

**INTELLECTUAL PROPERTY FUND - LINEAR
ONTARIO TRANSFER PAYMENT AGREEMENT**

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

BETWEEN:

Ontario Creates

(the “Province”)

- and -

«Applicant»

(the “Recipient”)

CONSIDERATION

In consideration of the mutual covenants and agreements contained in the 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 1.0 ENTIRE AGREEMENT

1.1 Schedules to the Agreement. The following schedules form part of the Agreement:

- Schedule “A” - General Terms and Conditions
- Schedule “B” - Project Specific Information and Additional Provisions
- Schedule “C” - Project Description and Timelines
- Schedule “D” - Budget and Financing Plan
- Schedule “E” - Payment Plan and Reporting Dates
- Schedule “F” - Reports.

1.2 Entire Agreement. 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.

2.0 2.0 CONFLICT OR INCONSISTENCY

2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between the Additional Provisions and the provisions in Schedule “A”, 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 Schedule “A”; and
- (b) where it is not possible to interpret the Additional Provisions in a way that is consistent with the provisions in Schedule “A”, the Additional Provisions will prevail over the provisions in Schedule “A” to the extent of the inconsistency.

3.0 3.0 COUNTERPARTS

3.1 **One and the Same Agreement.** 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.

4.0 4.0 AMENDING THE AGREEMENT

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

5.0 5.0 ACKNOWLEDGEMENT

5.1 **Acknowledgement.** 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;
- (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; and
- (f) the Province is bound by the *Financial Administration Act* (Ontario) (“FAA”) and, pursuant to subsection 11.3(2) of the FAA, payment by the Province of Funds under the Agreement will be subject to,
 - (i) an appropriation, as that term is defined in subsection 1(1) of the FAA, to which that payment can be charged being available in the Funding Year in which the payment becomes due; or
 - (ii) the payment having been charged to an appropriation for a previous fiscal year.

SIGNATURE PAGE FOLLOWS

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

ONTARIO CREATES

Date

Name:

Title:

«Applicant»

Date

Name: «Signing_Officer_Name»

Title: «Signing_Officer_Title»

I have authority to bind the Recipient

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 set out in Schedule "B".

"Agreement" means this agreement entered into between the Province and the Recipient, all of the schedules listed in section 1.1, and any amending agreement entered into pursuant to section 4.1.

"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 A12.1.

"Expiry Date" means the expiry 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 or the Expiry Date, whichever is first.

“Funds” means the money the Province provides to the Recipient pursuant to the Agreement.

“Indemnified Parties” means His Majesty the King in right of Ontario, and includes His ministers, agents, appointees, and employees.

“Loss” means any cause of action, liability, loss, cost, damage, or expense (including legal, expert and consultant fees) that anyone incurs or sustains as a result of or in connection with the Project or any other part of the Agreement.

“Maximum Funds” means the maximum 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 pursuant to section A12.3(b), and includes any such period or periods of time by which the Province extends that time pursuant to section A12.4.

“Parties” means the Province and the Recipient.

“Party” means either the Province or the Recipient.

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding that anyone makes, brings or prosecutes as a result of or in connection with the Project or with any other part of the Agreement.

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

“Records Review” means any assessment the Province conducts pursuant to section A7.4.

“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; 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.

A2.2 Execution of Agreement. The Recipient represents and warrants that it has:

- (a) the full power and capacity 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 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 A11.0 or Article A12.0.

A4.0 FUNDS AND CARRYING OUT THE PROJECT

A4.1 Funds Provided. The Province will:

- (a) provide the Recipient with Funds 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 the Recipient designates 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 required pursuant to section A10.2;
- (b) the Province is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project; and
- (c) the Province may adjust the amount of Funds it provides to the Recipient for any Funding Year based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section A7.2.

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 been 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 do either or both of the following:

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

A4.6 Rebates, Credits, and Refunds. The Province will calculate Funds 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 do so through a process that promotes the best value for money.

A5.2 Disposal. The Recipient will not, without the Province's prior 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.

A6.0 CONFLICT OF INTEREST

A6.1 Conflict of Interest Includes. For the purposes of 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 by a reasonable person to, interfere with the Recipient's

objective, unbiased, and impartial judgment relating to the Project, the use of the Funds, or both.

A6.2 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential, or perceived conflict of interest unless:

- (a) the Recipient:
 - (i) provides Notice to the Province disclosing the details of the actual, potential, or perceived conflict of interest; and
 - (ii) requests the consent of the Province to carry out the Project with an actual, potential, or perceived conflict of interest;
- (b) the Province provides its consent to the Recipient carrying out the Project with an actual, potential, or perceived conflict of interest; and
- (c) the Recipient complies with any terms and conditions the Province may prescribe in its consent.

A7.0 REPORTS, ACCOUNTING, AND REVIEW

A7.1 Province Includes. For the purposes of sections A7.4, A7.5 and A7.6, “Province” includes any auditor or representative the Province may identify.

A7.2 Preparation and Submission. The Recipient will:

- (a) submit to the Province at the address set out in Schedule “B” :
 - (i) all Reports in accordance with the timelines and content requirements set out in Schedule “F”;
 - (ii) any other reports in accordance with any timelines and content requirements the Province may specify from time to time;
- (b) ensure that all Reports and other reports are:
 - (i) completed to the satisfaction of the Province; and
 - (ii) signed by an authorized signing officer of the Recipient.

A7.3 Record Maintenance. The Recipient will keep and maintain for a period of seven years from their creation:

- (a) all financial records (including invoices and evidence of payment) relating to the Funds or otherwise to the Project in a manner consistent

with either international financial reporting standards or generally accepted accounting principles or any comparable accounting standards that apply to the Recipient; and

(b) all non-financial records and documents relating to the Funds or otherwise to the Project.

A7.4 Records Review. 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 conduct an audit or investigation of the Recipient regarding the Recipient's compliance with the Agreement, including assessing any of the following:

(a) the truth of any of the Recipient's representations and warranties;

(b) the progress of the Project;

(c) the Recipient's allocation and expenditure of the Funds.

A7.5 Inspection and Removal. For the purposes of any Records Review, the Province may take one or both of the following actions:

(a) inspect and copy any records and documents referred to in section A7.3;

(b) remove any copies the Province makes pursuant to section A7.5(a).

A7.6 Cooperation. To assist the Province in respect of its rights provided for in section A7.5, the Recipient will cooperate with the Province by:

(a) ensuring that the Province has access to the records and documents wherever they are located;

(b) assisting the Province to copy records and documents;

(c) providing to the Province, in the form the Province specifies, any information the Province identifies; and

(d) carrying out any other activities the Province requests.

A7.7 No Control of Records. No provision of the Agreement will be construed to give the Province any control whatsoever over any of the Recipient's records.

A7.8 Auditor General. The Province's rights under 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 the Province directs the Recipient to do otherwise, the Recipient will in each of its Project-related publications, whether written, oral, or visual:

- (a) acknowledge the support of the Province for the Project;
- (b) ensure that any acknowledgement is in a form and manner as the Province directs; and
- (c) indicate that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

A9.0 INDEMNITY

A9.1 Indemnify. The Recipient will indemnify and hold harmless the Indemnified Parties from and against any Loss and any Proceeding, unless solely caused by the gross negligence or wilful misconduct of the Indemnified Parties.

A10.0 INSURANCE

A10.1 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 set out in Schedule "B" per occurrence, which commercial general liability 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) at least 30 days' written notice of cancellation.

A10.2 Proof of Insurance. The Recipient will:

- (a) provide to the Province, either:
 - (i) certificates of insurance that confirm the insurance coverage

required by section A10.1; or

- (ii) other proof that confirms the insurance coverage required by section A10.1; and
- (b) in the event of a Proceeding, and upon the Province's request, the Recipient will provide to the Province a copy of any of the Recipient's insurance policies that relate to the Project or otherwise to the Agreement, or both.

A11.0 TERMINATION ON NOTICE

A11.1 Termination on Notice. The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving 30 days' Notice to the Recipient.

A11.2 Consequences of Termination on Notice by the Province. If the Province terminates the Agreement pursuant to section A11.1, 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 A11.2(b); and
 - (ii) subject to section A4.1(a), provide Funds to the Recipient to cover such costs.

A12.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A12.1 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 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 A7.2, Reports or such other reports as the Province may have requested pursuant to section A7.2(a)(ii);

- (b) the Recipient's operations, its financial condition, its organizational structure or its control 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;
- (d) the Recipient ceases to operate.

A12.2 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;
- (i) demand from the Recipient the payment of an amount equal to the costs the Province incurred or incurs to enforce its rights under the Agreement, including the costs of any Records Review and the costs it incurs to

collect any amounts the Recipient owes to the Province; and

- (j) upon giving Notice to the Recipient, terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province.

A12.3 Opportunity to Remedy. If, pursuant to section A12.2(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.

A12.4 Recipient not Remedyng. If the Province provides the Recipient with an opportunity to remedy the Event of Default pursuant to section A12.2(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 A12.2(a), (c), (d), (e), (f), (g), (h), (i) and (j).

A12.5 When Termination Effective. Termination under Article A12.0 will take effect as provided for in the Notice.

A13.0 FUNDS AT THE END OF A FUNDING YEAR

A13.1 Funds at the End of a Funding Year. Without limiting any rights of the Province under Article A12.0, if, by the end of a Funding Year, the Recipient has not spent all of the Funds allocated for that 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;
- (b) adjust the amount of any further instalments of Funds accordingly.

A14.0 FUNDS UPON EXPIRY

A14.1 Funds Upon Expiry. Upon expiry of the Agreement, the Recipient will pay to the Province any Funds remaining in its possession, under its control, or both.

A15.0 DEBT DUE AND PAYMENT

A15.1 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 to the Province an amount equal to the excess Funds.

A15.2 Debt Due. If, pursuant to the Agreement:

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

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

A15.3 Interest Rate. The Province may charge the Recipient interest on any money owing to the Province by the Recipient under the Agreement at the then current interest rate charged by the Province of Ontario on accounts receivable.

A15.4 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 set out in Schedule "B".

A15.5 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.

A16.0 NOTICE

A16.1 Notice in Writing and Addressed. Notice will be:

- (a) in writing;
- (b) delivered by email, postage-prepaid mail, personal delivery, courier or

fax; and

- (c) addressed to the Province or the Recipient as set out in Schedule "B", or as either Party later designates to the other by Notice.

A16.2 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 fax, one Business Day after the Notice is delivered; and
- (c) in the case of email, personal delivery or courier on the date on which the Notice is delivered.

A16.3 Postal Disruption. Despite section A16.2(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, courier or fax.

A17.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A17.1 Consent. When the Province provides its consent pursuant to the Agreement:

- (a) it will do so by Notice;
- (b) it may attach any terms and conditions to the consent; and
- (c) the Recipient may rely on the consent only if the Recipient complies with any terms and conditions the Province may have attached to the consent.

A18.0 SEVERABILITY OF PROVISIONS

A18.1 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.

A19.0 WAIVER

A19.1 Condonation not a waiver. Failure or delay by the either Party to exercise any of its rights, powers or remedies under the Agreement will not constitute a waiver

of those rights, powers or remedies and the obligations of the Parties with respect to such rights, powers or remedies will continue in full force and effect.

A19.2 Waiver. Either Party may waive any of its rights, powers or remedies under the Agreement by providing Notice to the other Party. A waiver will apply only to the specific rights, powers or remedies identified in the Notice and the Party providing the waiver may attach terms and conditions to the waiver.

TEMPLATE

A20.0 INDEPENDENT PARTIES

A20.1 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.

A21.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A21.1 No Assignment. The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A21.2 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on:

- (a) the Recipient's heirs, executors, administrators, successors, and permitted assigns; and
- (b) the successors to His Majesty the King in right of Ontario.

A22.0 GOVERNING LAW

A22.1 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.

A23.0 FURTHER ASSURANCES

A23.1 Agreement into Effect. The Recipient will:

- (a) provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains; and
- (b) 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.

A24.0 JOINT AND SEVERAL LIABILITY

A24.1 Joint and Several Liability. Where the Recipient comprises more than one entity, each entity will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

A25.0 RIGHTS AND REMEDIES CUMULATIVE

A25.1 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.

A26.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A26.1 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 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.

A27.0 SURVIVAL

A27.1 Survival. The following Articles and sections, and all applicable cross-referenced Articles, 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 A4.4, A4.5, A4.6, section A5.2, section A7.1, section A7.2 (to the extent that the Recipient has not provided the Reports or other reports as the Province may have requested and to the satisfaction of the Province), sections A7.3, A7.4, A7.5, A7.6, A7.7, A7.8, Article A8.0, Article A9.0, section A11.2, section A12.1, sections A12.2(d), (e), (f), (g), (h), (i) and (j), Article A13.0, Article A14.0, Article A15.0, Article A16.0, Article A18.0, section A21.2, Article A22.0, Article A24.0, Article A25.0 and Article A27.0.

END OF GENERAL TERMS AND CONDITIONS

SCHEDULE “B”
PROJECT SPECIFIC INFORMATION AND ADDITIONAL PROVISIONS

Maximum Funds	\$«Amount_Approved»
Percentage of Total Ontario Spend for the Contribution Amount	Up to 10% (feature films), 30% (digital series)
Expiry Date	«Date»
Amount for the purposes of section A5.2 (Disposal) of Schedule “A”	\$1000.00
Insurance	\$ 2,000,000
Contact information for the purposes of Notice to the Province	<p>Name: Ontario Creates</p> <p>Address: 175 Bloor Street East, South Tower, Suite 501, Toronto, Ontario, M4W 3R8</p> <p>Attention:</p> <p>Tel:</p> <p>Email:</p>
Contact information for the purposes of Notice to the Recipient	<p>Name: «Applicant»</p> <p>Address: «Address1»</p> <p>Attention: «Contact»</p> <p>Tel: «Bus_Tel»</p> <p>Email: «Contact_email»</p>

Additional Provisions:

B1. The following definitions are hereby added to Section A1.2 of Schedule “A” to the Agreement:

“Canadian Distributor/Broadcaster/Platform” means the distributor named in Schedule “C” or otherwise approved by the Province.

“Canadian-owned” has the same meaning as in the Program Policies.

“Contribution Amount” means the percentage set out in Schedule “B” of the Total Ontario Spend that is less than or equal to the Maximum Funds.

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

“Ontario-based” has the same meaning as in the Program Policies.

“Production Budget” means the final budget for all costs of producing the Project set out in the tables under the heading “Production Budget” in Schedule “D”, excluding all advertising and promotional costs, and being, in the aggregate, the sum of XXXX dollars (\$XXXX).

“Program Policies” means the Program Policies published on the Province’s website (ontariocreates.ca) applicable to the funds and programs funded by the Province as amended from time to time.

“Schedule of Minimum Commitment” means the table called the Schedule of Minimum Commitment that forms part of the Budget in Schedule “D”.

“Total Ontario Spend” means the combined total of Ontario expenditures, labour and non-labour, for production of the Project as set out in the line toward the bottom of the Schedule of Minimum Commitment called “Ontario Spend Total (Labour/Non-Labour)”.

B2. Section A2.1 of Schedule “A” to the Agreement is amended to delete the word “and” at the end of clause (c), and to add the following clauses after clause (d):

- (e) it is, and will continue to be, Canadian-owned and Ontario-based;
- (f) it is in compliance with, and will continue to comply with the Program Policies;
- (g) each of the Project’s Lead Ontario producers, or, where permitted by the Province, the Project’s qualifying executive producer is, and will continue to be an Ontario resident, and either a Canadian citizen within the meaning of the *Citizenship Act (Canada)* or a permanent resident within the meaning of the *Immigration and Refugee Protection Act (Canada)*;
- (h) it is, and will continue to be, responsible for Project costs other than Funds paid under the Agreement, and the financing sources for the Project are and will continue to be as set out in Schedule “D” in the table called “Description of Financing Sources”;
- (i) it is using, and will continue to use reasonable efforts to do each of the following in the development, production and exploitation of the Project:

- (i) implement environmentally sustainable practices and cleaner technologies; and
- (ii) reduce the use of unsustainable resources;
- (j) there are no judgments, orders, or other claims of any nature whatsoever outstanding against the Recipient, except for such judgments, orders or claims the Recipient has already disclosed to the Province in detail prior to the execution of the Agreement; and
- (k) it is treating, and will continue to treat, the Project as separate and distinct from other feature films, digital series, and all other products or services of the Recipient.

B3. Sections A2.5 and A2.6 are hereby added to Article 2.0 of Schedule "A" to the Agreement:

A2.5 Intellectual Property. The Recipient represents, warrants, and covenants that:

- (a) it exclusively owns, or has an exclusive option to acquire exclusively, and will continue to exclusively own, all rights in the Project and in any property underlying the Project necessary to produce and exploit the Project, worldwide, in all media, and for its full term of copyright; and
- (b) neither the Project nor any of its elements, including all musical, dramatic, cinematographic, artistic, literary and other works created, furnished or selected by the Recipient or by anyone engaged or employed by the Recipient and produced by or used in connection with the Project will in any way:
 - (i) infringe or violate any trademark, patent, trade name, or copyright or any other right of a third party whatsoever, including any person's right to privacy, or right to publicity, or right to any material; or
 - (ii) offend any law, statute, regulation or order of the provincial, federal or municipal governments, including obscenity, libel and slander, passing off, infringement of copyrights, trademarks, trade names and misappropriation of personality.

A2.6 Completed Project. The Recipient represents, warrants and covenants that:

- (a) where the Project is not an international co-production, upon completion the Project will be certified:
 - (i) by the Canadian Audio-Visual Certification Office (CAVCO) as a “Canadian film or video production” as defined in the regulations under the Income Tax Act (Canada)
 - (ii) as a “Canadian Program” under the Canadian content certification system administered by the Canadian Radio-television and Telecommunications Commission; or

where the Project is an international co-production, upon completion the Project will be certified as an official treaty co-production by Telefilm Canada or an equivalent certifying body;

- (b) upon certification in accordance with clause (a) or clause (b) of section A2.5, it will immediately provide a copy of the certification to the Province;
- (c) it is ensuring, and will continue to ensure, that the Canadian Distributor/Broadcaster/Platform will guarantee a commercial release of the Project’s production in Canada within twelve (12) months of completion of the Project and provide Notice to the Province of the details of such release; and
- (d) it is using, and will continue to use, its best efforts in good faith using sound business policy to obtain as wide and complete a distribution of the completed Project as is reasonably possible at the highest rentals and licence fees obtainable.

B4. Section A4.1 of Schedule “A” to the Agreement is hereby deleted and replaced with the following:

A4.1 Funds Provided. The Province will:

- (a) provide the Recipient with Funds for the Contribution Amount 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 the Recipient designates or provide the Funds to the Recipient by cheque and the Recipient will

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.

B5. Section A4.3 of Schedule “A” to the Agreement is amended to add the following clause (e) after clause (d):

- (e) unless otherwise permitted in writing by the Province, ensure the total amounts paid for Ontario expenditures for the Project do not fall more than five percent (5%) below the Total Ontario Spend.

B6. Article A4.0 of Schedule “A” to the Agreement is hereby amended by adding the following new section A4.7:

A4.7 **Notice.** If at any time during the Term of the Agreement the Recipient determines there is an event that has occurred or may occur that could be seen by a reasonable person to jeopardize the completion of the Project, including significant cost overruns, the Recipient will immediately provide Notice to the Province of that determination.

B7. Article A8.0 of Schedule “A” to the Agreement is hereby deleted and replaced with the following:

A8.0 CREDIT, PUBLICITY AND DISCLOSURE

A8.1 **Acknowledge Support.** Unless otherwise directed or modified in writing by the Province and subject to the Province’s approval in accordance with section A8.3, the Recipient will acknowledge the support of the Province for the Project in all Project-related publications and Project materials of any kind, whether written, oral, or visual, including paid advertising, press releases, publicity and promotional material, by providing a credit as follows or in a substantially similar form:

“Produced with the participation of Ontario Creates [LOGO]” (or the French version thereof).

A8.2 **Prominent Credit.** Unless otherwise directed by the Province in writing, the credit the Recipient is required to provide in accordance with section A8.1 will be prominent and will be at least equivalent in size and prominence (including size of type and placement) to credit

accorded to any and all other financial participant(s) in the Project.

A8.3 **Final Approval.** Prior to publishing or otherwise disseminating Project-related publications or Project materials with the credit to the Province required under section A8.1, the Recipient will obtain the Province's approval of the draft materials incorporating the credit proposed by the Recipient by sending the draft to the Province 14 Business Days in advance of the date when final approval is required from the Province. .

A8.4 **Recipient Information.** 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.

A8.5 **Promotion.** The Province reserves the right to use the Recipient's name, the Project title, and key art or images to promote the Province's support of the Project, and agrees to exercise that right with due consideration to the appropriate timing of such promotion as it relates to the Project.

A8.6 **Authority.** The Recipient will grant to or obtain for the Province any or all of the following as required to enable the Province to use, reproduce, distribute, display, and transmit in any medium, including electronic form on the Province's website and social media platforms, the Project title and the key art and images referenced in section A8.5 for the purpose of promoting the Province's support of the Project:

- (a) a perpetual, non-exclusive, world-wide, irrevocable and gratuitous licence that does not include the authority to sub-lisence;
- (b) an express, irrevocable and unrestricted waiver of all rights, including integrity and moral rights; or
- (c) any other requisite permission, waiver or authority.

B8. Section A10.1 of Schedule "A" to the Agreement is hereby deleted and replaced with the following:

A10.1 **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:

- (a) 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 and including the following:
 - (i) 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;
 - (ii) a cross-liability clause;
 - (iii) contractual liability coverage; and
 - (iv) at least 30 days' written notice of cancellation; and
- (b) Errors and Omissions Liability Insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Agreement, in the amount of not less than the amount set out in Schedule "B" per claim and in the annual aggregate. The policy should remain in full force and effect for a period of not less than twelve (12) months following termination or expiry of the Agreement.
- (c) Entertainment Package: loss or destruction of the master copy of the Project and of the sets, props or equipment used on the Project, and liability for damage to property.

B9. The reference to the "Ontario Minister of Finance" in Section A15.4 of Schedule "A" to the Agreement is deleted and replaced with "Ontario Creates".

B10. The references to His Majesty the King in right of Ontario in Section A15.5 of Schedule "A" to the Agreement are deleted and replaced with the Province.

B11. Article A16.0 of Schedule "A" to the Agreement is hereby deleted and replaced with the following:

A16.0 NOTICE

A16.1 Notice in Writing and Addressed. Notice will be:

- (a) in writing;
- (b) delivered by electronic means through the Online Application Portal (OAP) or by email; and
- (c) 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.

A16.2 **Notice Given.** Notice will be deemed to have been given on the date on which the Notice is delivered.

B12. Section A27.1 of Schedule "A" to the Agreement is hereby amended by adding section A2.5 to the list of Articles and sections that will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

B13. Article A28.0 is hereby added to Schedule "A" of the Agreement as follows:

A28.0 BUDGET REALLOCATION

A28.1 **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.

SCHEDULE "C"
PROJECT DESCRIPTION AND TIMELINES

C1. The Project to be produced will have all of the following elements, unless the Province provides prior written approval of any changes:

GENERAL

Project Title:	«Enter Here»
Production Company:	«Enter Here»
Project Type:	«Enter Here»
Projected Length (for Feature films):	«Enter Here»
Number of Episodes (for digital series):	«Enter Here»
Original Language Version:	«Enter Here»
Principal Shooting Locations:	«Enter Here»
Canadian Distributor/Broadcaster/Platform:	«Enter Here»
International Sales Agent:	«Enter Here»
Completion Guarantor:	«Enter Here»
Underlying Property:	«Enter Here»
Estimated Weeks of Work for Ontario Residents:	«Enter Here»
Project Description:	«Enter Here»
International Co-Producer (if applicable):	«Enter Here»
Interprovincial Co-Producer (if applicable):	«Enter Here»

PERSONNEL

C2. The Project will be produced by or with the participation of the following individuals:

TITLE	NAME	NATIONALITY
Individual Producer(s):		
Lead ON Producer	«Enter Name Here»	«Enter Country Here»
Producer(s)	«Enter Name Here»	«Enter Country Here»
Executive Producer(s):	«Enter Name Here»	«Enter Country Here»
Director:	«Enter Name Here»	«Enter Country Here»
Screenwriter(s): (if applicable)	«Enter Name Here»	«Enter Country Here»

PRODUCTION TIMELINES

C3. The Project is expected to meet the following production timelines:

Commencement of Principal Photography:	«Enter Here»
Completion of Principal Photography:	«Enter Here»
Completion and Delivery to	
Distributor/Broadcaster/Platform:	«Enter Here»

C4. A copy of the approved production schedule is attached hereto for greater detail and forms part of this Agreement by this reference.

SCHEDULE “D”
BUDGET AND FINANCING PLAN

D1.0 GENERAL

D1.1 **Budget Tables.** The Budget is comprised of the Production Budget and the Schedule of Minimum Commitment.

D1.2 **Description of Financing Sources.** The Province’s proposed Contribution Amount is reflected in the table under the heading, Description of Financing Sources. The amount of Funds provided to the Recipient is subject to the terms and conditions of the Agreement.

SCHEDULE "E"
PAYMENT PLAN AND REPORTING DATES

DUE DATE	REPORTS AND OTHER REQUIREMENTS	AMOUNT
XXXX	<ul style="list-style-type: none">• Execution of this Agreement;• Delivery to and approval by the Province of the Execution of Contract report	\$XXXX
XXXX	<ul style="list-style-type: none">• Delivery to and approval by the Province of the Completion of Principal Photography report as detailed below	\$XXXX
XXXX	<ul style="list-style-type: none">• Delivery to and approval by the Province of the Credit List report as detailed below	\$XXXX
XXXX	<ul style="list-style-type: none">• Delivery to and approval by the Province of the Final Cost Report/Audited Statement of Production Costs and Final Deliverables report as detailed below	\$XXXX

SCHEDULE “F” REPORTS

F1.0 REPORT DETAILS

F1.1 Execution of Contract Report. The Recipient will submit an IP Fund Execution of Contract Report in the template determined by the Province. An Execution of Contract Report must include the following:

- (a) Details of the Production, including: final budget and Ontario spend; weeks of work; completion guarantor; principal photography; delivery to distributors/broadcaster/platform; international sales agent and other distribution or commercial/exploitation partners
- (b) Chain of Title
- (c) Certificate of Incorporation for the Single Purpose Production Company (for contracting)
- (d) Director’s Registry (a list of shareholders detailing names of directors, ownership share and citizenship)
- (e) Co-production (if applicable) – All Fully executed Co-production agreements. For international treaty coproductions, please submit Telefilm Preliminary Ruling and coproducing country’s preliminary ruling
- (f) Locked Budget
- (g) Schedule of Minimum Commitment of Ontario Expenditures
- (h) Locked Financing Plan
- (i) Financing Agreements
- (j) Executed Distribution Agreements
- (k) Final Schedules - Production and Post-production
- (l) Full Crew list
- (m) Final Cast list
- (n) any other information that may be requested by the Province

F1.2 Completion of Principal Photography Report. The Recipient will deliver an IP Fund Completion of Principal Photography Report using the template located on the Recipient's dashboard in the OAP. The Completed Principal Photography Report will include the following information:

- (a) date Principal Photography was Completed;
- (b) current anticipated delivery date to Canadian Distributor/Canadian broadcaster/Platform;
- (c) written notice of the completion of Principal Photography;
- (d) delivery to and acceptance by the Province of an Interim Cost Report dated as of the completion of Principal Photography; and
- (e) any other information that may be requested by the Province.

F1.3 Credit List Report. The Recipient will deliver an IP Fund Credit List Report using the report template located on the Recipient's dashboard in the OAP. The Credit List Report will include the following information:

- (a) full credit list to be approved by the Province. See A8.0 Credit, Publicity and Disclosure.

F1.4 Production Audit/Final Cost Report and Final Deliverables. The Recipient will deliver an IP Fund Final Cost Report/Audited Statement of Production Costs and Final Deliverables using the report templates located on the Recipient's dashboard in the OAP. These reports will include the following information:

- (a) Date of delivery to Canadian Distributor/Broadcaster/Platform; anticipated release date and update on any production changes;
- (b) Final production costs, Ontario spend and weeks of work for Ontario residents;
- (c) Digital delivery of the completed production, and any other promotional materials (including trailers and posters);
- (d) A survey of Ontario Creates support;
- (e) Final cost statement/report of the Project. Applicants awarded more than \$150,000 must have the Final Cost Report audited by a licensed public accountant. Applicants awarded \$150,000 or less must have a duly authorized notarized affidavit attesting to the true and fair representation of the Final Cost Report (Please see Program Policies for details). Please include for coproducing partners (if applicable).

- (f) Schedule of Minimum Commitment of Ontario Expenditures based on actuals/final costs
- (g) the applicable certification for the production that is:
 - (i) OFTTC or OPSTC Certificate of Eligibility; AND
 - (ii) CAVCO Part B Certificate of Completion; or
 - (iii) As a “Canadian Program” under the Canadian content certification system administered by the Canadian Radio-television and Telecommunications Commission; OR
 - (iv) Where the Project is an international co-production, Telefilm Canada Final Coproduction Ruling and Final Ruling from the coproducing country’s equivalent body.
- (h) Written confirmation of acceptance of the Project by:
 - (i) the Canadian Distributor (for feature film drama);
 - (ii) Canadian distributor, Canadian broadcaster or Canadian streamer (for feature film documentary); or
 - (iii) confirmation of platform (for digital series); and
- (i) Any other information that may be requested by the Province.

F2.0 GENERAL REPORTING REQUIREMENTS

- F2.1 Additional Information.** The Province may require the Recipient to provide an update on subsequent results, including any measurable results in dollar terms, and other non-financial results. This will not be tied into a further financial payment to the Recipient.
- F2.2 Due Dates.** The due dates for the reports described in Article F1.0 of Schedule “F” to the Agreement are set out in Schedule “E” of the Agreement, where applicable.