

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the 15th day of September, 2015 (the "Effective Date")

BETWEEN :

**Her Majesty the Queen in right of Ontario
as represented by the Minister of Economic Development, Employment and
Infrastructure**

(the "Province")

- and -

GTA Region Investment Attraction

(the "Recipient")

BACKGROUND

The Recipient intends to carry out the Project.

The Province wishes to provide Funds to the Recipient for the Project.

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 is expressly acknowledged, the Province and the Recipient (the "Parties") agree as follows:

ENTIRE AGREEMENT

This agreement (the "Agreement"), including:

- Schedule "A" - General Terms and Conditions
 - Schedule "B" - Project Specific Information and Additional Provisions
 - Schedule "C" - Project Description and Timelines
 - Schedule "D" - Budget
 - Schedule "E" - Payment Plan
 - Schedule "F" - Reporting, and
- any amending agreement entered into as provided for below,

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

COUNTERPARTS

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

AMENDING THE AGREEMENT

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

ACKNOWLEDGEMENT

The Recipient:

- (a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and
- (b) agrees to be bound by the terms and conditions contained in the entire Agreement.

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as
represented by Minister of Economic Development,
Employment and Infrastructure**


10/8/15
Date

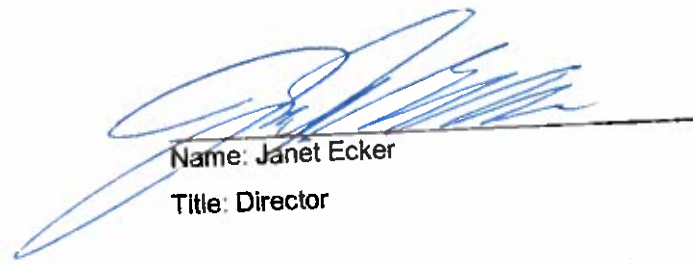
by: 
Name: Tony LaMantia
Title: Assistant Deputy Minister

Authorized Signing Officer

GTA Region Investment Attraction

Date

by: 
Name: Toby Lennox
Title: Interim President & CEO


Name: Janet Ecker
Title: Director

We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency will be in Canadian dollars and currency; and
- (e) "include", "includes" and "including" denote that the subsequent list is not exhaustive.

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

"Additional Provisions" means the terms and conditions referred to in section 9.1 and as specified in Schedule "B".

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

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

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

"Event of Default" has the meaning ascribed to it in section 15.1.

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

"Funding Year" means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

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

"Indemnified Parties" means Her Majesty the Queen in right of Ontario, Her ministers, agents, appointees and employees.

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

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

"Notice Period" means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which the Province considers it reasonable to extend that time.

"Party" means either the Province or the Recipient.

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

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

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

"Timelines" means the Project schedule set out in Schedule "C".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **General.** The Recipient represents, warrants and covenants that:

- (a) it is, and will continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and will continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project;
- (c) it is in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Project, the Funds or both; and
- (d) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and will continue to be true and complete for the term of the Agreement.

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

- (a) the full power and authority to enter into the Agreement; and
- (b) taken all necessary actions to authorize the execution of the Agreement.

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

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
- (b) procedures to ensure the ongoing effective functioning of the Recipient;

- (c) decision-making mechanisms for the Recipient;
- (d) procedures to enable the Recipient to manage Funds prudently and effectively;
- (e) procedures to enable the Recipient to complete the Project successfully;
- (f) procedures to enable the Recipient, in a timely manner, to identify risks to the completion of the Project, and strategies to address the identified risks;
- (g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0; and
- (h) procedures to enable the Recipient to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

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

3.0 **TERM OF THE AGREEMENT**

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date unless terminated earlier pursuant to Article 13.0, Article 14.0 or Article 15.0.

4.0 **FUNDS AND CARRYING OUT THE PROJECT**

4.1 **Funds Provided.** The Province will:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to section 12.2;
- (b) the Province is not obligated to provide Instalments of Funds until it is satisfied with the progress of the Project;

- (c) the Province may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Province's assessment of the information provided by the Recipient pursuant to section 7.1; and
- (d) if, pursuant to the *Financial Administration Act* (Ontario), the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
 - (i) reduce the amount of Funds and, in consultation with the Recipient, change the Project; or
 - (ii) terminate the Agreement pursuant to section 14.1.

4.3 Use of Funds and Project. The Recipient will:

- (a) carry out the Project in accordance with the terms and conditions of the Agreement;
- (b) use the Funds only for the purpose of carrying out the Project;
- (c) spend the Funds only in accordance with the Budget; and
- (d) not use the Funds to cover any specific cost that has or will be funded or reimbursed by any third party, including other ministries, agencies and organizations of the Government of Ontario.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient for the purposes of the Project and the Province is not responsible for carrying out the Project.

4.5 No Changes. The Recipient will not make any changes to the Project, the Timelines, or the Budget without the prior written consent of the Province.

4.6 Interest Bearing Account. If the Province provides Funds to the Recipient before the Recipient's immediate need for the Funds, the Recipient will place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

4.7 Interest. If the Recipient earns any interest on the Funds, the Province may:

- (a) deduct an amount equal to the interest from any further instalments of Funds; or
- (b) demand from the Recipient the repayment of an amount equal to the interest.

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

4.9 Rebates, Credits and Refunds. The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

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

- (a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and
- (b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will:

- (a) do so through a process that promotes the best value for money; and
- (b) comply with the BPSAA, including any procurement directive issued thereunder, to the extent applicable.

5.2 Disposal. The Recipient will not, without the Province's prior written consent, sell, lease or otherwise dispose of any asset purchased or created with the Funds or for which Funds were provided, the cost of which exceeded the amount as set out in Schedule "B" at the time of purchase.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

6.3 Disclosure to Province. The Recipient will:

- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

- (a) submit to the Province at the address referred to in section 19.1, all Reports in

accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

- (b) submit to the Province at the address referred to in section 19.1, any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

7.2 Record Maintenance. The Recipient will keep and maintain:

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

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

- (a) inspect and copy the records and documents referred to in section 7.2;
- (b) remove any copies made pursuant to section 7.3(a) from the Recipient's premises; and
- (c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds, the Project, or both.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

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

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Acknowledge Support. Unless otherwise directed by the Province, the Recipient will acknowledge the support of the Province in a form and manner as directed by the Province.

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

9.0 FURTHER CONDITIONS

9.1 **Additional Provisions.** The Recipient will comply with any Additional Provisions. In the event of a conflict or inconsistency between any of the requirements of the Additional Provisions and any requirements of this Schedule "A", the Additional Provisions will prevail.

10.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

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

11.0 INDEMNITY

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

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

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

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

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

12.0 INSURANCE

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

- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30 day written notice of cancellation.

12.2 **Proof of Insurance.** The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 12.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.

13.0 TERMINATION ON NOTICE

13.1 **Termination on Notice.** The Province may terminate the Agreement at any time without liability, penalty or costs upon giving at least 30 days' Notice to the Recipient.

13.2 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section 13.1, the Province may take one or more of the following actions:

- (a) cancel all further instalments of Funds;
- (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and
- (c) determine the reasonable costs for the Recipient to wind down the Project, and do either or both of the following:
 - (i) permit the Recipient to offset such costs against the amount owing pursuant to section 13.2(b); and
 - (ii) subject to section 4.8, provide Funds to the Recipient to cover such costs.

14.0 TERMINATION WHERE NO APPROPRIATION

14.1 Termination Where No Appropriation. If, as provided for in section 4.2(d), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the Agreement, the Province may terminate the Agreement immediately without liability, penalty or costs by giving Notice to the Recipient.

14.2 Consequences of Termination Where No Appropriation. If the Province terminates the Agreement pursuant to section 14.1, the Province may take one or more of the following actions:

- (a) cancel all further instalments of Funds;
- (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and
- (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section 14.2(b).

14.3 No Additional Funds. For greater clarity, if the costs determined pursuant to section 14.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, the Province will not provide additional Funds to the Recipient.

15.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

15.1 Events of Default. Each of the following events will constitute an Event of Default:

- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Project;
 - (ii) use or spend Funds; or
 - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
- (b) the Recipient's operations, or its organizational structure, changes such that it no longer meets one or more of the eligibility requirements of the program under which the Province provides the Funds;
- (c) 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; or
- (d) the Recipient ceases to operate.

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

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel all further instalments of Funds;
- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds the Province provided to the Recipient; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

15.3 **Opportunity to Remedy.** If, in accordance with section 15.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

15.4 **Recipient not Remediating.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 15.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections 15.2(a), (c), (d), (e), (f), (g), (h) and (i).

15.5 **When Termination Effective.** Termination under this Article will take effect as set out in the Notice.

16.0 FUNDS AT THE END OF A FUNDING YEAR

16.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Province under Article 15.0, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided

for in the Budget, the Province may take one or both of the following actions:

- (a) demand the return of the unspent Funds; and
- (b) adjust the amount of any further instalments of Funds accordingly.

17.0 FUNDS UPON EXPIRY

17.1 Funds Upon Expiry. The Recipient will, upon expiry of the Agreement, return to the Province any Funds remaining in its possession or under its control.

18.0 REPAYMENT

18.1 Repayment of Overpayment. If at any time during the term of the Agreement the Province provides Funds in excess of the amount to which the Recipient is entitled under the Agreement, the Province may:

- (a) deduct an amount equal to the excess Funds from any further instalments of Funds; or
- (b) demand that the Recipient pay an amount equal to the excess Funds to the Province.

18.2 Debt Due. If, pursuant to the Agreement:

- (a) the Province demands the payment of any Funds or an amount equal to any Funds from the Recipient; or
- (b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not their return or repayment has been demanded by the Province,

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

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

18.4 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in section 19.1.

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

19.0 NOTICE

19.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email,

postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

19.2 **Notice Given.** Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or
- (b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

19.3 **Postal Disruption.** Despite section 19.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail will not be deemed to be received; and
- (b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

20.0 **CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT**

20.1 **Consent.** When the Province provides its consent pursuant to the Agreement, it may impose any terms and conditions on such consent and the Recipient will comply with such terms and conditions.

21.0 **SEVERABILITY OF PROVISIONS**

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

22.0 **WAIVER**

22.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 19.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

23.0 **INDEPENDENT PARTIES**

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

24.0 **ASSIGNMENT OF AGREEMENT OR FUNDS**

24.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights, or obligations under the Agreement.

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

25.0 GOVERNING LAW

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

26.0 FURTHER ASSURANCES

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

27.0 JOINT AND SEVERAL LIABILITY

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

28.0 RIGHTS AND REMEDIES CUMULATIVE

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

29.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

29.1 **Recipient Acknowledges.** The Recipient:

- (a) acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario);
- (b) acknowledges that Her Majesty the Queen in right of Ontario has issued expenses, perquisites, and procurement directives and guidelines pursuant to the BPSAA; and
- (c) will comply with any such legislation, including directives issued thereunder, to the extent applicable.

30.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

30.1 Other Agreements. If the Recipient:

- (a) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies;
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

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

31.0 SURVIVAL

31.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section 4.2(d), 4.7, section 5.2, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.47.4, 7.5, 7.6, Article 8.0, Article 11.0, section 13.2, sections 14.2 and 14.3, sections 15.1, 15.2(d), (e), (f), (g) and (h), Article 17.0, Article 18.0, Article 19.0, Article 21.0, section 24.2, Article 25.0, Article 27.0, Article 28.0, Article 29.0, Article 30.0, and Article 31.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION AND ADDITIONAL PROVISIONS

| | |
|---|--|
| Maximum Funds | \$730,000 |
| Expiration Date | January 31, 2016 |
| Amount for the purposes of section 5.2 of Schedule "A" | \$5,000 |
| Insurance | \$ 2,000,000 |
| Contact Information for the purposes of Notice to the Province | <p>Name: George Cadete</p> <p>Address: 56 Wellesley St West, 4th Floor, Toronto Ontario, M7A 2E7</p> <p>Attention: George Cadete</p> <p>Fax: 416-314-4589</p> <p>Email: George.cadete@ontario.ca</p> |
| Contact information for the purposes of Notice to the Recipient | <p>Name: Toby Lennox</p> <p>Address: 350 Bay Street, Suite 1200, Toronto, ON, M5H 2S6</p> <p>Attention: Toby Lennox</p> <p>Fax: N/A</p> <p>Email: tobylennox@bell.net</p> |
| Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement | <p>Name: Toby Lennox</p> <p>Position: Interim President & CEO</p> <p>Fax: N/A</p> <p>Email: tobylennox@bell.net</p> |

Additional Provisions:

None

SCHEDULE "C"

PROJECT DESCRIPTION AND TIMELINES

Project Objectives:

This project will support the development of a new Organization (the "organization") that will supersede the Greater Toronto Marketing Alliance (GTMA) in being the foreign direct investment (FDI) organization representing the Greater Toronto Area (GTA). This new structure will offer a more streamlined, efficient, collaborative FDI practice across the GTA.

The purpose of the funds aligns with the Province's mandate to support a strong, innovative economy that can provide jobs, opportunities and prosperity for all Ontarians. The GTA area attracts the most FDI in Canada and both the province and the country stand to benefit from increased investment into the GTA. Newco will be tasked with the challenge of increasing the Toronto region's share of global FDI.

Scope of Project:

Provincial funding will support the organization to undertake the necessary steps, studies and consultations to launch by January 1, 2016. Funds will be used to hire consultants and staff, and to support legal fees, communications and marketing, and other expenses.

This Project is built around an expected launch date of January 1, 2016 for the new organization. In order to meet this deadline, the Province and the Recipient have agreed upon the following implementation schedule:

| Milestones | Date |
|--|------------------------|
| Establish the overarching strategy, operating model and governance model | September/October 2015 |
| Recruit executive leadership, establish administration, develop preliminary Strategic Plan and first Business Plan | November/December 2015 |
| Communications and stakeholder engagement | Ongoing |
| Transitional arrangements with GTMA, municipalities, existing international relationships. | Ongoing |

SCHEDULE "D"

BUDGET

The maximum funding to be provided by the Province to the Recipient to deliver the Project, subject to the terms and conditions of this agreement, is \$730,000. The Funds will be used for the following:

| Description | Budget |
|---|------------------|
| Foreign Direct Investment (FDI) Consultant – to assist with developing foundational elements and strategy for the organization. This would include establishing the operating model, and assisting with the development of transitional arrangements. Other matters to be addressed include the role of private sector, success metrics and financial model (i.e., how municipalities will fund the organization). | \$150,000 |
| Brand Consultant – to support development of visual identity for the organization. Will also be required to develop vision, mission and values, as well a consultation process for developing the brand. | \$150,000 |
| Salary for Interim CEO | \$135,000 |
| Project Management Consultant – to provide logistical support and project management services, as well as support the Economic Development Organizations and Transition Committee. | \$75,000 |
| Governance Consultant – Legal consultant to assist in developing the governance structure, including all governance documents and by-laws. | \$50,000 |
| Recruiter – To conduct search for new CEO and Board members. | \$50,000 |
| Legal Services | \$50,000 |
| Communications and Marketing – Expenses related to the development of marketing collateral and communications support. | \$20,000 |
| Other Administrative Expenses – Note that any travel and accommodation costs must be in accordance with the Government of Ontario's <i>Travel, Meal and Hospitality Expenses Directive</i> . | \$50,000 |
| TOTAL: | \$730,000 |

SCHEDULE "E"

PAYMENT PLAN

Method of Disbursement

Disbursement by the Province to the Recipient on account of the Project shall be made available as follows, subject to and conditional upon compliance with the terms and conditions of this Agreement and satisfactory performance and/or attainment of the Timelines and Project Deliverables:

| Timeline or Deliverable | Maximum Amount |
|--|------------------|
| Upon execution of the Agreement by the Parties and receipt of insurance certificate required under Section 12.2 of Schedule "A". | \$100,000 |
| Upon receipt of the First Progress Report as described in Schedule F, by October 9, 2015. | \$200,000 |
| Upon receipt of the Second Progress Report as described in Schedule F by October 31, 2015. | \$100,000 |
| Upon receipt of the Third Progress Report as described in Schedule F by November 30, 2015 . | \$200,000 |
| Upon receipt and acceptance by the Province of a satisfactory Final Report. | \$130,000 |
| TOTAL: | \$730,000 |

SCHEDULE "F"

REPORTING

| Report / Report Details | Due Date |
|--|-------------------|
| Progress report including, without limitation, details on the overarching strategy, operating model and governance model of the organization ("First Progress Report"). | October 9, 2015 |
| Progress report including, without limitation, details on status of communications and stakeholder engagement, and transitional arrangements with GTMA and a financial statement for the Project that details Project costs and incurred to date ("Second Progress Report"). | October 31, 2015 |
| Progress report including, without limitation, a status update on the recruitment of executive leadership, establishment of the organization's administration, and a preliminary Strategic Plan and Business Plan ("Third Progress Report"). | November 30, 2015 |
| <p>Final Report which details the final status of work done to:</p> <ul style="list-style-type: none"> • Establish the organization's overarching strategy and operating model • Establish the governance model • Develop a new brand • Recruit executive leadership • Establish the organization's administration • Develop a preliminary Strategic Plan and first Business Plan • Communications and stakeholder engagement • Transitional Arrangements with GTMA | December 31, 2015 |

Progress Reports:

In addition to the information required above, progress reports shall include:

- Reports, invoices or receipts that detail project work completed and the associated final costs, and any other details that will facilitate the Province's understanding and confidence that the Project is proceeding as outlined in this Agreement.

Final Report:

In addition to the information required above, the Final Report shall include:

- An overall summary of the Project's progress and completion, including whether milestones and deliverables were completed on budget and on schedule;
- A financial statement for the Project that shall be a final accounting of the Project that details all Project costs incurred and paid;
- A certificate signed by a duly authorized officer of the Recipient confirming that all Funds have been expended in accordance with the Budget and in accordance with the terms and conditions of this Agreement.