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REGIONAL TOURISM ORGANIZATION 7
TRANSFER PAYMENT AGREEMENT (TPA)
SCHEDULE "A" 2012 – 2013

**SCHEDULE “A”
GENERAL TERMS AND CONDITIONS**

1.0 Definitions

- 1.1 When used in this Agreement, the following terms will have the meanings ascribed to them below:
- (a) “**Additional Funding Requirements**” means the requirements referred to in paragraph 3.3(b) and as specified in Schedule “B”;
 - (b) “**Additional Provisions**” means the terms and conditions referred to in section 10.1 and as specified in Schedule “B”;
 - (c) “**Agreement**” means this agreement (including the cover and execution pages and all of the schedules) entered into between the Province and the Recipient and any instrument amending this agreement;
 - (d) “**Budget**” means the Initiative budget set out in Schedule “D”;
 - (e) “**Claims**” means any and all liability, loss, costs, damages and expenses (including legal fees), causes of action, actions, claims, demands, lawsuits or other proceedings;
 - (f) “**Destination Marketing Fee**” means a fee (of any name) imposed by a vendor that is (1) charged to purchasers of transient accommodation, (2) related to destination or tourism promotion and (3) shown as a separate item on the purchaser’s invoice or receipt.
 - (g) “**Effective Date**” means the date set out at the top of the first page of this Agreement;
 - (h) “**Expiration Date**” means the date on which this Agreement will expire and is the date set out in Schedule “B”;
 - (i) “**Fiscal Year**” means:
 - (i) in the case of the first Fiscal Year, the period commencing on the date of this Agreement and ending on first day that is March 31 following the date of this Agreement; and
 - (ii) in the case of Fiscal Years after the first Fiscal Year, the period commencing on the date that is April 1 following the end of the previous Fiscal Year and ending on the following March 31;
 - (j) “**Funding**” means the funds provided to the Recipient by the Province pursuant to this Agreement and will be payable in lawful money of Canada;
 - (k) “**Maximum Funding**” means the maximum amount of the Funding to be provided as set out in Schedule “B”; and
 - (l) “**Region**” means the geographic area described in Schedule “B”;

2.0 Term of Agreement

2.1 The term of this Agreement will commence on the Effective Date and will expire on the Expiration Date unless terminated earlier pursuant to Article 16.0, 17.0 or 29.0.

3.0 Funding

3.1 The Province will provide Funding up to the Maximum Funding to the Recipient for the purpose of supporting the Initiative.

3.2 The Province will disburse the Funding according to the payment schedule provided in Schedule "B".

3.3 Despite sections 3.1 and 3.2, the Province:

- (a) may adjust the amount of Funding to be provided to the Recipient in any Fiscal Year based upon the Province's assessment of the reports provided to the Province pursuant to Article 11.0;
- (b) will not provide any Funding to the Recipient until the insurance requirements described in Article 14.0 have been met and any Additional Funding Requirements have been met; and
- (c) shall not provide Funding instalments unless it is satisfied with the progress of the Initiative.

3.4 The amount of Funding to be provided to the Recipient is based on the net costs to the Recipient, net of any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

4.0 Initiative

4.1 The Recipient will carry out the Initiative and will do so in compliance with the description set out in Schedule "C" and all federal, provincial or municipal laws or regulations, or any orders, rules or by-laws related to any aspect of the Initiative. The Province is not responsible in any way for the carrying out of the Initiative.

4.2 The Recipient will not make any changes to the Initiative without the prior written consent of the Province.

4.3 The Recipient will carry out the Initiative in accordance with the timelines provided in Schedule "C".

4.4 Subject to the requirements of this section 4.4, the Province acknowledges that the Recipient may make adjustments to Schedule "C" insofar as this schedule relates to a spring/summer/fall and winter marketing campaigns. If the Recipient wishes to make adjustments to Schedule "C" insofar as this schedule relates to a spring/summer/fall and winter marketing campaigns, the Recipient must provide the Province with the updated spring/summer/fall marketing plan no later than June 30, 2012 and a winter marketing plan no later than October 1, 2012. If the Province is satisfied, in its sole and absolute discretion, with the updated plans, the Province will communicate its satisfaction to the Recipient within 20 days of receipt and the approved plan will form part of Schedule "C" of this Agreement from the date of such notice. Notwithstanding the foregoing, should the Province request that the Recipient enter into a formal amending agreement to evidence the above-mentioned updates, the Recipient shall do so. Should the Province not be satisfied, in its sole and absolute discretion, with the spring/summer/fall or winter marketing plans, the Province may rely on its remedies set out in Article 17.0.

5.0 Budget

- 5.1 The Recipient will only use the Funding for the purpose of carrying out the Initiative and will expend those funds only in accordance with the Budget.
- 5.2 The Recipient will not make any changes to the Budget (including re-allocating any part of the Funding to a different Fiscal Year) without the prior written consent of the Province.
- 5.3 Funding cannot be used towards any costs not directly associated with carrying out the Initiative.

6.0 Holding of Funding

- 6.1 Until it is used in accordance with this Agreement, the Funding will be placed in an account that:
 - (a) resides at a Canadian financial institution; and
 - (b) is in the name of the Recipient.
- 6.2 If the Province provides the Funding to the Recipient prior to the Recipient's immediate need for the Funding the Recipient shall place the Funding in an interest bearing account.
- 6.3 If the Recipient earns any interest on the Funding:
 - (a) the Province may deduct the interest amount from any further Funding instalments; and/or
 - (b) the Recipient shall pay any interest to the Province as directed by the Province.

7.0 Tendering for Goods and Services and Disposal of Assets

- 7.1 The Recipient will manage the Initiative wisely and prudently achieving value for money. The Recipient will acquire all supplies, equipment and services, including any advertising-related services, purchased with the Funding through an appropriate competitive process. Subject to section 7.3, where the purchase price exceeds \$5,000, the Recipient will, at a minimum, obtain at least three written quotes unless the Recipient can demonstrate that the supplies, equipment or services the Recipient is purchasing is specialised and is not readily available.
- 7.2 In carrying out a competitive process, the Recipient must:
 - a) develop a clear description of the product/service which includes sufficient details concerning the requirements; and
 - b) apply a consistent, transparent and objective evaluation criteria.
- 7.3 Should the Recipient be or become subject to directives and/or guidelines issued pursuant to Part V of the *Broader Public Sector Accountability Act, 2010*, the Recipient shall comply with such directives and/or guidelines. In the event that that there is a conflict between the requirements of sections 7.1 and/or 7.2 of this Agreement and the requirements of the directives and/or guidelines, the directives and/or guidelines shall prevail.
- 7.4 The Recipient will not without the Province's prior written consent sell, lease or otherwise

dispose of any assets purchased with the Funding, the purchase price of which exceeds \$5,000.

8.0 Conflict of Interest

8.1 The Recipient will carry out the Initiative and use the Funding in a manner that no person associated with the Initiative in any capacity will have a potential or actual conflict of interest.

8.2 For these purposes, a conflict of interest includes a situation in which a person associated with the Initiative or any member of his or her family is able to benefit financially from his or her involvement in the Initiative. Nothing in this Article prevents the Recipient from reimbursing its volunteers for their reasonable out of pocket expenses incurred in connection with the Initiative.

8.3 The Recipient will disclose to the Province without delay any situation that may be reasonably interpreted as either an actual or potential conflict of interest.

9.0 Representations, Warranties and Governance

9.1 The Recipient represents warrants and covenants that:

- (a) it is, and shall continue to be for the term of this Agreement, a validly existing legal entity with full power to fulfill its obligations under this Agreement;
- (b) it has the experience and expertise necessary to carry out the Initiative; and
- (c) all information (including information relating to any eligibility requirements for Funding) the Recipient provided to the Province in support of its request for funding was true and complete at the time the Recipient provided it, and shall continue to be true and complete for the term of this Agreement, in every respect except as set out to the contrary in this Agreement.
- (d) it will not knowingly use or accept funding that has been collected by way of a Destination Marketing Fee in respect of the period April 1, 2012 to March 31, 2012.

9.2 The Recipient represents and warrants that:

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

9.3 The Recipient represents, warrants and covenants that it has

- (a) established, and shall maintain for the period during which this Agreement is in effect, by-laws or other legally necessary instruments to:
 - (i) establish decision-making mechanisms;
 - (ii) provide for the prudent and effective management of the Funding;
 - (iii) establish procedures to enable the successful completion of the Initiative; and
 - (iv) establish procedures to enable the preparation and delivery of all reports required pursuant to Article 11.0.

9.4 Upon request, the Recipient shall provide the Province with proof of the matters referred to in this Article.

10.0 Further Conditions

- 10.1 The Recipient will comply with any Additional Provisions.
- 10.2 The Recipient acknowledges that the Province may impose further terms and conditions on the use of the Funding which it considers appropriate for the proper expenditure and management of the Funding and the carrying out and completion of the Initiative.
- 11.0 Reporting, Accounting and Review**
- 11.1 The Recipient will submit to the Province:
- (a) Progress reports and other reports as specified in Schedule “E”; and
 - (b) such other reports as the Province may require from time to time.
- 11.2 The Recipient will deliver all reports in a form (or following templates or guidelines) satisfactory to the Province, as may be communicated by the Province from time to time.
- 11.3 The Recipient:
- (a) will keep and maintain all financial records, invoices and other financially-related documents relating to the Funding or otherwise to the Initiative in a manner consistent with generally accepted accounting principles and clerical practices;
 - (b) will maintain such records and keep them available for review or investigation by the Province for a period of seven (7) years from the date of the expiry or termination of this Agreement; and
 - (c) will maintain all non-financial documents and records relating to the Funding or otherwise to the Initiative, including any records it receives about its members, in a confidential manner consistent with all applicable law.
- 11.4 The Province or its authorized representatives may, upon twenty-four (24) hours’ notice to the Recipient and during normal business hours:
- (a) enter upon the Recipient’s premises to review the status and manner of operation of the Initiative;
 - (b) inspect and copy any financial records, invoices and other financially-related documents in the possession or under the control of the Recipient which relate to the Funding or otherwise to the Initiative;
 - (c) inspect and copy non-financial records in the possession or under the control of the Recipient which relate to the Funding or otherwise to the Initiative, except that, where such records relate to a third party served by the Initiative, the Province will obtain the consent of the third person before inspecting or copying such records; and
 - (d) conduct a full or partial audit or investigation of the Recipient in respect of the Initiative.
- 11.5 The Recipient will cooperate with the Province in respect of the exercise of the Province’s rights set out in section 11.4, and the Recipient will provide any information in respect of the Funding or the Initiative that the Province may reasonably request.
- 11.6 The purposes for which the Province may exercise its rights under this Article include:

- (a) determining for what items and purposes the Recipient expended the Funding;
 - (b) determining whether and to what extent the Recipient expended the Funding with due regard to economy and efficiency; and
 - (c) determining whether the Recipient is carrying out the Initiative effectively and in accordance with the terms of this Agreement.
- 11.7 For greater clarity, the Province's rights under this Article are in addition to any rights provided to the Auditor General pursuant to Section 9.1 of the *Auditor General Act* (Ontario).

12.0 Limitation of Liability

- 12.1 The Province, its officers, employees and agents will not be liable to the Recipient, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors for Claims howsoever caused that arise out of or are in any way related to the Initiative or this Agreement.

13.0 Indemnity

- 13.1 The Recipient will indemnify and hold harmless the Province from and against any and all Claims, by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Recipient, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of carrying out the Initiative under, or otherwise in connection with, this Agreement. The Recipient further agrees to indemnify and hold harmless the Province for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organisation, including, without limitation, the Province, claimed or resulting from such Claims.

14.0 Insurance

- 14.1 The Recipient hereby agrees to put in effect and maintain insurance for the term of this Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary insurance that is appropriate for a prudent person in the business of the Recipient would maintain including, but not limited to, the following:
- (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 two million dollars (\$2,000,000) per occurrence. The policy is to include the following clauses:
 - (i) the Province as an additional insured with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, this Agreement;
 - (ii) cross-liability clause;
 - (iii) contractual liability coverage; and
 - (iv) thirty (30) day written notice of cancellation, termination or material change.

14.2 Before beginning the Initiative, the Recipient will provide the Province with a valid Certificate of Insurance that references the Initiative and confirms the above requirements. The Recipient will provide the Province with a copy of the policy and any renewal replacement certificates as may be necessary.

15.0 Credit

15.1 The Recipient:

- (a) will acknowledge, in a format approved by the Province, the support of the Province in all material including but not limited to print, electronic, television and radio related to the Initiative;
- (b) will advise the Province in writing of any public communication, interview, media event, report or presentation that is expected to refer to the Initiative and provide the opportunity for the Province to be present where appropriate. The Recipient will provide the Province with a minimum of ten (10) business days prior written notice of such events, or as soon as the Recipient is aware of such events;
- (c) will not make any public announcement, news release, advertising or other form of publicity regarding the Funding until permission to do so is received from the Province; and
- (d) where applicable, will include a statement in any materials related to the Initiative that the views expressed in such materials are the views of the Recipient and do not necessarily reflect those of the Province.

16.0 Termination for Convenience

16.1 The Province may terminate this Agreement at any time, for any reason, upon giving at least thirty (30) days' notice to the Recipient.

17.0 Termination and Corrective Action

17.1 The Province may terminate this Agreement immediately upon giving notice to the Recipient if:

- (a) in the opinion of the Province:
 - (i) the Recipient has knowingly provided false or misleading information regarding its funding request or in any other communication with the Province;
 - (ii) the Recipient breaches any provision of this Agreement;
 - (iii) the Recipient is unable to complete the Initiative or is likely to discontinue it; or
 - (iv) it is not reasonable for any reason for the Recipient to complete the Initiative;
- (b) the nature of the Recipient's business, or its corporate status, changes so that it no longer meets any applicable eligibility requirements under which the Province is providing the Funding;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or
- (d) the Recipient ceases to carry on business.

17.2 If the Province considers that it is appropriate to allow the Recipient the opportunity to

- (a) of the particulars of the breach;
- (b) of the period of time within which the Recipient is required to remedy the breach; and
- (c) that the Province will terminate this Agreement:
 - (i) at the end of the notice period provided for in the notice if the Recipient fails to remedy the breach within the time specified in the notice; or
 - (ii) prior to the end of the notice period provided for in the notice if it becomes apparent to the Province that the Recipient cannot completely remedy the breach within that time or such further period of time as the Province considers reasonable, or the Recipient is not proceeding to remedy the breach in a way that is satisfactory to the Province.

17.3 If the Province has provided the Recipient with an opportunity to remedy the breach, and

- (a) the Recipient does not remedy the breach within the time period specified in the notice;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the breach within the time specified in the notice or such further period of time as the Province considers reasonable; or
- (c) the Recipient is not proceeding to remedy the breach in a way that is satisfactory to the Province,

the Province may immediately terminate this Agreement by giving notice of termination to the Recipient.

17.4 Despite the Province's right to terminate this Agreement pursuant to section 17.1, the Province may, in addition to and in the alternative to section 17.2, choose not to terminate this Agreement and may take whatever corrective action it considers necessary and appropriate, including suspending Funding for such period as the Province determines, to ensure the successful completion of the Initiative in accordance with this Agreement.

17.5 The effective date of any termination under this Article will be the last day of the notice period, the last day of any subsequent notice period or immediately, which ever applies.

18.0 Funding Upon Termination

18.1 Upon termination of this Agreement pursuant to either Article 16.0 or 29.0, the Province may:

- (a) cancel all further Funding instalments; and/or
- (b) demand the repayment of any Funding (including any interest) remaining in the possession or under the control of the Recipient;

and the Province will determine the Recipient's reasonable costs to terminate the Initiative (if such action is necessary) and allow the Recipient to set-off such costs against the amount owing by the Recipient to the Province. In no event will the Province be responsible for any amount by which the costs exceed the amount owing.

- 18.2 Upon termination of this Agreement pursuant to Article 17.0, the Province may:
- (a) cancel all further Funding instalments; and/or
 - (b) demand the repayment of the Funding in whole or in part (including any interest), or an amount equal thereto.

19.0 Recipient's Repayment of Funds

- 19.1 If the Province demands the payment by the Recipient of any Funding or interest on the Funding pursuant to this Agreement, the amount demanded 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.
- 19.2 The Province may charge the Recipient interest on any amount owing by the Recipient at the then current interest rate charged by the province of Ontario on accounts receivable.
- 19.3 The Recipient will pay the amount demanded by cheque payable to the Minister of Finance, Ontario.
- 19.4 The Recipient agrees that any part of the Funding which has not been used or accounted for by the Recipient by the time this Agreement expires or is terminated will be used only for the purposes agreed upon by the Province or will be returned to the Province immediately on the written request of the Province.

20.0 Notices

- 20.1 Any notice or communication required or permitted to be given under this Agreement will be:
- (a) in writing;
 - (b) delivered personally or by pre-paid courier, or sent by facsimile, certified or registered mail or postage pre-paid mail with receipt notification requested; and
 - (c) addressed to the other party as provided in Schedule "B" or as either party will later designate to the other in writing.
- 20.2 All notices will be effective:
- (a) at the time the delivery is made if the notice is delivered personally, by pre-paid courier or by facsimile; or
 - (b) three (3) days after the day the notice was deposited in the mail if the notice is sent by certified, registered or postage prepaid mail, unless the day the notice is effective falls on a day when the Province is normally closed for business, in which case the notice will not be effective until the next day that is a day when the Province is normally open for business.

21.0 Severability of Provisions

- 21.1 The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement and any invalid or unenforceable provision will be deemed to be severed.

22.0 Amendment and Waiver

- 22.1 No amendment of or addition to this Agreement will be valid unless it is in writing and signed by each party.
- 22.2 A waiver of any failure to comply with any term of this Agreement will be in writing and signed by the party providing the waiver. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

23.0 Independent Parties

- 23.1 The parties are and will at all times remain independent of each other and are not and will not represent themselves to be the agent, joint venturer, partner or employee of the other. No representations will be made or acts taken by either party which could establish or imply any apparent relationship of agency, joint venture, partnership or employment and neither party will be bound in any manner whatsoever by any agreements, warranties or representations made by the other party to any other person nor with respect to any other action of the other party.

24.0 Assignment of Agreement or Funding

- 24.1 The Recipient will not assign this Agreement or the Funding or any part thereof without the prior written consent of the Province, which consent may be unreasonably and arbitrarily withheld.
- 24.2 This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.

25.0 Governing Law

- 25.1 This Agreement and the rights, obligations and relations of the parties to this Agreement will be governed by and construed in accordance with the laws of the province of Ontario. The parties irrevocably attorn and submit to the exclusive jurisdiction of the courts of the province of Ontario and all courts competent to hear appeals therefrom.

26.0 Further Assurances and Consents

- 26.1 The parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 26.2 The Recipient acknowledges that the Province may impose conditions on any consent it provides pursuant to this Agreement.

27.0 Circumstances Beyond the Control of Either Party

- 27.1 Neither party will be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the Province and the Recipient including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, riot or other civil insurrection, lawful act of public authority, or delay or default caused by a common carrier which cannot be reasonably foreseen or provided against.

28.0 Survival

- 28.1 Upon the expiration or termination of this Agreement, the provisions in Articles 6.0 (Holding of Funding), 11.0 (Reporting, Accounting and Review), 12.0 (Limitation of

29.0 Appropriation

29.1 Despite any other provision of this Agreement, any payment by the Province under this Agreement is subject to there being an appropriation for the Fiscal Year in which the payment is to be made and there being funds available. Furthermore, should the Province's funds be reduced or otherwise become unavailable by non-appropriation by the Legislative Assembly of Ontario, the Province may (1) reduce the amount of the Funding and/or (2) in accordance with section 18.1 terminate this Agreement immediately upon giving notice to the Recipient.

30.0 Interpretative Value of Agreement Documents

30.1 In the event of any of conflict or inconsistency between any of the Schedules to this Agreement, Schedule "A" will prevail over any of the other Schedules.

30.2 The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.

31.0 Counterparts

31.1 This 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. This Agreement will be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart. This Agreement may be executed and delivered by facsimile signatures and will be binding on all parties as if executed by original signature and delivered personally.

32.0 Freedom of Information and Protection of Privacy Act (FIPPA)

32.1 The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F. 31, as amended from time to time, and that any information provided to the Province in connection with this Agreement is subject to disclosure in accordance with the requirements of that Act.

32.2 The Recipient acknowledges that the Province may make public the name and business address of the Recipient, the amount of the Funding and the purpose for which the Funding has been provided.

33.0 Time of Essence

33.1 Time will be of the essence in all respects. No extension of or waiver pursuant to this Agreement will operate as a waiver of this provision.

34.0 Number and Gender

34.1 This Agreement will be read with all changes in gender or number as required by the context.

35.0 Joint and Several

- 35.1 Where the Recipient is made up of two or more entities, each such entity will be jointly and severally liable (each completely and individually liable) to the Province for the fulfillment of the obligations of the Recipient under this Agreement.

- END OF GENERAL TERMS AND CONDITIONS -