

FILE NO. _____

**ONTARIO TRANSFER PAYMENT AGREEMENT
SKILLSADVANCE ONTARIO (SAO)**

THE AGREEMENT, effective as of the 30th day of March, 2020 (the "**Effective Date**")

BETWEEN :

**Her Majesty the Queen in right of Ontario
as represented by the Minister of Labour, Training and Skills
Development**

(the "Province")

- and -

City of Kawartha Lakes

(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
Schedule "G" -	Performance Commitments

Schedule "H" - Audit and Accountability Requirements; 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 the Minister of Labour, Training and
Skills Development**

by:

Date

Name: Jennifer Barton
Title: Regional Director
Authorized Signing Officer

City of Kawartha Lakes

by:

Date

Name:
Title:

by:

Date

Name:
Title:

I/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 7.3a. 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 13.2b.; 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 4.2d., 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 14.2b.

14.3 **No Additional Funds.** For greater clarity, if the costs determined pursuant to section 14.2c. 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 7.1b.;
- 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 15.2b., 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 15.2b., 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 15.2a., 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 19.2a., 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 4.2d., 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, 7.4, 7.5, 7.6, Article 8.0, Article 11.0, section 13.2, sections 14.2 and 14.3, sections 15.1, 15.2d., 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	\$1,179,778
Expiration Date	March 31, 2021
Amount for the purposes of section 5.2 of Schedule "A"	\$1,000
Insurance	\$ 2,000,000
Contact information for the purposes of Notice to the Province	<p>Name: Ministry of Labour, Training and Skills Development</p> <p>Address: 347 Preston Street, 3rd Floor, Suite 310, Ottawa, ON, K1S 3H8</p> <p>Attention: Jennifer Barton, Regional Director</p> <p>Fax: 613-239-0411</p> <p>Email: EastRPU@ontario.ca</p>
Contact information for the purposes of Notice to the Recipient	<p>Name: City of Kawartha Lakes</p> <p>Address: 180 Kent Street, Lindsay, ON, K9V 2Y6</p> <p>Attention: Rebecca Mustard</p> <p>Fax: 705-340-5961</p> <p>Email: rmustard@kawarthalakes.ca</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: Carolyn Daynes</p> <p>Position: Treasurer</p> <p>Fax: 705-340-5961</p> <p>Email: cdaynes@kawarthalakes.ca</p>

Additional Provisions:

1. Amendments to Definitions

The definition of "Indemnified Parties" in section 1.2 is deleted and replaced with:

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

2. Further Definitions

The following definitions also apply to this Agreement

"EOIS-CaMS" means the Employment Ontario Information System-Case Management System.

"Employer" means a person or a firm registered in SAO and actively receiving SAO services; and/or informing the development and delivery of sector-focused employment and training services to ensure that Participants have the right essential, technical, and employability skills to obtain entry-level employment and advance in identified sectors.

"EOPG" means the Employment Ontario Partners' Gateway, a provincially maintained website which provides support to service providers delivering Employment Ontario programs and services as part of the Employment Ontario network.

"FIPPA" means the *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31*, as amended.

"Incumbent Worker" means a person registered in SAO as a Participant who is already employed, but is either vulnerable in his or her current employment or faces barriers to advancement before receiving SAO services.

"Individuals" means a person who is interested in becoming a Participant.

"Jobseeker" means a person registered in SAO as a Participant and is unemployed before receiving SAO services.

"Participant" means a person registered in SAO and actively receiving SAO services.

"Participant Intake Target" means a Participant who has started receiving SAO services in 2019-2021.

"Participant Placement Target" means a Participant who has started a job placement in 2019-2021.

“Participant Retention Target” means a Participant who has completed their job placement and remains employed with the placement employer.

“SAO” means SkillsAdvance Ontario.

“Sector” means multiple employers or organizations that are in the same or a similar or related industry.

“SPRA” means Service Provider Registration Authority.

3. Additions to Article 2.0

The following provisions are added to section 2.1:

- e. it has provided, and will continue to provide for the term of the Agreement, training to any person involved in carrying out the Project on the relevant responsibilities of the Recipient set out in the Agreement; and
- f. it has taken, and will continue to take for the term of the Agreement, all reasonable actions to minimize and reduce the costs related to the Project that may be incurred as a result of the expiry or termination of the Agreement including negotiating all contracts related to the Project, such as employment contracts, on terms that will enable the Recipient to cancel them upon terms and conditions that will minimize their cancellation costs in the event of the expiry or termination of the Agreement

4. Additions to Article 5.0

The following provisions are added to Article 5.0:

5.3 Ownership of Products. The Recipient will own the Products.

5.4 Recipient's Grant of Licence. The Recipient grants the Province and all Stakeholders a perpetual, irrevocable and royalty-free licence to use the Products for any purpose except commercial gain. Without limitation, the Province may update, revise, copy, translate or distribute the Products to its Stakeholders.

5.5 Representation and Warranty. The Recipient represents and warrants that the grant of licences pursuant to section 5.4 will not infringe or induce the infringement of any third party intellectual property rights.

5.6 Acceptance of Terms of Licence. If at any time, the Recipient is granted a licence for other Products pursuant to an agreement with the Province and another organization to carry out a project with the Province, or a successor Government of Ontario program, the Recipient acknowledges and agrees:

- a. that the licence for the other Products is solely applicable for the purpose of the Recipient carrying out the Project or a subsequent project with the Province, or a successor Government of Ontario program;
- b. the license expires on the day that the Recipient does not hold a valid agreement with the Province to carry out a project with the Province, or a successor Government of Ontario program; and
- c. to immediately cease using, modifying, reproducing or distributing the other Products upon the expiry of the licence.

5. Additions to Article 7.0

The following provision is added to Article 7.0:

7.7 Records Transfer. At any time after the expiry of the Agreement or the termination of the Agreement pursuant to Article 13.0, Article 14.0 or Article 15.0, the Province may demand the transfer of any records referred to in section 7.2 to another organization identified by the Province in order to facilitate the successful continuation or completion of the Project, or a similar project, including the continuation or completion of services to individuals.

6. Amendment and Addition to Article 8.0

Section 8.2 is deleted and replaced with:

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, and shall include a statement that "The Government of Ontario and its agencies are in no way bound by the recommendations contained in this document."

The following provision is added to Article 8.0:

8.3 Visual Identity and Communications. The Recipient will comply with the Visual Identity and Communications Guidelines for Employment Ontario Services, available on the EOPG, and which may be amended from time to time at the sole discretion of the Province.

7. Additions to Article 10.0

The following provisions are added to Article 10.0:

10.2 **Idem.** The Recipient acknowledges that the Province is bound by FIPPA and undertakes to perform its obligations under the Agreement in a manner that ensures that the Province is not in breach of its obligations under FIPPA.

10.3 **Protection of Privacy.** The Recipient represents and warrants that it will protect privacy in accordance with applicable privacy legislation or pursuant to its own privacy policy that is consistent with the Canadian Standards Association Code for the Protection of Personal Information and that is publicly available. Without limitation, the Recipient will:

- a. designate an experienced official who will be responsible for ensuring the Recipient's compliance with its privacy policy and the privacy protection provisions of the Agreement;
- b. make the designated privacy officer aware of the privacy policy and the privacy protection provisions of the Agreement;
- c. implement appropriate privacy protection training of employees, contractors and authorized subcontractors who have access to personal information to deliver the Project;
- d. only collect, use and disclose personal information if necessary to deliver the Project to the Recipient's Participants and comply with its obligations under the Agreement;
- e. ensure that the personal information of the Recipient's Participants, including contact information, is accurate and up to date;
- f. at the earliest opportunity, provide notice of collection, if required, and obtain and retain any consents that may be necessary to deliver the Project and comply with its obligations under the Agreement in compliance with all applicable privacy legislation, and the Recipient's privacy policy;
- g. on behalf of the Province, provide each Participant with the Notice of Collection of Personal Information and obtain his or her Consent to the indirect collection of personal information set out on the forms as mandated by the Province for this Project and retain the signed forms as mandated by the Province for this Project for a period of seven (7) years and make it available to the Province, upon request;
- h. not use personal information that was collected for use in delivering the Project to the Recipient's Participants for any other purpose without the informed and voluntary written

consent of the individual;

- i. limit access to personal information to employees, contractors and authorized subcontractors who need the personal information to deliver the Project to the Recipient's Participants and ensure the Recipient's compliance with its obligations under the Agreement;
- j. ensure that only the SPRA and employees authorized by the SPRA have access to the EOIS-CaMS, using their assigned EOIS-CaMS Enrolment Numbers and PIN IDs and that the SPRA and the authorized users abide by the SPRA Terms and Conditions and the representations made by the Recipient on the SPRA EOIS-CaMS Registration form;
- k. before disclosing personal information to employees, contractors and authorized subcontractors, enter into an agreement with them requiring them to be bound by the Recipient's privacy policy and the privacy protection provisions of the Agreement;
- l. ensure the security and integrity of any personal information collected by implementing, using and maintaining the most appropriate products, tools, measures and procedures to prevent the unauthorized or inadvertent collection, use, disclosure, loss, alteration or destruction;
- m. provide Participants with access to their own personal information in accordance with applicable privacy legislation, and the Recipient's privacy policy;
- n. ensure the secure and irreversible destruction of paper records containing personal information when it is no longer needed to deliver the Project or to comply with the obligations under the Agreement;
- o. ensure that electronic records containing personal information that are no longer needed to deliver the Project or to comply with the obligations under the Agreement are not accessible until secure and irreversible destruction of these records is possible;
- p. notify the Province as soon as the Recipient becomes aware of a potential or actual breach of any of the privacy policy and the privacy protection provisions of the Agreement;

- q. cooperate with the Province and its contractors and auditors in any audit of or investigation into a breach of the privacy policy and the privacy protection provisions of the Agreement; and
- r. implement, use and maintain other specific privacy or security measures that in the reasonable opinion of the Province would improve the adequacy and effectiveness of the Recipient's measures to ensure the privacy and security of the records collected, created, used and disclosed in the delivery of the Project and compliance with the obligations under the Agreement.

8. Amendment to Article 12.0

Section 12.1 is deleted and replaced with:

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, or if the Recipient is a school board, with the Ontario School Boards' Insurance Exchange, 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 two million dollars (\$2,000,000) 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, termination or material change.

9. Addition to Article 15.0

The following provision is added to section 15.1a.:

- iv. meet the performance commitments described in Schedule "G".

10. Amendment to Article 31.0

The following provisions are added to the list in Article 31.0: Article 10.0 and Section 8 e. in Schedule C.

SCHEDULE "C"

PROJECT DESCRIPTION AND TIMELINES

The Project will be delivered for the period March 30, 2020 to March 31, 2021.

1. BACKGROUND

SkillsAdvance Ontario (SAO) is a sector-focused workforce development pilot that provides employers in specific sectors with access to job ready, skilled workers that meet their workforce development needs; and provides Individuals with sector-focused employment and training services, including experiential development opportunities to support them to obtain, succeed, and advance in employment.

SAO will support employers to:

- a. Build a supply of skilled Participants who can meet their workforce development needs by providing training services to improve their workforce performance;
- b. Reduce turnover and associated recruitment and training costs;
- c. Demonstrate commitment to workforce development, including advancement of Incumbent Workers; and
- d. Form effective and dependable workforce development partnerships with delivery partners.

SAO will provide Participants with:

- a. Training related to an occupation that offers positive labour market prospects;
- b. Essential, technical, and employability skills training, and on-the-job experience;
- c. Industry-recognized certificate or credential upon completion of training;
- d. New jobs in field of training;
- e. The ability to sustain or advance from their current employment; and
- f. Sustainable employment (i.e. sufficient hours to sustain household income; greater security through improved employment status and reduced chance of getting laid-off).

SAO sectors are identified by delivery partners and advisory committee (refer to Section 3 in this schedule for roles and responsibilities of delivery partners and advisory committee) in Ontario as having vacancies and advancement opportunities for partnership to develop sector-focused training curriculum and employment services to meet workforce development needs.

2. OBJECTIVES

SAO is intended to support:

- a. Sector-focused work-force development in all aspects of delivery, including skills training and pre-employment, employment, and post-employment services;
- b. Employers with hiring, onboarding and retaining employees and responding to employer skills requirements in the local economy; and
- c. Participants with succeeding and advancing in employment.

3. ROLES AND RESPONSIBILITIES

The Province will:

- a. Administer the Project by receiving and monitoring progress and performance against Agreement activities and outcomes;
- b. Collect and review products, outcomes, and data to evaluate the Project;
- c. Assess the Recipient's capacity to manage complex relationships, its knowledge of and credibility in the sector and regional community, as well as its project management capabilities;
- d. Conduct Recipient site visits; and
- e. Participate in advisory committee, as appropriate.

The Recipient will:

- a. Deliver SAO activities by undertaking all of the Project components and subcomponents;
- b. Lead delivery partners (such as service providers, training providers, SAO employers and community partners) and advisory committee to carry out Project components and subcomponents;
- c. Establish an advisory committee (if an advisory committee has not been established);
- d. Ensure advisory committee consists of representatives from employers, employment training providers, industry associations, labour and economic development organizations, and sector business development organizations;
- e. Ensure delivery partners and advisory committee:
 - i. Advise on sector requirements, including identifying job vacancies to be filled;
 - ii. Develop relevant sector-focused employment services and skills training curriculum;
 - iii. Maintain the ongoing relevance of the workforce development activities; and
 - iv. Deliver sector-focused employment services and skills training;

- f. Enter into and maintain contractual arrangements with delivery partners to deliver SAO;
- g. Develop and manage clear and transparent business arrangements and practices with delivery partners, including developing:
 - i. Clear performance expectations for delivery partners;
 - ii. Consistent and transparent methods for distributing operating Funds and financial supports to delivery partners;
 - iii. Practices for the sharing of Participant data between delivery partners and the Recipient. Participant data sharing practices must comply with applicable privacy legislation;
 - iv. Policies regarding service delivery and coordination, such as intake and assessment processes and procedures, referral processes;
 - v. Processes to collect and report data from all delivery partners in order to accurately complete reporting requirements as required;
 - vi. Written policies on the reimbursement payment process to all delivery partners;
- h. Participate actively in the reporting, monitoring and evaluation of the Project;
 - i. Ensure that objectives, milestones and outcomes are being met;
 - j. Keep a record of progress and accomplishments to-date and maintain accurate financial records;
 - k. Ensure that funding is being used for its intended purpose and that objectives stated in the Agreement are being met;
 - l. Provide prompt and accurate reimbursement to employers, according to the terms and conditions of the training or placement agreement; and
 - m. Input and actively manage information in EOIS-CaMS as required under the Agreement.

4. EMPLOYER ELIGIBILITY AND SUITABILITY

The Recipient will ensure that employers meet the eligibility and suitability requirements set out below:

a. Eligibility:

The Recipient will ensure that employers:

- i. Have identified job vacancies or advancement opportunities in Ontario consistent with the workforce development needs to be addressed by the partnership;
- ii. Are registered and licensed to operate in Ontario;
- iii. Comply with all applicable legislation, including federal and provincial human rights legislation, regulations, and any other relevant standards, as well as the *Occupational Health and Safety Act, R.S.O. 1990*, *Employment Standards Act, 2000, S.O. 2000*, and *Freedom of Information and Protection of Privacy Act, R.S.O., 1990*;

- iv. Maintain appropriate Workplace Safety and Insurance Board or private workplace safety insurance coverage, as well as adequate third party general liability insurance as advised by its insurance broker;
- v. Provide job placements in Ontario;
- vi. Place the Participant on their payroll and provide the same employment terms, conditions, and benefits as for their regular employees during job placements;
- vii. Disclose any other government sources of funding associated with employing the Participants;
- viii. Do not hire Participants to displace existing staff or replace staff who are on lay-off;
- ix. Do not receive government funds from any other source for the same training and job placement services provided to the Participant; and
- x. Are not EO employment and training services providers.

b. Suitability:

The Recipient will ensure that employers:

- i. Demonstrate identified vacancies or advancement opportunities that have the potential to be permanent with long-term sustainability;
- ii. Offer support for training completion through:
 - 1. Flexible work arrangements and experiential development opportunities, such as job shadows or job placements;
 - 2. Providing adequate supervision and on-the-job training;
 - 3. Collaboration with delivery partners and advisory committee during the term of the Agreement in identifying specific essential, technical, and employability skills requirements associated with vacancies and advancement opportunities; and
 - 4. Providing advice on changes required to sector-focused employment services, training curriculum or occupational training.

5. PARTICIPANT ELIGIBILITY AND SUITABILITY

a. Eligibility

The Recipient will ensure that Participants meet the eligibility requirements set out below:

- i. Individuals who are unemployed, precariously employed, or employed with low household income (for the purpose of this Project, Individuals who are working less than an average of 20 hours per week are considered to be unemployed and low household income is based on Low Income Cut-Off);

- ii. Individuals who are on a SAO employer's payroll but are facing barriers to job retention or advancement as identified by the delivery partners and advisory committee;
- iii. Individuals who are not participating in full-time training, education, or any other government training intervention that offers funding support for similar training or training-related costs (Note: Participants may access SAO financial supports in combination with supports from other government programs, provided they do not overlap or duplicate one another);
- iv. Residents of Ontario and legally entitled to work in Canada (i.e. citizens, permanent residents, or protected persons) and consistent with direction on other EO programs, Individuals who are not permanent residents or citizens (for example, 900-series Social Insurance Number holders) are not eligible, unless they meet the exceptions indicated in the Province's advisory on eligibility.
- v. 18 years of age or older; and
- vi. Individuals who are not employed in senior management or executive positions, or have controlling interest in the business.

b. Suitability

The Recipient will ensure that suitable Participants demonstrate the following factors:

- i. Having interest in pursuing a career in the identified sector; or for Individuals who are Incumbent Workers, having interest in advancement and demonstrate potential for success in SAO;
- ii. Poor employment history, for example, long-term unemployment, insufficient working hours (under-employment), or interruptions in work history;
- iii. Low household income, employment in a low-wage job, or dependence on non-employment income sources, such as social assistance or employment insurance benefits;
- iv. The ability to meet additional sector, workplace-specific requirements or occupational requirements as advised by the delivery partners and advisory committee, such as manual dexterity or strength; and
- v. The ability to meet additional partnership or community-specific criteria, for example, to support the employment and advancement of equity-seeking groups, as applicable.

6. PROJECT COMPONENTS

There are two Project components under SAO. The following outlines the two SAO project components and their subcomponents:

a. Partnership Development

- i. Partnership Building and Employer Needs Determination;
- ii. Partnership Sustainment (Management)