”** means this agreement entered into between the Province and the Recipient, all of the schedules listed in Section 1.1, and any amending agreement entered into pursuant to Section 4.1;
- (iv) **“Agreement Records”** has the meaning given in Section 12.3(a);
- (v) **“Applicable Law”** means:
- (A) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
- (B) any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority; and
- (C) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

in each case, in force in the Province of Ontario, or otherwise binding on the Recipient or the Province;

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- (vi) **“Approved Bank”** means any one or more of the six largest (by assets) banks listed in Schedule I of the *Bank Act* (Canada) or any other financial institution approved in writing by the Province, acting reasonably, in each case, whose current long-term issuer rating is at least “A” by Standard & Poor’s Rating Service (a division of McGraw Hill Companies, Inc.) and “A2” by Moody’s Investors Services, Inc. or a similar issuer rating by another person acceptable to the Province;
- (vii) **“Architect of Record”** means a qualified architect duly licenced by the Ontario Association of Architects retained by the Recipient;
- (viii) **“Asset Control”** has the meaning given in Section 9.2(a);
- (ix) **“Auditor General Act (Ontario)”** means the *Auditor General Act*, RSO 1990, c. A.35 amended or replaced from time to time;
- (x) **“Broader Public Sector Accountability Act, 2010 (Ontario)”** means the *Broader Public Sector Accountability Act*, 2010, SO 2010, c. 25 as amended or replaced from time to time;
- (xi) **“Business Corporations Act (Ontario)”** means the *Business Corporations Act*, RSO 1990, c. B.16 as amended or replaced from time to time;
- (xii) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in Toronto, Ontario;
- (xiii) **“Compliance Failure”** has the meaning given in Section 31.1(a)(i);
- (xiv) **“Construction Act (Ontario)”** means the *Construction Act*, RSO 1990, c C.30, as amended or replaced from time to time;
- (xv) **“Construction Progress Report”** has the meaning given in Schedule E;
- (xvi) **“Cost Consultant”** means an accredited cost consultant or accredited quantity surveyor retained by the Recipient that is duly licensed to practice in the Province of Ontario by the Association for the Advancement of Cost Engineering (AACE) International Institute or such other issuer reasonably acceptable to the Province in its sole and absolute discretion;
- (xvii) **“Design Development Payment”** has the meaning given in Section 8.7(a);
- (xviii) **“Direct Losses”** means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses;



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- (xix) **“Direct or Indirect Power or Control”** means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (A) ownership, beneficial or otherwise, of five percent or more of any of the shares, units or equity interests of a person;
  - (B) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds five percent of the voting securities, units or equity interests of such person; or
  - (C) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person;
- (xx) **“Early Disposition”** has the meaning given in Section 9.2(b);
- (xxi) **“Early Disposition Adjustment Amount”** means the amount calculated in accordance with Schedule G;
- (xxii) **“Economic Interest”** means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits;
- (xxiii) **“Effective Date”** means the date set out at the top of the Agreement;
- (xxiv) **“Eligible Costs”** means, other than Ineligible Costs, those costs and expenses that are reasonably and actually incurred by the Recipient and are directly related and necessary to the construction, renovation, rehabilitation, retrofitting or improvement, in whole or in part, of any Project Asset in connection with the Project. A description of Eligible Costs is set out in Schedule F;
- (xxv) **“Eligible Costs Certification Report”** has the meaning given in Schedule E;
- (xxvi) **“Event of Default”** has the meaning given in Section 18.1(a);
- (xxvii) **“Excess Government Support Amount”** has the meaning given in Section 8.3(d);

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- (xxviii) “**Expiry Date**” means the end of the final day of the Intended Use Period, unless such date is extended in accordance with the terms of this Agreement;
- (xxix) “**Final Certificate and Project Report**” has the meaning given in Schedule E;
- (xxx) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended or replaced from time to time;
- (xxxi) “**Financial Administration Act (Ontario)**” means the *Financial Administration Act*, RSO 1990, c. F.12 as amended or replaced from time to time;
- (xxxii) “**Force Majeure Event**” means acts of God, acts of public enemies, acts of governments or foreign states, epidemics (excluding any effects of the COVID-19 pandemic known or reasonably foreseeable and preventable as of the Effective Date), quarantine restrictions, Abnormal Weather, fires or floods that were not caused or contributed to by any act, fault or omissions of a Party, strikes, lockouts or organization of workers, embargoes by transportation companies or public authorities, riots, insurrections, wars, pestilence, earthquakes, issuance of a direction or stop work order related to all or a portion of the Project by a court of competent jurisdiction or other public authority provided that such order was not issued as a result of any act, fault or omission of a Party, or any other event which the Province determines in its sole discretion to be wholly beyond the control of the Parties that prevents, delays or interrupts the performance of any obligation under this Agreement, other than any obligation to pay any money, in all cases arising after the Effective Date and provided such event does not occur by reason of:
- (i) the negligence of the Party relying on the Force Majeure Event (or those for whom such Party is responsible pursuant to Applicable Law); or
  - (ii) any act or omission of the Party relying on the Force Majeure Event (or those for whom such Party is responsible pursuant to Applicable Law) that is in breach of the provisions of this Agreement;
- (xxxiii) “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial safety standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances, including professionals, manufacturers, contractors and tradespeople who are experienced in work on infrastructure that is comparable to the Project;
- (xxxiv) “**Government**” means any federal, provincial, territorial, regional, municipal or local government;

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- (xxxv) “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction;
- (xxxvi) “**Government Support Cap**” has the meaning given in Section 8.3(d);
- (xxxvii) “**Guarantor**” means the party providing the Third Party Guarantee, if applicable;
- (xxxviii) “**Highway Traffic Act (Ontario)**” means the *Highway Traffic Act*, RSO 1990, c. H.8 as amended or replaced from time to time;
- (xxxix) “**Indigenous Communities**” include First Nation, Métis, and Inuit communities or peoples of Canada.
- (xl) “**Indirect Losses**” has the meaning given in Section 15.2(b);
- (xli) “**Ineligible Costs**” means those costs and expenses that are ineligible for the SDF Contribution as described in Schedule F;
- (xlii) “**Intended Use**” means the Intended Use set out in Schedule B;
- (xliii) “**Intended Use Period**” means the five year period following the date the Project achieves Substantial Performance;
- (xliv) “**Intended Use Proposal**” has the meaning given in Section 11.1(b);
- (xlv) “**Interim KPI Report**” has the meaning given in Schedule E;
- (xlvi) “**Investment Canada Act**” means the *Investment Canada Act* RSC, 1985, c. 28 as amended or replaced from time to time;
- (xlvii) “**Key Performance Indicator**” or “**KPI**” means the Required Project Outcome indicators set forth in Schedule C;
- (xlviii) “**Key Performance Indicator Target**” means the annual Key Performance Indicator targets set forth in Schedule C;
- (xlix) “**KPI Remediation Plan**” has the meaning given in Section 11.2(b);
- (l) “**KPI Standard Failure**” has the meaning given in Section 11.2(c);
- (li) “**Letter of Credit**” has the meaning given in Section 14.1(a);

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- (lii) **“Material Adverse Effect”** means any change, event, circumstance, occurrence, violation, inaccuracy, misrepresentation, failure, breach, claim, loss or other matter that (alone or in combination) is or could reasonably be expected to be (i) materially adverse to the business, assets, liabilities, financial condition or operations of the Recipient in such a way that the Recipient’s financial capacity and wherewithal to complete the Project and/or repay the SDF Contribution (if required) is materially impacted, or (ii) contrary to the public good in any material respect or materially adverse or materially prejudicial to the reputation or integrity of the Province or the SDF Capital Stream generally or the Crown;
- (liii) **“Maximum SDF Commitment”** means the maximum SDF Contribution amount set out in Schedule B;
- (liv) **“Minimum KPI Standard”** has the meaning given in Section 11.2(a);
- (lv) **“Notice”** means any communication given or required to be given pursuant to the Agreement;
- (lvi) **“Occupational Health and Safety Act (Ontario)”** means the *Occupational Health and Safety Act*, RSO 1990, c. O.1 as amended or replaced from time to time;
- (lvii) **“Other Government Support”** means federal or municipal government financial assistance, including any grants, contributions, implicit subsidies, forgivable loans, investment tax credits and any other tax credits available to the Recipient in respect of the Project, but excluding Government financial assistance from the Canada Infrastructure Bank in the form of repayable loans or other financial instruments substantially the same as repayable loans;
- (lviii) **“Party”** means either the Province or the Recipient, and **“Parties”** means collectively the Recipient and the Province;
- (lix) **“Performance Security”** means, collectively, the Letter of Credit and, where applicable, the Third Party Guarantee;
- (lx) **“Permits, Licences, Approvals and Agreements”** means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Project in accordance with the Agreement and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties, needed to perform the Project in accordance with the Agreement and as required by Applicable Law;
- (lxi) **“Project”** means the design, construction, operation and maintenance of the Project Assets in connection with the undertaking described in Schedule B;

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- (Ixii) **“Project Asset”** means any real or personal property, or immovable or movable asset, constructed, rehabilitated, renovated, retrofitted or improved, in whole or in part, with the SDF Contribution in connection with the Project;
- (Ixiii) **“Project Asset Lease Agreement”** has the meaning given in Section 6.1(a)(xii);
- (Ixiv) **“Project Milestone”** and **“Project Milestones”** have the meaning given to them in Section 8.6(a);
- (Ixv) **“Project Milestone Failure Notification”** has the meaning given in Section 8.6(b);
- (Ixvi) **“Project Partner”** means any organization collaborating with the Recipient on the Project and may be an organization that is playing a supporting role such as providing research, training or other services to support the goals and objectives of the Project;
- (Ixvii) **“Project Plan”** means the Project plan submitted by the Recipient in connection with the Recipient’s application to the SDF Capital Stream and approved by the Province;
- (Ixviii) **“Project Plaque”** has the meaning given in Section 13.3(a);
- (Ixix) **“Project Signage”** has the meaning given in Section 13.2(a);
- (Ixx) **“Province”** has the meaning given in the recitals;
- (Ixxi) **“Province Indemnified Parties”** and **“Province Indemnified Party”** have the meaning given in Section 15.1(a);
- (Ixxii) **“Public Sector Salary Disclosure Act, 1996 (Ontario)”** means the *Public Sector Salary Disclosure Act, 1996*, SO 1996, c. 1, Sched. A as amended or replaced from time to time;
- (Ixxiii) **“Recipient”** has the meaning given in the recitals;
- (Ixxiv) **“Remedial Period”** has the meaning given in Section 18.4(b)(i);
- (Ixxv) **“Reports”** means, collectively, the reports described in Schedule E and **“Report”** means any single report described in Schedule E;
- (Ixxvi) **“Restricted Person”** means any person who, or any member of a group of persons acting together, any one of which:
- (A) is subject to any economic or political sanctions imposed by Canada or Ontario, or has, directly or indirectly, its principal or controlling office in a

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- country that is subject to any economic or political sanctions imposed by Canada or Ontario;
- (B) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (C) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which the Province considers unacceptable in its sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by the Province in its sole discretion);
- (D) in the case of an individual, (i) has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
- (E) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or, where applicable, its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
- (F) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

- (G) is subject to a material claim of the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Province’s view, in either case, be reasonably likely materially to affect the ability of the Recipient to perform its obligations under this Agreement; or
- (H) has a material interest in the production of tobacco products;
- (lxxvii) “**Required Project Outcome**” means the Required Project Outcomes set forth in Schedule C;
- (lxxviii) “**SDF Capital Guideline**” means the Skills Development Fund SDF Capital Stream Guideline which may be amended from time to time at the sole and absolute discretion of the Province and which is available at <https://forms.mgcs.gov.on.ca/en/dataset/on00540>;
- (lxxix) “**SDF Capital Key Participant Groups**” has the meaning given in the SDF Capital Guideline;
- (lxxx) “**SDF Capital Stream**” means Skills Development Fund Capital Stream;
- (lxxxii) “**SDF Contribution**” means the aggregate funding for the Project the Province provides to the Recipient pursuant to the terms and conditions of this Agreement, which, for certainty, shall never exceed the Maximum SDF Commitment;
- (lxxxiii) “**Sources and Uses Attestation**” means the attestation delivered by the Recipient to the Province in connection with the Recipient’s application that details the sources and uses for all Project funding (including any and all funding support received or expected to be received by the Recipient from a Governmental Authority other than the Province);
- (lxxxiv) “**Substantial Performance**” means the point at which a certificate of substantial performance with respect to the Project has been published in accordance with the *Construction Act* (Ontario);
- (lxxxv) “**Substantial Performance Date**” means the date of Substantial Performance set forth in the corresponding certificate of substantial performance published in accordance with the *Construction Act* (Ontario);
- (lxxxvi) “**Term**” has the meaning given in Section 7.1(a);
- (lxxxvii) “**Third Party Guarantee**” means, if applicable, the guarantee to be entered into by the Guarantor in the form required by the Province;

(lxxxvii) “**Training Volume Target**” means the annual Key Performance Indicator Target for the Training Volume Required Project Outcome set forth in Schedule C; and

(lxxxviii) “**TPON**” means Transfer Payment Ontario.



**SCHEDULE B**

**PROJECT SPECIFIC INFORMATION**

<b>Maximum SDF Commitment</b>	\$ 3,667,650.00
<b>Project Title</b>	The Town of Orangeville Fire Services Campus
<b>Case Number</b>	2023-08-1-2307261279
<b>Letter of Credit Amount</b>	An amount that is equal to 75% of the SDF Contribution.
<b>Project Description</b>	<p>The Project will construct a one-storey fire station at 30 Centennial Road, Orangeville, and will consist of the following:</p> <ul style="list-style-type: none"> <li>- Approx. 3,779 sq/ft – construction of training tower, classrooms, support areas, and training-related administration spaces;</li> <li>- Approx. 1,120 sq/ft Community Engagement Space;</li> <li>- Approx. 1,701 sq/ft for fitness, computer rooms, storage &amp; bottle filling stations;</li> <li>- Approx. 2,336 sq/ft one Apparatus Bay allocated to daily training; and</li> <li>- Approx. 33,196 sq/ft Training Grounds (not part of building)</li> </ul>
<b>Intended Use</b>	<p>Skills Development Activities will include:</p> <ul style="list-style-type: none"> <li>- New recruits will participate in essential training including National Fire Protection Association (NFPA) 1001 levels I and II, NFPA 1072 Hazmat Training, and Awareness and Hazmat Operations.</li> <li>- Training will include: Academic Training; Emergency First Response Course; Search and Rescue; Decontamination Training; Auto Extrication Training; Mock Emergency Calls; Firefighter Survival; Ladder Climbing; Hose Use; Controlled Environment Training Specialized training to maintain firefighters’ skills will include: Pump Operations Course; Man In Machine Rescue; Survival and Rapid Intervention Teams; Auto Extrication; Forcible Entry; Emergency Patient Care; Fire Dynamics; Hazardous Material Awareness; The Incident Management System; Recruit Training Program; Rural Water Supply Operations; Ice and Water Rescue; Thermal Imaging Camera Technology; Automatic External Defibrillation Certification; Alternative Power Sources</li> <li>- Red Cross-certified instructors will deliver a long list of additional rescue courses.</li> </ul>
<b>Provincial Approval Date</b>	Friday, June 21, 2024

<b>Contact information for the purposes of Notice to the Province</b>	<p><b>Position:</b> Director, Strategic Workforce Policy and Programs Branch <b>Address:</b> 14th Floor, 400 University Avenue, Toronto, Ontario, M7A 1T7 <b>Phone:</b> (416) 917-2601 <b>Email:</b> nadine.scott2@ontario.ca</p> <p>with a copy to:</p> <p><b>Position:</b> Director, Program Implementation Branch <b>Address:</b> 777 Bay Street, Toronto, Ontario, M7A 2J3 <b>Phone:</b> (647) 929-8615 <b>Email:</b> boafoa.kwamena@ontario.ca</p>
<b>Contact information for the purposes of Notice to the Recipient</b>	<p><b>Name:</b> Rebecca Medeiros <b>Position:</b> Senior Financial Analyst <b>Address:</b> 87 Broadway, Orangeville, ON L9W 1K1 <b>Phone:</b> 519-941-0440 ext. 2290 <b>Email:</b> rmedeiros@orangeville.ca</p>

**SCHEDULE C**

**KEY PERFORMANCE INDICATORS**

**Intended Use Period: Year 1**

**SDF Key Milestones and Activity**

<b>Required Project Outcome</b>	<b>Key Performance Indicator (KPI)</b>	<b>KPI Target</b>
Training Volume	Annual training participant enrollment attributable to the Project.	29
Training Capacity	Annual training seats attributable to the Project.	20
SDF Capital Key Participant Groups	Annual training participant enrollment for SDF Capital Key Participant Groups attributable to the Project.	20

**(Note: The Province will assess performance in accordance with Section 11.2. However, Recipients shall report on all Required Project Outcomes.)**

**Intended Use Period: Year 2**

**SDF Key Milestones and Activity**

<b>Required Project Outcome</b>	<b>Key Performance Indicator (KPI)</b>	<b>KPI Target</b>
Training Volume	Annual training participant enrollment attributable to the Project.	30
Training Capacity	Annual training seats attributable to the Project.	20
SDF Capital Key Participant Groups	Annual training participant enrollment for SDF Capital Key Participant Groups attributable to the Project.	20

**(Note: The Province will assess performance in accordance with Section 11.2. However, Recipients shall report on all Required Project Outcomes.)**

**Intended Use Period: Year 3**

**SDF Key Milestones and Activity**

<b>Required Project Outcome</b>	<b>Key Performance Indicator (KPI)</b>	<b>KPI Target</b>
Training Volume	Annual training participant enrollment attributable to the Project.	33
Training Capacity	Annual training seats attributable to the Project.	20
SDF Capital Key Participant Groups	Annual training participant enrollment for SDF Capital Key Participant Groups attributable to the Project.	20

**(Note: The Province will assess performance in accordance with Section 11.2. However, Recipients shall report on all Required Project Outcomes.)**

**Intended Use Period: Year 4**

**SDF Key Milestones and Activity**

<b>Required Project Outcome</b>	<b>Key Performance Indicator (KPI)</b>	<b>KPI Target</b>
Training Volume	Annual training participant enrollment attributable to the Project.	35
Training Capacity	Annual training seats attributable to the Project.	40
SDF Capital Key Participant Groups	Annual training participant enrollment for SDF Capital Key Participant Groups attributable to the Project.	40

**(Note: The Province will assess performance in accordance with Section 11.2. However, Recipients shall report on all Required Project Outcomes.)**

Intended Use Period: Year 5

SDF Key Milestones and Activity

Required Project Outcome	Key Performance Indicator (KPI)	KPI Target
Training Volume	Annual training participant enrollment attributable to the Project.	37
Training Capacity	Annual training seats attributable to the Project.	40
SDF Capital Key Participant Groups	Annual training participant enrollment for SDF Capital Key Participant Groups attributable to the Project.	40

**(Note: The Province will assess performance in accordance with Section 11.2. However, Recipients shall report on all Required Project Outcomes.)**

## SCHEDULE D

### PAYMENT PLAN AND TIMELINE

The SDF Contribution shall, subject to the terms and conditions of this Agreement, be paid in accordance with the following timeline:

- (a) if applicable, the Design Development Payment within 180 days of the requirements in Section 8.7 being met;
- (b) 75% of the SDF Contribution, calculated less any Design Development Payment previously paid, no earlier than 65 days after the Substantial Performance Date but in any event within 180 days of the requirements in Section 8.4 being met; and
- (c) on every 12 month anniversary of the date the payment in (b) was made, and subject to the Recipient's ongoing compliance with the terms and conditions of this Agreement, pay an equal installment during the Intended Use Period of the remaining SDF Contribution (calculated less any Design Development Payment and any prior payment of SDF Contribution) until 100% of the SDF Contribution has been paid.

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## SCHEDULE E

### REPORTS

#### 1. REQUIRED REPORTS

##### 1.1 Instructions for Reports Required

- (a) Reports are complete if they contain the required information and are signed by a person with authority to bind the Recipient and, where applicable, the professional that authored the report provided to the Recipient. Payments of SDF Contribution will be delayed if complete Reports are not received by identified due dates as directed by and in the form required by the Province.
- (b) Recipients shall submit all required Reports through the TPON online portal.

##### 1.2 During the Term

- (a) During the Term, the Recipient shall provide to the Province:
    - (i) on July 15<sup>th</sup> of each year, audited financial statements (or such other financial statements as the Province consents to in its sole and absolute discretion) of the Recipient for its most recently completed fiscal year;
    - (ii) if a Third Party Guarantee has been delivered, on July 15<sup>th</sup> of each year, audited financial statements (or such other financial statements as the Province consents to in its sole and absolute discretion) of the Guarantor for its most recently completed fiscal year; and
    - (iii) prior to the Project's achievement of Substantial Performance, on January 15 and July 15 each year:
      - (A) a Project status report in form and substance reasonably acceptable to the Province that includes, at a minimum, a report on construction status and information and invoices regarding Eligible Costs incurred during the Recipient's two immediately preceding fiscal quarters,
- (each such report a "**Construction Progress Report**").

##### 1.3 Reporting upon the Project's achievement of Substantial Performance

- (a) Within 90 days of the date the Project achieves Substantial Performance, the Recipient shall provide the Province with:
  - (i) a certification report from the Cost Consultant setting forth and certifying the total Eligible Costs that have been incurred and paid by the Recipient in accordance with the terms of this Agreement as of the Substantial Performance Date in the

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form of report acceptable to the Province (such report, the “**Eligible Costs Certification Report**”). The Eligible Costs Certification Report shall verify that:

- (A) all Eligible Costs are properly supported by invoices and supporting documentation that has been reviewed by the Cost Consultant;
  - (B) all Eligible Costs are net of tax rebates, credits and refunds referred to in Section 8.4 of this Agreement;
  - (C) no Ineligible Costs have been included in the Recipient’s submission of Eligible Costs; and
- (ii) a final certificate and Project report (“**Final Certificate and Project Report**”) reasonably satisfactory to the Province that includes a certificate of substantial performance in accordance with the *Construction Act* (Ontario), a statutory declaration in a form acceptable to the Province and such other information as may be requested by the Province confirming that the Project has achieved Substantial Performance.

#### **1.4 Reporting During the Intended Use Period**

- (a) Within six months of the date the Project achieves Substantial Performance, and every six months thereafter, the Recipient shall provide to the Province a report, in a form reasonably satisfactory to the Province, detailing the status and achievement of the Project’s/Project Assets’ identified Project indicators with respect to the Key Performance Indicators set forth in the Recipient’s application and detailing the training volume, training capacity and SDF Capital Key Participant Groups, set out in Schedule C, as directed by the Province (each an “**Interim KPI Report**”).

#### **1.5 Post-Project Reporting**

- (a) The Recipient shall, until the seventh anniversary of the Expiry Date:
- (i) participate and respond to any surveys in relation to the Project, the SDF Contribution or financial support provided by the Province of Ontario; and
  - (ii) maintain Project documentation, invoices, agreements and records in accordance with the terms of this Agreement.



**SCHEDULE F**

**ELIGIBLE COSTS**

**1. FUNDING CATEGORIES**

**1.1 Eligible Costs**

(a) The following costs and expenses shall be considered Eligible Costs for the purposes of this Agreement:

Eligible Costs	Examples
<p><b>Hard Construction Costs</b></p> <p><i>that lead to an improvement of the Project Assets through construction, alteration, extension, fit out, demolition or refurbishment of a Project Asset</i></p>	<ul style="list-style-type: none"> <li>• Material costs, including but not limited to:               <ul style="list-style-type: none"> <li>○ Structural materials;</li> <li>○ Finish materials;</li> <li>○ Mechanical materials.</li> </ul> </li> <li>• Building and site:               <ul style="list-style-type: none"> <li>○ Utilities, cement, life safety systems, security and safety monitoring equipment (for example, cameras, mag locks), paving, necessary storm water control and remediation and essential landscaping</li> <li>○ Heating, ventilation and air conditioning (HVAC) systems;</li> <li>○ Project site office rental;</li> <li>○ Site temporary utilities;</li> <li>○ Scaffolding;</li> <li>○ Mechanical, electrical, plumbing (MEP)</li> <li>○ Carpentry, masonry;</li> <li>○ Elevators and hoists;</li> <li>○ Concrete;</li> <li>○ Safety and security, such as guards</li> <li>○ Excavation and demolition;</li> <li>○ Structural steel;</li> <li>○ Foundation and formwork;</li> <li>○ Shoring and caissons;</li> <li>○ Waterproofing;</li> <li>○ Testing and inspection (lab tests, strength tests, slump, etc.);</li> <li>○ Rebar;</li> <li>○ Soil removal;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Environmental work;</li> <li>○ Millwork;</li> <li>○ Electrical panels, transformers, switchboards;</li> <li>○ Fencing;</li> <li>○ Communication networks / IT.</li> <li>● Interior:             <ul style="list-style-type: none"> <li>○ Wallpaper, paint, trim, flooring;</li> <li>○ Life safety systems such as fire alarm and sprinkler systems, fire escapes and other related systems.</li> </ul> </li> <li>● Labour Costs:             <ul style="list-style-type: none"> <li>○ Direct costs.</li> </ul> </li> </ul>
<p><b>Infrastructure, Permit and Development Charges and Fees</b></p>	<ul style="list-style-type: none"> <li>● Land survey fees;</li> <li>● Costs of inspections, development charges, demolition and construction permitting fees paid to regional or municipal government authorities (site plans approval, building permits, foundation permits, monumental permits etc.);</li> <li>● LEED Certification or similar designations designed to reduce environmental footprint and enhance energy conservation.</li> </ul>
<p><b>Design Drawings and Planning</b></p> <p><i>Advancement of design drawings and planning post-application approval. This can include but is not limited to:</i></p>	<ul style="list-style-type: none"> <li>● Architectural plans &amp; drawings, notes and sections</li> <li>● Construction drawings and specifications</li> <li>● Civil plans, notes, and sections</li> <li>● Structural plans, notes, sections, and details fully describing the structural building requirements</li> <li>● Mechanical plans, notes and details fully describing the plumbing, HVAC, and fire protection requirements</li> <li>● Electrical plans, notes and details fully describing the electrical communications, security, and equipment requirements</li> <li>● Detailed demolition drawings (if renovation), including clear indication of existing materials to remain</li> </ul>

	<ul style="list-style-type: none"> <li>• Conveyance plans, specifications and sections fully describing elevators, escalators, and lifts; Landscape design</li> </ul>
<p><b>Professional Fees</b></p> <p><i>That are incurred in connection with construction tender services, contract administration, and construction/building inspections, other than legal fees</i></p>	<ul style="list-style-type: none"> <li>• Architectural Engineering, Design and Studies Fees;</li> <li>• Sustainability services (LEED and WELL certifications);</li> <li>• Landscape Designer;</li> <li>• Interior Designer / Interior Decorator;</li> <li>• Consultant fees (for example, permit consultants, heritage building expert, hazardous material consultant);</li> <li>• Incremental third-party project management;</li> <li>• Project Management Costs: <ul style="list-style-type: none"> <li>○ staff compensation related to documentation and drawings;</li> <li>○ security and safety staff;</li> <li>○ direct payment to subcontractors or general contractors.</li> </ul> </li> </ul>
<p><b>Marketing and Promotional Costs</b></p>	<ul style="list-style-type: none"> <li>• Marketing and promotional costs of the SDF Capital Stream project (e.g. material costs associated with the signage or plaque required for the SDF Capital Stream) and labour costs associated with the installation of Project Signage.</li> </ul>
<p><b>Duty to Consult Engagement</b></p>	<ul style="list-style-type: none"> <li>• The reasonable and pre-approved costs of engagement with Indigenous communities, as identified by the Province and required as part of the Crown's Duty to Consult and, where appropriate, the costs of pre-approved accommodation measures. Costs will not be reimbursed where engagement has taken place prior to project approval. Reimbursement of up to 49% of approved Eligible Costs will be in accordance with the terms and conditions of the Agreement.</li> </ul>
<p><b>Administrative Costs</b></p>	<ul style="list-style-type: none"> <li>• Salaries/benefits of the Executive Director, information technology (IT),</li> </ul>

<p><i>Also understood as Recipient’s overhead and operating costs. Administrative costs should be attributed to the Project on a basis that is proportional with the respective size of the organization and the size and/or effort of the Project</i></p>	<p>and/or financial staff that work for the entire organization but may spend a portion of their time dedicated to administrative functions that support the Project;</p> <ul style="list-style-type: none"> <li>• Accounting fees;</li> <li>• Bank fees, postage and courier fees; basic telephone fees and monthly internet fees;</li> <li>• Contracting (if not contracted specifically to support the Project), bookkeeping, janitorial services, Information Technology (IT) used indirectly in Project delivery, equipment maintenance services, security, translator, training fees, consultant fees, printing contracts fees;</li> <li>• Indirect/support equipment repair and maintenance (includes photocopy meter charges);</li> <li>• IT maintenance; and</li> <li>• Lease or finance/interest costs attributed to administrative functions.</li> </ul>
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- (b) The costs and expenses set forth in the category of “Administrative Costs” shall not exceed 5% of the sum of costs and expenses in all other categories of Eligible Costs, not including “Administrative Costs”, submitted by the Recipient for funding in connection with the SDF Contribution. For greater certainty, the “Administrative Costs” shall not exceed 5% of the sum of all Eligible Costs submitted in the categories of “Hard Construction Costs”, “Infrastructure, Permit and Development Charges and Fees”, “Design Drawings and Planning”, “Professional Fees”, “Marketing and Promotional Costs”, and “Duty to Consult Engagement”.

## 1.2 Sample

Amount submitted for Eligible Costs for “Hard Construction Costs”	\$200,000
Amount submitted for Eligible Costs for “Infrastructure, Permit and Development Charges and Fees”	\$10,000
Amount submitted for Eligible Costs for “Design Drawings and Planning”	\$25,000
Amount submitted for Eligible Costs for “Professional Fees”	\$10,000
Amount submitted for Eligible Costs for “Marketing and Promotional Costs”	+ <u>\$5,000</u>
Sum of Eligible Costs in all other categories, not including “Administrative Costs”	\$250,000
Maximum amount of “Administrative Costs” (5% of above)	<u>\$12,500</u>

## 1.3 Ineligible Costs

- (a) The following costs and expenses are ineligible for the purposes of the SDF Contribution:
- (i) costs and expenses in respect of delivering skills development activities/services and training related activities and services;
  - (ii) costs and expenses incurred following the Recipient’s submission of an Eligible Costs Certification Report (except for Eligible Costs reflected on an updated Eligible Costs Certification Report delivered in accordance with Section 8.4(e));
  - (iii) all costs and expenses associated with land acquisition;
  - (iv) building acquisition costs, building leasing costs (including leasing costs under Project Asset Lease Agreements) and mortgage costs and expenses;
  - (v) financial obligations of the Recipient (other than Eligible Costs) including legal fees, costs and expenses with respect to mortgages, loans or other loan payments (including all costs and expenses associated with obtaining and maintaining the Letter of Credit) and any debt reduction costs;
  - (vi) any goods purchased for resale;

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- (vii) professional development expenses for Recipient management and administrative staff;
  - (viii) equipment acquisition and operating costs: acquisition, maintenance and support of equipment, whether used to deliver the Project or not;
  - (ix) if applicable, all operational costs related to the existing Skills Development Fund (Phase 3) Program;
  - (x) all labour costs and expenses that are paid to an Affiliate of the Recipient or to the Recipient's own personnel unless such costs and expenses are accompanied by an auditor report as provided for in Section 8.4(c);
  - (xi) all own-force labour costs and expenses other than those expressly set out in Section 1.1 of this Schedule F;
  - (xii) all maintenance costs associated with Project Signage and Project Plaque, including those activities set out in Section 13.2(b) and 13.3(c);
  - (xiii) all costs and expenses incurred by the Recipient in connection with marketing and promotional costs that are not approved by the Province in accordance with Section 13.1;
  - (xiv) all costs and expenses incurred by the Recipient in connection with a terminated or cancelled Project;
  - (xv) unreasonable meal, hospitality or incidental costs or expenses of any Person as determined by the Province in its sole discretion;
  - (xvi) costs and expenses outside of the approved scope of the Project;
  - (xvii) costs of furnishing and non-fixed assets which are not essential for the operation of a Project Asset and all costs associated with moveable assets or rolling stock;
  - (xviii) costs and expenses related to contracts that are not procured through an open and competitive procurement process, or in a manner otherwise acceptable to the Province;
  - (xix) costs and expenses incurred following the end date of the SDF Capital Stream;
  - (xx) any expenses that are not permitted and/or are inconsistent with the terms and conditions of the Agreement and any other applicable directive, policies, or guidelines of the Province of Ontario; and
  - (xxi) any costs and expenses incurred prior to the Provincial Approval Date set out in Schedule B.

**1.4 Tax Rebates**

- (a) The Recipient will report all program expenditures net of any tax rebates or input tax credits.

**1.5 Sample**

Amount Recipient spent on applicable Eligible Costs		\$100.00
Amount of tax paid (example 13%)	\$13.00	
Less amount of tax rebate claimed (where rebate equals 80%)	<u>-\$10.40</u>	
Amount of tax expenditure	<u>\$2.60</u>	
Amount reported as applicable Eligible Cost		<b>\$102.60</b>

**SCHEDULE G**

**EARLY DISPOSITION ADJUSTMENT AMOUNT**

<b>Timing of an Occurrence of an Early Disposition</b>	<b>Calculation of Early Disposition Adjustment Amount</b>
Year 1 of the Intended Use Period	The Early Disposition Adjustment Amount payable shall be an amount equal to 25% of all SDF Contribution amounts received by the Recipient as of the date of the Early Disposition.
Year 2 of the Intended Use Period	The Early Disposition Adjustment Amount payable shall be an amount equal to 20% of all SDF Contribution amounts received by the Recipient as of the date of the Early Disposition.
Year 3 of the Intended Use Period	The Early Disposition Adjustment Amount payable shall be an amount equal to 15% of all SDF Contribution amounts received by the Recipient as of the date of the Early Disposition.
Year 4 of the Intended Use Period	The Early Disposition Adjustment Amount payable shall be an amount equal to 10% of all SDF Contribution amounts received by the Recipient as of the date of the Early Disposition.
Year 5 of the Intended Use Period	The Early Disposition Adjustment Amount payable shall be an amount equal to 5% of all SDF Contribution amounts received by the Recipient as of the date of the Early Disposition.

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