

THE AGREEMENT is effective as of the _____ day of _____, 20____

B E T W E E N :

Ontario Media Development Corporation

(the “Province”)

- and -

[Full name of recipient]

(the “Recipient”)

CONSIDERATION

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

1.0 ENTIRE AGREEMENT

1.1 This 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” - Reports, and
- any amending agreement entered into as provided for in section 3.1,

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.

2.0 COUNTERPARTS

2.1 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.

3.0 AMENDING THE AGREEMENT

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

4.0 ACKNOWLEDGEMENT

4.1 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 Salary Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario);
- (b) His Majesty the King 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) to assist the Recipient to carry out the Project and not to provide goods or services to the Province;
 - (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; 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 Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

- SIGNATURE PAGE FOLLOWS -

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

ONTARIO MEDIA DEVELOPMENT CORPORATION

by:

Date

Name:
Title:

[FULL NAME OF RECIPIENT]

by:

Date

Name:
Title:

I have authority to bind the Recipient.

TEMPLATE

SCHEDULE “A” GENERAL TERMS AND CONDITIONS

A1.0 INTERPRETATION AND DEFINITIONS

A1.1 **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.

A1.2 **Definitions.** In the Agreement, the following terms will have the following meanings:

“**Additional Provisions**” means the terms and conditions referred to in section A9.1 and as specified in Schedule “B”.

“**Agreement**” means this agreement entered into between the Province and the Recipient and includes all of the schedules listed in section 1.1 and any amending agreement entered into pursuant to section 3.1.

“**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.

“**Effective Date**” means the date set out at the top of the Agreement.

“**Event of Default**” has the meaning ascribed to it in section A14.1.

“**Expiry Date**” means the date on which the Agreement will expire and is the date provided for 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 Ontario Media Development Corporation, His Majesty the King Queen in right of Ontario, His ministers, agents, appointees, and employees.

“Maximum Funds” means the maximum amount the Province will provide the Recipient under the Agreement as provided for 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 pursuant to section A14.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A14.4.

“Parties” means the Province and the Recipient.

“Party” means either the Province or the Recipient.

“Project” means the undertaking described in Schedule “C”.

“Reports” means the reports described in Schedule “F”.

A2.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS

A2.1 General. The Recipient represents, warrants, and covenants that:

- (a) it is, and will continue to be, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and will continue to have, the experience and expertise necessary to carry out the Project;
- (c) 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 Project, the

Funds, or both;

- (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; and
- (e) it is not aware of any actions, suits, proceedings or investigations that relate to the Project that may be pending or threatened against the Recipient or any person associated with the Project.

A2.2 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.

A2.3 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 Article A7.0; and
- (h) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to enable the Recipient to carry out its obligations under the Agreement.

A2.4 Supporting Proof. Upon the request of the Province, the Recipient will provide the Province with proof of the matters referred to in this Article A2.0.

A3.0 TERM OF THE AGREEMENT

A3.1 **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 A12.0, Article A13.0, or Article A14.0.

A4.0 FUNDS AND CARRYING OUT THE PROJECT

A4.1 **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.

A4.2 **Limitation on Payment of Funds.** Despite section A4.1:

- (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 A11.2;
- (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 the Recipient provides to the Province pursuant to section A7.1; 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 A13.1.

- A4.3 **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;
 - (c) spend the Funds only in accordance with the Budget;
 - (d) not use the Funds to cover any cost that has or will be funded or reimbursed by one or more of any third party, ministry, agency, or organization of the Government of Ontario.
- A4.4 **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.
- A4.5 **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.
- A4.6 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.
- A4.7 **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 to carry out the Project, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit, or refund.
- A5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS**
- A5.1 **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.

A5.2 **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 provided for in Schedule "B" at the time of purchase.

A6.0 CONFLICT OF INTEREST

A6.1 **No Conflict of Interest.** The Recipient will carry out the Project and use the Funds without an actual, potential, or perceived conflict of interest.

A6.2 **Conflict of Interest Includes.** For the purposes of this Article A6.0, 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.

A6.3 **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.

A7.0 REPORTS, ACCOUNTING, AND REVIEW

A7.1 **Preparation and Submission.** The Recipient will:

- (a) submit to the Province at the address referred to in section A18.1, all Reports in accordance with the timelines and content requirements as provided for 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 A18.1, any other reports as may be requested by the Province in accordance with the Project 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.

A7.2 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.

A7.3 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 Project and 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 A7.2;
- (b) remove any copies made pursuant to section A7.3(a) from the Recipient's premises; and
- (c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds, the Project, or both.

A7.4 Disclosure. To assist in respect of the rights provided for in section A7.3, 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.

A7.5 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.

A7.6 Auditor General. The Province's rights under this Article A7.0 are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 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 A8.1(a) is in a form and manner as directed by the Province.

A8.2 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.

A9.0 FURTHER CONDITIONS

A9.1 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.

A10.0 INDEMNITY

A10.1 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 Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

A10.2 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.

A10.3 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 the 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.

A10.4 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 the 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.

A10.5 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

A11.0 INSURANCE

A11.1 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 the amount provided for in Schedule "B" 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.

A11.2 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 A11.1; or
 - (ii) other proof that confirms the insurance coverage as provided for in section A11.1; and
- (b) upon the request of the Province, provide to the Province a copy of any insurance policy.

A12.0 TERMINATION ON NOTICE

A12.1 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.

A12.2 Consequences of Termination on Notice by the Province. If the Province terminates the Agreement pursuant to section A12.1, 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 A12.2(b); and
 - (ii) subject to section A4.7, provide Funds to the Recipient to cover such costs.

A13.0 TERMINATION WHERE NO APPROPRIATION

A13.1 Termination Where No Appropriation. If, as provided for in section A4.2(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.

A13.2 Consequences of Termination Where No Appropriation. If the Province terminates the Agreement pursuant to section A13.1, 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 A13.2(b).

A13.3 No Additional Funds. If, pursuant to section A13.2(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.

A14.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A14.1 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 A7.1, Reports or such other reports as may have been requested pursuant to section A7.1(b);
- (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 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.

A14.2 **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 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.

A14.3 Opportunity to Remedy. If, in accordance with section A14.2(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.

A14.4 Recipient not Remediating. If the Province provided the Recipient with an opportunity to remedy the Event of Default pursuant to section A14.2(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 A14.2(a), (c), (d), (e), (f), (g), (h), and (i).

A14.5 When Termination Effective. Termination under this Article will take effect as provided for in the Notice.

A15.0 FUNDS AT THE END OF A FUNDING YEAR

A15.1 Funds at the End of a Funding Year. Without limiting any rights of the Province under Article A14.0, 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 from the Recipient payment of the unspent Funds; and
- (b) adjust the amount of any further instalments of Funds accordingly.

A16.0 FUNDS UPON EXPIRY

A16.1 **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.

A17.0 DEBT DUE AND PAYMENT

A17.1 **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.

A17.2 **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.

A17.3 **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.

A17.4 **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 Schedule “B”.

A17.5 **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, His Majesty the King in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by His Majesty the King in right of Ontario.

A18.0 NOTICE

A18.1 **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 provided for Schedule “B”, or as either Party later designates to the other by Notice.

A18.2 **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.

A18.3 **Postal Disruption.** Despite section A18.2(a), in the event of a postal disruption:

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

A19.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A19.1 **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.

A20.0 SEVERABILITY OF PROVISIONS

A20.1 **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.

A21.0 WAIVER

A21.1 **Waiver Request.** Either Party may, in accordance with the Notice provision set out in Article A18.0, ask the other Party to waive an obligation under the Agreement.

A21.2 **Waiver Applies.** Any waiver a Party grants in response to a request made pursuant to section A21.1 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.

A22.0 INDEPENDENT PARTIES

A22.1 **Parties Independent.** The Recipient is not an agent, joint venture, 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.

A23.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A23.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A23.2 **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.

A24.0 GOVERNING LAW

A24.1 **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.

A25.0 FURTHER ASSURANCES

A25.1 **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.

A26.0 JOINT AND SEVERAL LIABILITY

A26.1 **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.

A27.0 RIGHTS AND REMEDIES CUMULATIVE

A27.1 **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.

A28.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A28.1 **Other Agreements.** If the Recipient:

- (a) has failed to comply with any term, condition, or obligation under any other agreement with His Majesty the King in right of Ontario or one of

His agencies (a “**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.

A29.0 SURVIVAL

A29.1 **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, Article 2.0, Article A1.0 and any other applicable definitions, section A2.1(a), sections A4.2(d), A4.5, section A5.2, section A7.1 (to the extent that the Recipient has not provided the Reports or other reports as may have been requested to the satisfaction of the Province), sections A7.2, A7.3, A7.4, A7.5, A7.6, Article A8.0, Article A10.0, section A12.2, sections A13.2, A13.3, sections A14.1, A14.2(d), (e), (f), (g) and (h), Article A16.0, Article A17.0, Article A18.0, Article A20.0, section A23.2, Article A24.0, Article A26.0, Article A27.0, Article A28.0 and Article A29.0.

- END OF GENERAL TERMS AND CONDITIONS -

**SCHEDULE “B”
PROJECT SPECIFIC INFORMATION AND ADDITIONAL PROVISIONS**

Maximum Funds	\$
Expiry Date	
Amount for the purposes of section A5.2 (Disposal) of Schedule “A”	\$ 1,000
Insurance	\$ 2,000,000
Contact information for the purposes of Notice to the Province	Name: Address: Attention: Fax: Email:
Contact information for the purposes of Notice to the Recipient	Name: Address: Attention: Phone: Fax: Email:

Additional Provisions:

1. The following definitions are hereby added to section A1.2 of Schedule “A” to this Agreement:

“**Ontario Creates**” means the Ontario Media Development Corporation.

“**First Draft Study**” means the first draft study required by the Project as described in Schedule “C” to this Agreement.

“**Final Draft Study**” means the final draft study required by the Project as described in Schedule “C” to this Agreement.

“Final Study” means the final study required by the Project as described in Schedule “C” to this Agreement.

“Online Application Portal (OAP)” means the database through which an application under this Agreement must be submitted.

2. Article A4.0 in Schedule “A” to this Agreement is hereby amended by adding section A4.8 as follows:

A4.8 Changes Requested. The Recipient will provide Notice to the Province of any changes to the Project or the Budget it requests as soon as such proposed changes are identified. The Province will then review each request and determine whether it will agree to enter into a written amending agreement reflecting such a request pursuant to section 4.1 of the Agreement.

3. Article A8 in Schedule “A” to this Agreement is hereby deleted and replaced with the following:

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 Acknowledgement. The Recipient will acknowledge the Province’s financial support of the Project by:

- (a) including one of the following acknowledgements in the Final Study in addition to the Ontario Creates logo, which will be provided to the Recipient:
 - (i) “Funding for this study/project was provided by Ontario Creates” (or the French version thereof); or
 - (ii) “The authors acknowledge the financial support of Ontario Creates” (or the French version thereof); and
- (b) acknowledging the financial support of Ontario Creates towards the Project at any public launch of the Project and in all Project communications material (e.g., news releases, website text, posts to social media channels), in a form and manner to be approved in writing by the Province.
- (c) In all material respects (including size of type and placement), the Ontario Creates logo is not to be less prominent than credit accorded to any and all other financial participant(s) in the Project, where applicable, taking into consideration the respective size of the contribution.

- A8.2 Disclaimer.** The Recipient will include the following disclaimer in its Final Study in addition to the acknowledgement required under subsection A8.2: “Any opinions, findings, conclusions or recommendations expressed in this material are those of the author and do not necessarily reflect the views of Ontario Creates or the Government of Ontario. The Government of Ontario and its agencies are in no way bound by the recommendations contained in this document.”
- A8.3 Release of Final Study.** The form and manner of all public announcements, news releases, advertising, website text or social media postings prepared by the Recipient in relation to the release of the Final Study require the prior written approval of the Province. The Province requires ten (10) business days to review and provide any comments on these materials. The Recipient must give Notice to the Province of any known or anticipated media coverage of the release of the Final Study as soon as the Recipient becomes aware of such coverage.
- A8.4 Project Launch Event.** If a public launch event of the Project is undertaken, the Recipient shall be responsible for organizing the event.
- A8.5 Public.** The Recipient agrees that the Province may make public the name and business address of the Recipient, the amount of Funds, and the purpose for which such Funds are being provided to the Recipient under the Agreement.
- A8.6 Promotion.** The Province reserves the right to use the Recipient’s name, Project title and key art or images to promote the Province’s involvement in the Project. While this right is to be exercised at the discretion of the Province, due consideration is to be given to the appropriate timing of such promotion as it relates to the Project.

4. Article A30.0 is hereby added to Schedule “A” of the Agreement as follows:

A30.0 THIRD PARTY INVOLVEMENT

- A30.1 Third Party Involvement.** The Recipient shall be responsible for overseeing the completion of all aspects of the Project as described in Schedule “C”, including the work of any consultants, researchers or other third parties required for the Project. If an outside third party is engaged on the Project by the Recipient, the Recipient shall enter into a written agreement with that third party.
- A30.2 Materials.** Upon request of the Province, and in order to allow the Province an opportunity to assess whether the requirements of the Project

are being or have been met, the Recipient agrees to share all draft materials, including documents, reports and studies, prepared for the Project by third parties.

- A30.3 Presentations.** Upon request of the Province, and in order to allow the Province an opportunity to assess whether the requirements of the Project are being or have been met, the Recipient agrees to permit the Province's attendance at any Project related presentations to the Recipient by consultants, researchers or other third parties involved in the Project or at any Project related meetings between the Recipient and such third parties. The Recipient will provide reasonable notice of such meetings or presentations to the Province.
- A30.4 Recipient's Obligations.** For greater clarity, the Recipient acknowledges that sections A30.1 to A30.3 do not relieve the Recipient of any of its obligations under the Agreement.
- A30.5 Expenses.** The Funds shall not be used to cover travel, hospitality or other personal expenses incurred by consultants, researchers or other third parties for the Project.
- A30.6 Taxes.** The Recipient must ensure any taxes, including HST, charged to the Recipient by a consultant, researcher or other third party for the Project are described in the written agreement between those parties, and are included in the Budget.

5. Article A31.0 is hereby added to Schedule "A" of the Agreement as follows:

A31.0 REVIEW AND APPROVAL OF BUSINESS INTELLIGENCE STUDY

- A31.1 Review Process.** The Recipient must provide the Province with an opportunity to review and comment on each of the First Draft Study, Final Draft Study and the Final Study to assess whether the Project requirements set out in Schedule "C" to the Agreement are being or have been met. This review process will occur in three stages in accordance with the following requirements and the Project timelines set out in Schedule "C":
- (a) First, the Recipient will provide the Province with the First Draft Study. The Province requires ten (10) business days to review and provide comments on the First Draft Study;
 - (b) Second, the Recipient will provide the Province with a Final Draft Study that responds to any comments by the Province on meeting the Project requirements in the First Draft Study. The Province requires ten (10)

business days to review and provide comments on the Final Draft Study; and

- (c) Third, the Recipient will provide a Final Study to the Province that responds to any Ontario Creates comments on meeting the Project requirements in the Final Draft Study.

A31.2 Approval. The Recipient must receive written approval from the Province that the Final Study meets the Project requirements set out in Schedule “C” to the Agreement before the Recipient may publish, distribute or disseminate it to the public in accordance with section A31.0.

6. Article A32.0 is hereby added to Schedule “A” of the Agreement as follows:

A32.0 PUBLIC AVAILABILITY OF FINAL STUDY

A32.1 Public Availability. Upon receiving approval from the Province in accordance with section A31.2, the Recipient must make the Final Study publically available for exclusively non-commercial educational purposes, including by posting a copy on its website, by publishing, distributing and/or disseminating copies of the Final Study more broadly (for example by posting copies to its social media channels and by distributing copies within the cultural media industry) and by allowing for further publication, distribution and/or dissemination by members of the public.

- (c) The reference to the “Ontario Minister of Finance” in section A17.4 of Schedule “A” to this Agreement is deleted and replaced with the “Ontario Media Development Corporation”.
- (d) The references to His Majesty the King in right of Ontario in section A17.5 of Schedule “A” to this Agreement are deleted and replaced with the Province.
- (e) Section A30.2 and Article A32.0 of Schedule “A” to the Agreement are hereby added to the list of provisions that will survive expiry or termination of the Agreement under and in accordance with section A29.1 of Schedule “A” to the Agreement.

7. Section A18.1 of Schedule “A” to this Agreement is hereby deleted and replaced with the following:

A18.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by electronic means on the Online Application Portal (OAP), 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.

8. Article A33.0 is hereby added to Schedule “A” of the Agreement as follows:

A33.0 BUDGET REALLOCATION

A33.1 **Where No Formal Amendment Required.** Notwithstanding section 4.1 of the Agreement, the reallocation of Funds between line items within the Budget will not constitute a change to the Budget requiring a written amendment to the Agreement duly executed by the Parties, unless the reallocation of such Funds on one or more occasions represents a cumulative amount of reallocated Funds equalling over 10% of the total Funds within the Budget.

TEMPLATE

SCHEDULE “C”

PROJECT DESCRIPTION AND TIMELINES

To be completed at time of contracting.

TEMPLATE

SCHEDULE “D”

BUDGET

To be completed at time of contracting.

TEMPLATE

SCHEDULE “E”

PAYMENT PLAN

To be completed at time of contracting.

TEMPLATE

SCHEDULE “F”

REPORTS

The Recipient will deliver an interim progress report via the Online Application Portal (OAP), including the following information:

1. A brief update on project activities to date with reference to original project plan (eg. status of data collection, survey activities, budget)
2. An indication of whether the project is on schedule. If no: Please provide an explanation of the reason/reasons the project is no longer on schedule as well as a revised timeline (may be attached)
3. An indication of plans to release the study (examples may include report distribution, communications plan, any planned launch or similar activities). (Note: Ontario Creates requires 2 weeks’ notice prior to launch and the opportunity to review draft press releases at least one week in advance).
4. Supporting Documents
 - Cost Report for costs incurred to date relative to the Budget
 - Revised timeline, if required

The Recipient will deliver a final cost report via the Online Application Portal (OAP), including the following information:

1. A detailed cost report based on the Budget that accounts for revenues and expenditures, including in-kind goods and services. Explain significant variances in each budget category. The Final Cost Report must include the actual amounts incurred for each budgeted item and a separate list of the sources used to finance the final cost. The Province reserves the right to request additional details including proof of payment for any item submitted in the Final Cost Report.

The due dates for the reports referred to above are set out in Schedule “E” to this Agreement, where applicable.

The Province reserves the right to request progress reports from time to time, on a date or dates specified by the Province.