

Ontario Tourism Recovery Program – Terms and Conditions

The Ontario Tourism Recovery Program (the “**Program**”) is a program funded by Her Majesty the Queen in Right of Ontario as represented by the Minister of Heritage, Sport, Tourism and Culture Industries (the “**Province**”) to support eligible, established and proven for profit tourism businesses in Ontario that have been hardest hit by COVID-19. The aim of the Program is to ensure that tourism business that operate in Ontario can remain sustainable, recover from the impacts of COVID-19 and continue to operate in Ontario.

Awarded funding can be applied only to the eligible expenses listed below and only for expenses incurred between April 1, 2021 and March 31, 2022.

Eligible expenses

Funding can be applied to the following expenses for tourism-related operations:

- Staff salaries
- Operating costs including administration, staff training, repair and maintenance to restart or ramp up operations
- Costs related to strengthening health and safety measures to comply with COVID-19 guidelines and supporting visitors and workers (training, new technologies, advanced cleaning requirements, social distancing mechanisms, etc.)
- Tourism product and experience improvements
- Marketing, mobile application and website development.

Ineligible expenses

Program funding cannot be applied to any of the following expenses:

- Supporting restaurant and retail facilities (unless for staff salaries and wages, which are eligible)
- Expenses incurred before April 1, 2021 or after March 31, 2022
- Any expenses not directly paid by the funding recipient
- Pre-existing budget deficits/ long-term debt financing
- Any expenses covered by another municipal, provincial or federal grant program
- Repayments to other funding programs
- Capital repayments
- Capital costs not related to COVID-19 adaptations (for example, construction materials, motorized vehicles, land acquisition, purchase of depreciable assets.)
- Any costs related to transactions by organizations directly affiliated with the applicant or between enterprises under common ownership or control
- Any costs for gifts, gratuities, honoraria or other items of personal benefit (for example, executive bonuses)
- Alcohol or cannabis-related products
- Any costs incurred outside Ontario and payment for any operations outside Ontario
- Insurance
- Harmonized Sales Tax or refundable expenses (for example, security deposits)
- Anything that violates Ontario Ministry of Health guidance and regulations on COVID-19.

Payments to a successful applicant (the “**Recipient**”) under the Program are governed by an agreement between the Recipient and the Province (the “**Agreement**”). The terms and conditions of this Agreement are contained in this Intake Form.

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By submitting this Intake Form to the Province, the applicant is agreeing to be bound by these particular terms and conditions, if the Province agrees to provide Program funding to the applicant. If you are approved to receive Program funding, the Province will send you an Approval Letter.

If the Province and the Recipient agree on additional terms and conditions to be added to the Agreement, the Province will send these terms and conditions in Subsequent Correspondence, which the Recipient will sign and return to the Province, confirming its agreement with them.

Please note that the Province will not provide any Program payments to the applicant unless:

- (a) the Province approves the Program payment in an Approval Letter, which will outline the payment plan;
- (b) the applicant attests to the accuracy of the information submitted in the Intake Form and in any information submitted to the Province;
- (c) the applicant agrees to be bound by all of the terms and conditions of the Agreement (including those contained in any Subsequent Correspondence).

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 any additional terms and conditions that may be contained in the Approval Letter or Subsequent Correspondence;

“Agreement” means the Intake Form, including these general terms and conditions and any attached Schedules, Additional Provisions, and any instructions related to the submission of the Intake Form or any information provided by the Province, including those instructions found at

www.ontario.ca/page/get-funding-ontario-government

“Applicant” means the entity that has submitted the Intake Form to the Province for Funds from the Program.

“Approval Letter” means the letter from the Province to the Applicant announcing the award of funding through the Program to the Applicant.

“Budget” means the amount set out in the Approval Letter or Subsequent Correspondence.

“Business Day” means any working day, Monday to Friday inclusive, excluding statutory and

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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.

“Effective Date” means the date of the Approval Letter.

“Event of Default” has the meaning ascribed to it in section 17.1.

“Expiry Date” means August 31, 2022.

“Funding Period” means the period between the Effective Date and March 31, 2022.

“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.

“Intake Form” means the Transfer Payment Ontario intake form, including the attestation and all required supporting documentation, submitted by the Applicant for the Program, and includes all information contained therein.

“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 pursuant to section 17.3(b) and includes any such period or periods of time by which the Province extends that time in accordance with section 17.4.

“Program” means the Ontario Tourism Recovery Program.

“Parties” means the Province and the Recipient.

“Party” means either the Province or the Recipient.

“Project” means the project described by the Applicant, including the Applicant's proposed use of the funds, in the Intake Form, unless the Province describes the project in the Approval letter.

“Recipient” means an Applicant who has been awarded funding from the Program.

“Reports” means the reports described in Schedule “A”: Reports.

“Schedules” means any schedule attached to these terms and conditions.

“Subsequent Correspondence” means any correspondence relating to the Program, and/or the Reports that the Province sends to the Recipient subsequent to submission of the Intake Form by the Applicant.

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2.0 ENTIRE AGREEMENT

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

3.0 CONFLICT OR INCONSISTENCY

- 3.1 In the event of a conflict or inconsistency between the Additional Provisions and the provisions in these terms and conditions, the following rules will apply:

- (a) the Parties will interpret any Additional Provisions in so far as possible, in a way that preserves the intention of the Parties as expressed in these terms and conditions; and
- (b) where it is not possible to interpret the Additional Provisions in a way that is consistent with the provisions in these terms and conditions, the Additional Provisions will prevail over the provisions in these terms and conditions to the extent of the inconsistency.

4.0 COUNTERPARTS

- 4.1 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.

5.0 ACKNOWLEDGEMENT

- 5.1 The Recipient acknowledges that:
- (a) by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the *Broader Public Sector Accountability Act, 2010* (Ontario), the *Public Sector Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario);
 - (b) Her Majesty the Queen in right of Ontario has issued expenses, perquisites, and procurement directives and guidelines pursuant to the *Broader Public Sector Accountability Act, 2010* (Ontario);
 - (c) the Funds are:
 - (i) exclusively for the Recipient to carry out the Project and not to provide goods or services to the Province or for any other purpose;
 - (ii) funding for the purposes of the *Public Sector Salary Disclosure Act, 1996* (Ontario);
 - (d) the Province is not responsible for carrying out the Project, which is the sole responsibility of the Recipient; and
 - (e) 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 Program or

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otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

6.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- (a) it is, and will continue to be, a validly existing corporation incorporated under the *Canada Business Corporation Act* or the *Business Corporations Act* (Ontario) with full power to fulfill its obligations under the Agreement;
- (b) it has, and will continue to have the experience and expertise to carry out the Project;
- (c) it is operating, and will continue to operate, a tourism operation that is operated in accordance with the laws of the Province of Ontario, the applicable federal laws of Canada and the applicable laws of a municipality or similar jurisdiction, including the requirement for any permit or licence required to operate the tourism operation;
- (d) it is in compliance with, and will continue to comply 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 Program;
- (e) it will use the Funds exclusively for the Project; and
- (f) 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 to the best of the Recipient's knowledge and ability, which truth and completeness will be attested to by an attestation made by the Recipient in any response to any request for information by the Province.

6.2 **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.

6.3 **Governance.** The Recipient represents, warrants and covenants that it has, will maintain in writing, and will follow:

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
- (b) procedures to enable the Recipient's ongoing effective functioning;
- (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 to identify risks to the completion of the Project and strategies to address the identified risks, all in a timely manner;
- (g) procedures to enable the preparation and submission of all Reports required pursuant to the reporting requirements of the Program; and
- (h) procedures to enable the Recipient to address such other matters as the Recipient

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considers necessary to enable the Recipient to carry out its obligations under the Agreement.

- 6.4 **Supporting Proof.** Upon the request of the Province, the Recipient will provide the Province with proof of the matters referred to in Article 6.0.

7.0 TERM OF THE AGREEMENT

- 7.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless terminated earlier pursuant to Article 15.0, Article 16.0, or Article 17.0.

8.0 FUNDS AND CARRYING OUT THE PROJECT

- 8.1 **Funds Provided.** The Province will:

- (a) provide the Funds to the Recipient for the purposes of carrying out the Project;
- (b) 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.

- 8.2 **Limitation on Payment of Funds.** Despite section 8.1:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the certificates of insurance or other proof as the Province may request pursuant to section 14.2;
- (b) the Province is not obligated to provide final instalment of the Funds until it is satisfied with the final report submitted by the Recipient;
- (c) the Province may adjust the amount of Funds it provides to the Recipient based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section 11.1; or
- (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 16.1.

- 8.3 **Use of Funds and Carry Out the Project.** The Recipient will do all of the following:

- (a) carry out the Project in accordance with the Agreement;
- (b) use the Funds only for the purpose of carrying out the Project and only for eligible tourism-related expenses, incurred between April 1, 2021 and March 31, 2022, which are:
 - i. Staff salaries;

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- ii. Operating costs including administration, repair and maintenance to restart or ramp up operations when provincial health orders and restrictions are lifted;
 - iii. Costs related to strengthening health and safety measures to comply with COVID-19 guidelines and support the safety of visitors and workers (training, new technologies, advanced cleaning requirements, social distancing mechanisms, etc.);
 - iv. Product and experience improvements; and
 - v. Marketing, mobile application and website development
- (c) not use the Funds on any ineligible expense, which include;
 - i. Expenses incurred before April 1, 2021 or after March 31, 2022;
 - ii. Any expenses not directly paid by the Recipient;
 - iii. Pre-existing budget deficits/ long-term debt financing;
 - iv. Any expenses covered by another municipal, provincial or federal grant program;
 - v. Repayments to other funding programs;
 - vi. Capital repayments;
 - vii. Capital costs (e.g., construction materials, motorized vehicles, land acquisition, purchase of depreciable assets) not related to COVID-19 adaptations;
 - viii. Any costs related to transactions by organizations directly affiliated with the applicant or between enterprises under common ownership or control;
 - ix. Any costs for gifts, gratuities, honoraria or other items of personal benefit (e.g., executive bonuses);
 - x. Alcohol or cannabis-related products;
 - xi. Any costs incurred to fund the operation of an operation or business outside Ontario, whether a tourism operation or business or any other operation or business;
 - xii. Insurance;
 - xiii. Harmonized Sales Tax or refundable expenses (e.g., security deposits); and
 - xiv. Anything that contravenes the Ontario Ministry of Health guidance and regulations on COVID-19
- (d) not use the Funds for costs that have or will be funded or reimbursed by one or more of any third party, ministry, agency or organization of the Government of Ontario or the Government of Canada;
- (e) make reasonable efforts to set out Funds received under the Program as a separate line item in their income statement and/or financial reports from other government funding;
- (f) create and maintain records that document:
 - i. a summary of invoices regarding the expenses the Funds were used for;
 - ii. the gross amount of Funds used in each eligible expense category as set out in section 8.3(b);
- (g) provide the Province with such information and records as may be requested in order to calculate the Recipient's entitlement to Funds or to evaluate the outcomes and effectiveness of the Recipient's use of the Funds to carry out the Project; and
- (h) at the request of the Province, provide communications materials related to the use of the Funds to carry out the Project.

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- 8.4 **Interest Bearing Account.** If the Province provides Funds 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.
- 8.5 **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 payment of an amount equal to the interest.
- 8.6 **Rebates, Credits, and Refunds.** The Province will calculate Funds based on the actual funds for which the Recipient is eligible in respect of the Project.
- 9.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS**
- 9.1 **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 *Broader Public Sector Accountability Act, 2010* (Ontario), including any procurement directive issued thereunder, to the extent applicable.
- 9.2 **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 \$1,000 at the time of purchase.
- 10.0 CONFLICT OF INTEREST**
- 10.1 **No Conflict of Interest.** The Recipient will carry out the Project and use the Funds without an actual, potential, or perceived conflict of interest.
- 10.2 **Conflict of Interest Includes.** For the purposes of Article 10.0, 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.
- 10.3 **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

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- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

11.0 REPORTS, ACCOUNTING, AND REVIEW

11.1 Preparation and Submission. The Recipient will:

- (a) submit to the Province at the address referred to in section 21.1, all Reports in accordance with Schedule “A” or the timelines and content requirements to be provided in the Approval Letter and/or Subsequent Correspondence and any other Reports requested by the Province in accordance with the timelines and content requirements provided by the Province;
- (b) ensure that all Reports are completed to the satisfaction of the Province;
- (c) attest to the truth of the contents of the Reports in the Reports; and
- (d) ensure that all Reports are signed on behalf of the Recipient by an authorized signing officer.

11.2 Record Maintenance. The Recipient will keep and maintain:

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

11.3 Inspection. The Province, any authorized representative, or any independent auditor identified by the Province may, at the Province’s 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 Recipient’s allocation and expenditure of the Funds and, for these purposes, the Province, any authorized representative, or any 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 11.2;
- (b) remove any copies made pursuant to section 11.3(a) from the Recipient’s premises; and
- (c) conduct an audit or investigation of the Recipient in respect of the use of the Funds, or both.

11.4 Disclosure. To assist in respect of the rights provided for in section 11.3, the Recipient will disclose any information requested by the Province, any authorized representatives, or any independent auditor identified by the Province, and will do so in the form requested by the Province, any authorized representative, or any independent auditor identified by the Province, as the case may be.

11.5 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.

11.6 Auditor General. The Province’s rights under Article 11.0 are in addition to any rights provided

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to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

12.0 COMMUNICATIONS REQUIREMENTS

12.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient will:

- (a) acknowledge the support of the Province for the Project; and
- (b) ensure that the acknowledgement referred to in section 12.1(a) is in a form and manner as directed by the Province.

12.2 **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.

13.0 INDEMNITY

13.1 **Indemnification.** The Recipient will 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 Program or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

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14.0 INSURANCE

14.1 **Recipient's Insurance.** The Recipient represents, warrants, and covenants that it has, and will maintain, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance 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 \$2,000,000 per occurrence. The insurance 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.

14.2 **Proof of Insurance.** The Recipient will:

- (a) provide to the Province, either:
 - i. certificates of insurance that confirm the insurance coverage as provided for in section 14.1;
 - ii. or other proof that confirms the insurance coverage as provided for in section 14.1; and
- (b) upon the request of the Province, provide to the Province a copy of any insurance policy.

15.0 TERMINATION ON NOTICE

15.1 **Termination on Notice.** The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving at least 15 days' Notice to the Recipient.

15.2 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section 15.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment 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 the Recipient owes pursuant to section 15.2(b); and

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- (ii) subject to section 18.1(a), provide Funds to the Recipient to cover such costs.

16.0 TERMINATION WHERE NO APPROPRIATION

- 16.1 **Termination Where No Appropriation.** If, as provided for in section 8.2(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.
- 16.2 **Consequences of Termination Where No Appropriation.** If the Province terminates the Agreement pursuant to section 16.1, the Province may take one or more of the following actions:
- (a) cancel further instalments of Funds;
 - (b) demand from the Recipient the payment 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 16.2(b).
- 16.3 **No Additional Funds.** If, pursuant to section 16.2(c), the Province determines that the costs to wind down the Project exceed the Funds remaining in the possession or under the control of the Recipient, the Province will not provide additional Funds to the Recipient.

17.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

- 17.1 **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 the Funds to carry out the Project; or
 - (iii) provide Reports in accordance with section 11.1;
 - (b) the Recipient's operations, its financial condition, or its organizational structure, changes such that it no longer meets one or more of the eligibility requirements of the Program;
 - (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.
- 17.2 **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:

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- (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 further instalments of Funds;
- (f) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand from the Recipient the payment 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.

17.3 **Opportunity to Remedy.** If, in accordance with section 17.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will give Notice to the Recipient of:

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

17.4 **Recipient not Remediating.** If the Province provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 17.2(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 17.2(a), (c), (d), (e), (f), (g), (h) and (i).

17.5 **When Termination Effective.** Termination under Article 17.0 will take effect as provided for in the Notice.

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18.0 FUNDS AT THE END OF A FUNDING YEAR

18.1 **Funds at the End of the Funding Period.** Without limiting any rights of the Province under Article 17.0, if the Recipient has not spent all of the Funds allocated for the Funding Period as provided for in the Budget, the Province may take one or both of the following actions:

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

19.0 FUNDS UPON EXPIRY

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

20.0 DEBT DUE AND PAYMENT

20.1 **Payment of Overpayment.** If at any time 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.

20.2 **Debt Due.** If, pursuant to the Agreement:

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

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 the amount to the Province immediately, unless the Province directs otherwise.

20.3 **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.

20.4 **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 as provided for in section 21.1.

20.5 **Fails to Pay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, 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.

21.0 NOTICE

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- 21.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, and will be addressed to the Province and the Recipient respectively as provided for below, or as either Party later designates to the other by Notice:

To the Province: Attention: Ontario Tourism Recovery Program Ministry of Heritage, Sport, Tourism and Culture Industries 400 University Avenue 5 th Floor Toronto ON M7A 2R9 Email: otrp@ontario.ca	To the Recipient: The Recipient's email address as set out in the Intake Form, or as the Recipient later designates to the Province by Notice.
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- 21.2 **Notice Given.** Notice will be deemed to have been given one Business Day after the Notice is delivered.

22.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

- 22.1 **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.

23.0 SEVERABILITY OF PROVISIONS

- 23.1 **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.

24.0 WAIVER

- 24.1 **Waiver Request.** Either Party may in accordance with the Notice provision set out in Article 21.0, ask the other Party to waive an obligation under the Agreement.
- 24.2 **Waiver Applies.** Any waiver a Party grants in response to a request made pursuant to section 24.1 will:
- (a) be valid only if the Party granting the waiver provides it in writing; and
 - (b) apply only to the specific obligation referred to in the waiver.

25.0 INDEPENDENT PARTIES

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

26.0 ASSIGNMENT OF AGREEMENT OR FUNDS

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- 26.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.
- 26.2 **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.

27.0 GOVERNING LAW

- 27.1 **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.

28.0 FURTHER ASSURANCES

- 28.1 **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.

29.0 JOINT AND SEVERAL LIABILITY

- 29.1 **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.

30.0 RIGHTS AND REMEDIES CUMULATIVE

- 30.1 **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.

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31.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

31.1 Other Agreements. If the Recipient:

- (a) has failed to comply with any term, condition, or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a “**Failure**”);
- (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.

32.0 SURVIVAL

- 32.1 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, Article 2.0, Article 3.0, Article 4.0, section 6.1(a), section 11.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 11.2, 11.3, 11.4, 11.5, 11.6, Article 12.0, Article 13.0, section 15.2, sections 16.2 and 16.3, sections 17.1, 17.2(d), (e), (f), (g) and (h), Article 19.0, Article 20.0, Article 21.0, Article 23.0, section 26.2, Article 27.0, Article 29.0, Article 30.0, Article 31.0, and Article 32.0.

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SCHEDULE “A” REPORTS

Report No.	Report Type	Content	Submission Date
1.	Final Report	<p>A report outlining how the Funds helped your tourism operation, re-opening and recovery efforts. All performance metrics and results (achieved or anticipated) will be reported in this document. Example of these metrics include how many employees were hired, expenses incurred re-opening, new tourism product/experiences developed etc.</p> <p>Report template will be provided to successful recipients.</p>	on or before August 31, 2022
2.	Financial reporting: a. For grant funding under \$250,000:	<p>1. Summary of Invoices for the Ontario Tourism Recovery funded expenses. The summary must include the date of invoice, the amount (not including tax), payee and the description of expenses. A template will be provided by the Ministry.</p> <p>Note: you will not be required to submit each invoice, however in the absence of a third party audited confirmation of program spend, recipients are required to keep supporting invoice documents to validate all costs for a minimum of three years, and may be required to submit to the province upon request. Expenses need to have been incurred between April 1, 2021 and March 31, 2022.</p> <p>2. Financial statement for Ontario Tourism Recovery Program funded revenue and expenses. This statement must be certified by the Chief Financial Officer, or senior most financial representative, assuring its accuracy and compliance with the eligible expenses for which the funds were used, as set out in section 8 of the terms and conditions.</p>	Along with the Final Report.

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		<p>The following statement must be included in certification:</p> <p>In our opinion, the statement of Provincial revenue and expenditures of <name of business> for the Ontario Tourism Recovery Program funding for the period April 1, 2021 to March 31, 2022 is prepared, in all material respects, in accordance with the financial reporting provisions in Section 8 of the Terms and Conditions (Use of Funds and Carry Out the Project) of the Agreement between <name of business> and the Ministry of Heritage, Sport, Tourism and Culture Industries as represented by Her Majesty the Queen in right of Ontario.</p>	
	<p>b. For grant funding \$250,000 or higher:</p>	<p>1. Audited statement of revenues and expenditures outlining the eligible, expenses financed by this grant. Expenses must be incurred within the fiscal year from April 1, 2021 – March 31, 2022. This statement must include the auditor's opinion of assurance, prepared by a third-party Licensed Public Chartered Professional Accountant, on the expenditures for the Ontario Tourism Recovery Program in accordance with Section 8 of the Terms and Conditions (Use of Funds and Carry out the Project) the Agreement between the Recipient and the Ministry of Heritage, Sport, Tourism and Culture Industries, as represented by Her Majesty the Queen in right of Ontario.</p>	<p>Along with the Final Report.</p>