



tourism

Department:
Tourism
REPUBLIC OF SOUTH AFRICA

COVID - 19 TOURISM RELIEF FUND

AGREEMENT

BETWEEN

THE DEPARTMENT OF TOURISM

(Hereinafter referred to as “**the Department**”)

Herein represented by **MR. VICTOR THARAGE**, in his capacity as the **Director-General** of the Department of Tourism and duly authorised hereto;

AND

[NAME OF BENEFICIARY]

Registration

Hereinafter referred to as “**the Beneficiary**”)

Herein represented by (name), in his capacity as the-- of the ---and duly authorised hereto;

(On the disbursement and of the Tourism Relief Fund)

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PREAMBLE

WHEREAS The Government of South Africa has instituted the Covid-19 lockdown as a measure to manage the spread of COVID-19 in South Africa.

AND WHEREAS The Beneficiary has been forced to close the Business for the duration of the COVID-19 lockdown

AND WHEREAS in an effort to assist the Beneficiary to deal with the impact of the Covid-19 lockdown, the Department has allocated the Fund to the Beneficiary.

NOW THEREFORE the Parties hereby record their agreement relating to the Fund and matters connected thereto.

1. DEFINITIONS

1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1 **“Agreement”** means this Agreement together with all the annexures thereto;

1.1.2 **“Applicable Laws”** means all applicable laws, ordinances, regulations, judgment and orders of any competent court, central bank or governmental agency or authority having the force of law in South Africa and/or any other competent jurisdiction;

1.1.3 **“Award Letter”** means the Department’s letter of offer to the Beneficiary of the Fund;

1.1.4 **“Bank”** means any entity registered as a Bank in accordance with the Banks Act 94 of 1990, as amended;

1.1.5 **“Beneficiary Bank Account”** means the Beneficiary’s Account, being the following bank account:

Name of Bank	
Account Number	
Branch and Code	

- 1.1.6 “**Beneficiary Shareholder(s)**” means person(s) whose **full names and ID numbers**], and holding a **percentage** of the issued shares in the Beneficiary; listed in Annexure A
- 1.1.7 “**Business**” means the business conducted by the Beneficiary which is the operation of a Tourism and/or hospitality related business known as **[insert name of business]** which is located at **[insert details]**;
- 1.1.8 “**Business Day**” means any day other than a Saturday, Sunday or officially recognised public holiday in South Africa;
- 1.1.9 “**Covid-19**” means the Corona Virus Disease 2019, a disease which has been declared as a pandemic by the World Health Organisation;
- 1.1.10 “**Covid-19 Lockdown**” means the 21 days’ lockdown period instituted by the Government of South Africa as part of the measures to manage the spread of COVID-19;
- 1.1.11 “**Constitutional Documents**” means the founding documents of the Beneficiary namely the memorandum of incorporation, together with the certificate to commence business and other resolutions of the Beneficiary which are registered with the CIPC;
- 1.1.12 “**Days**” means calendar days as defined in terms of the Interpretation Act, 1957, (Act No. 33 of 1957);
- 1.1.13 “**Department**” means the Department of Tourism of the Republic of South Africa;
- 1.1.14 “**Disbursement**” means any amount disbursed by the Department to the Beneficiary against the Fund in accordance with this Agreement;
- 1.1.15 “**Disbursement Date**” means the date on which the Fund, or a part thereof, is disbursed by the Department to the Beneficiary;
- 1.1.16 “**Effective Date**” means the date of the last signature by the last Party signing this Agreement;
- 1.1.17 “**Fund**” means the grant allocated by the Department to the Beneficiary in an effort to assist with dealing with the impact of the Covid-19 lockdown on the Business which Grant is for an amount of **[insert amount of grant]**

- 1.1.18 “**Parties**” means the Department and the Beneficiary and “Party” means any of them as the context requires;
- 1.1.19 “**Signature Date**” means the date of signature of this Agreement by the Party signing last in time;
- 1.1.20 “**South Africa**” means the Republic of South Africa;
- 1.1.21 “**Taxes**” means all present and future income and other taxes, levies, assessments and imposts, whatsoever, together with interest thereon and penalties with respect thereto and any payment made in respect thereof and “Tax” and “Taxation” shall be construed accordingly;
- 1.1.22 “**writing**” means legible writing in English and excludes any form of electronic communication contemplated in the Electronic Communication and Transactions Act 25 of 2002, as amended.
- 1.2. In this Agreement:
- 1.2.1 any reference to the singular includes the plural and vice versa;
- 1.2.2 any reference to a gender includes the other genders
- 1.2.3 a natural person includes an artificial or juristic person and vice versa; and
- 1.3. The clause headings in this Agreement have been inserted for convenience only and shall not be considered in its interpretation.
- 1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.5. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day other than a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.6. The terms and conditions of this Agreement have been negotiated, and accordingly the rule of construction that the agreement shall be interpreted against the Party responsible for the drafting thereof shall not apply in the interpretation of this Agreement.

- 1.7. This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

2. INTERPRETATION OF AGREEMENT

In this Agreement, unless the context otherwise indicates:

- 2.1 words and phrases defined in the Agreement shall bear the meaning assigned to them;
- 2.2 words and phrases used in this Agreement that are defined in any statute, which applies to the subject matter, professional person, goods or services provided in this Agreement shall be construed in accordance with the applicable statute or regulations;
- 2.3 headings of clauses are for convenience only and shall not aid in the interpretation of the Agreement;
- 2.4 words importing the singular number include the plural and vice versa, and words importing either gender or the neuter include both genders and the neuter where the context requires; and
- 2.5 where figures are referred to in numerals and in words and if there is conflict between the 2 (two), the words shall prevail.

3. FUND ALLOCATION

- 3.1 The Department hereby allocates the Fund to the Beneficiary which hereby accepts the Fund on the terms and conditions contained herein.
- 3.2 The Fund is a once-off grant to the Beneficiary on an ex gratia basis, the Department or any organ of Government shall not be obliged to make any further funding available to the Beneficiary.
- 3.3 The Fund together with any interest earned upon it, is made for the purpose outlined in the grant award letter and may not be expended for any other purpose without the Department's prior written approval.

- 3.4 The Funds is intended to subsidise expenses towards fixed costs, operational costs, supplies and other pressure cost items for a specific period as more specifically set out in the award letter.
- 3.5 Any portion of the Fund not expended at the completion of the project or at the end of the period, shall be returned immediately to the Department.

4. COMMENCEMENT AND DURATION

- 4.1 This Agreement will commence on the effective date and shall remain valid until the date mentioned in the Award letter after the successful submission of a comprehensive written report in accordance with the Agreement.

5 DISBURSEMENT OF THE FUND

- 5.1 The Fund shall be paid by the Department into the Beneficiary Bank Account within reasonable time after the Signature Date.

6 RECORDS AND REPORTING

The Beneficiary shall:

- 6.1 Keep a record of all receipts and expenditures relating to the Fund and shall provide the Department with a comprehensive written report detailing the use of the Fund promptly following the end of the period during which the Beneficiary is to use the Fund.
- 6.2 When required by the Department, submit interim reports.
- 6.3 In the reports, describe progress in achieving the purposes of the Fund and include a detailed accounting of the uses or expenditure of the Funds and attach proof thereof.
- 6.4 The Department reserves the right to audit the Fund and if in possession of any audited financial statements covering any part of the period of this Fund, the Beneficiary shall provide a copy to the Department.

- 6.5 The Beneficiary shall keep the financial records with respect to the Fund, along with copies of any reports submitted to the Department, for at least five years following the year in which the Fund is fully expended.
- 6.6 Provide any other information reasonably requested by the Department.
- 6.7 The Beneficiary shall in writing notify the Department immediately of
 - 6.7.1 any changes in the Beneficiary's tax status
 - 6.7.2 inability to expend the grant for the purposes described in the grant award letter
 - 6.7.3 any expenditure from the Fund made for any purpose other than those for which the Fund was intended

7 REPRESENTATIONS AND WARRANTIES

- 7.1 In addition to any representations and warranties given elsewhere in this Agreement by the Beneficiary to the Department, the Beneficiary gives the representations and warranties contained in this clause 7 to the Department. Each such representation and warranty:
 - 7.1.1 is a separate and distinct representation and warranty;
 - 7.1.2 is material unless the contrary is proved;
 - 7.1.3 has induced the Department to enter into this Agreement;
 - 7.1.4 is given, save where otherwise indicated, as at the Signature Date; and
 - 7.1.5 is, unless otherwise indicated, a continuing representation and warranty.
- 7.2 The Beneficiary represents and warrants that
 - 7.2.1 it is duly established and validly existing under the laws of South Africa
 - 7.2.2 it is an empowered enterprise in terms of the B-BBEE Codes of Good Practice
 - 7.2.3 it has as its only Shareholders, the persons stated in this Agreement
 - 7.2.4 it is not prohibited from entering and from benefiting from the Government
 - 7.2.5 it has full power to conduct the Business

- 7.2.6 no corporate action, legal proceedings or similar procedure or steps have been taken or threatened, nor do any circumstances exist which are likely to give rise to steps being taken in respect of the Beneficiary or any of its subsidiaries relating to the commencement of business rescue or liquidation proceedings
- 7.2.7. it has not engaged in any trade, business or activity, made any investment or acquired any asset or incurred any liability (whether contingent or otherwise) other than in the ordinary course of business
- 7.2.8 all the information submitted to the Department is true and accurate in all respects, and the opinions and forecasts contained therein are reasonable and made with due care and enquiry
- 7.2.9 its Shareholder(s) do not hold majority stakes in any other entities which have the financial means to support the Business
- 7.2.10 all taxes and other governmental or official charges upon the Beneficiary, or its properties or its income which are due and payable, have been paid except as maybe presently payable without penalty or interest or as maybe the subject of a bona fide dispute and for which prudent reserves have been made
- 7.2.11 the Beneficiary has obtained and it is in compliance with all authorisations required to enable it to lawfully carry out its Business;
- 7.2.12 its directors have never been ineligible or disqualified from being a director of any company;
- 7.2.13 the Beneficiary has disclosed to the Department all such information as is material to the granting of the Fund by the Department to the Beneficiary and all information disclosed by the Beneficiary to the Department, whether in writing or otherwise, is true, correct and complete in every material respect;
- 7.2.14 it has complied with all material obligations imposed on it by all applicable laws.
- 7.3 Should any of the above warranties be breached, the Department reserves the right to immediately cancel this Agreement and if already paid, to demand immediate repayment of the Fund. In such instance,

7.4 the Beneficiary shall:

7.4.1 use the Fund, exclusively in connection with the Business;

7.4.2 maintain books of account and other records adequate to reflect truly and fairly use of the Fund and shall make such information available to the Department immediately upon request;

7.4.3 shall at all times comply with its taxes;

7.4.4 at the Department's notification, permit representatives of the Department to visit any of the premises or sites where the Business is conducted and to have access to the books of account and records of the Beneficiary and provide to the Department such information about the Beneficiary and its operations as the Department may require.

8 EVENTS OF DEFAULT AND BREACH

8.1. An Event of Default shall occur if: -

8.1.1. the Beneficiary breaches any provision, representation and warranty given by it in this Agreement;

8.1.2. the Beneficiary or any of its Shareholders commits an act of fraud or is disqualified to act as a director in terms of a court order;

8.1.3. the Beneficiary utilises the Fund for purposes other than contemplated in this Agreement;

8.1.4. the Beneficiary ceases to conduct the Business, is liquidated or placed into business rescue prior to the payment of the Grant;

8.1.5. the Beneficiary commits any other breach of this Agreement;

8.1.6. any material adverse change occurs in relation to the Beneficiary which shall inter alia include but not be limited to change in control of the Beneficiary;

8.2. If an Event of Default occurs, the Department shall be entitled to, in addition to any other rights it may have: -

8.2.1. suspend performance of any obligation owed by the Department to the Beneficiary in terms of any agreement concluded between the two, including but not limited to refuse to make any further Disbursements against the Grant to the Beneficiary;

- 8.2.2. on the giving of written notice to the Beneficiary, demand that the Beneficiary, immediately repays the Fund to the Department;
 - 8.2.3. charge interest at the prime rate on the Grant calculated from the date of Disbursement to the date of full payment (both dates inclusive);
 - 8.2.4. refuse to allow any further Disbursement of the Fund to the Beneficiary;
 - 8.2.5. cancel this Agreement and/or;
 - 8.2.6. institute legal action against the Beneficiary.
- 8.3. The Department may exercise any of these rights and any other rights it may have together or separately and at any time and in any order.

9. VARIATIONS

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

10 DISPUTE RESOLUTION

Any disagreement or dispute arising amongst the Parties with regard to implementation, application, interpretation or breach of this Agreement shall be settled as follows:

- 10.1 A disagreement or dispute must be initiated in writing.

11 INDEMNITY

Notwithstanding anything to the contrary set out in this Agreement, the Parties hereby indemnify each other and undertake to place reliance on the common law of contract insofar as it relates to any claims that may arise as a result of the conduct of either Party to this Agreement.

12 CANCELLATION / TERMINATION OF THIS AGREEMENT

- 12.1 The Agreement may be terminated by mutual written consent of Parties on 14 (fourteen) calendar days' written notice.
- 12.2 In the event of termination, any amount of money that the Department has transferred to the Beneficiary which was not used, shall be returned to the Department.

13 NO ASSIGNMENT

Neither Party shall be entitled to cede, assign or otherwise transfer all or any of its rights or obligations in terms of this Agreement without the prior written consent of the other Party.

14 GENERAL

- 14.1. This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof. If any term or provision or any part thereof (in this clause called "the offending provision") contained in this Agreement is declared or become unenforceable, invalid or illegal, for any reason whatsoever, including, without limitation, a decision by any competent court, an Act of Parliament or any statutory or other by-laws or regulations or any other requirements having the force of law, the other terms and provisions of this Agreement shall remain in full force and effect as if this Agreement had been executed without the inclusion of the offending provision.
- 14.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or Agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 14.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 14.4. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement and/or whether it was negligent or not.
- 14.5. Each Party warrants to the other Party that it has power, authority and legal right to sign and perform in terms of this Agreement and that this Agreement has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.
- 14.6. Each of the Parties acknowledges that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal advice or dispensed with the necessity of doing so. Further, each of the Parties hereto acknowledges that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with the Agreement and Projects.
- 14.7. The Parties agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purposes and the implementation of this Agreement and to give effect to the terms of this Agreement and to all transactions deriving therefrom.
- 14.8. Prior drafts of this Agreement shall not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the signature of this Agreement.
- 14.9. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement, which shall be binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatories to the original or the same counterpart.
- 14.10. This Agreement is executed in the English language, which shall be the sole and controlling language used in interpreting or construing its meaning.

- 14.11. Initials placed in the outside margin shall be deemed to be the initials for one change only. Additional changes shall require additional initialling.
- 14.12. Communications / notices must be received in a form that can be read, copied and recorded.
- 14.13. Each Party shall bear its own costs in respect of the negotiation, preparation and execution of this Agreement.

15 FORCE MAJEURE

- 15.1 Neither Party shall be responsible for or liable due to any failure to observe its obligations in terms of this Agreement where such failure or liability is due to any event of *force majeure*.
- 15.2 A Party claiming force majeure hereunder shall notify the other Party within 3 (three) business days of the circumstances of such force majeure event arising and, when known, of the likely duration of the force majeure event and shall use all reasonable diligence to remedy the force majeure event, or to avoid or minimize the consequences of suspending performance of the obligation affected by the force majeure event, provided that nothing herein shall require such Party to settle strikes or other labour disputes contrary to its interest, and shall continue with its obligations after the force majeure event has ceased to exist. Performance of the obligations affected by the force majeure event shall be deemed suspended for as long as such force majeure event continues to prevent or delay performance.
- 15.3 If a force majeure situation arises, the affected Party shall promptly notify other Parties in writing of such condition and the cause thereof. Unless otherwise directed by other Parties in writing, the affected Party shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 15.4 If any event(s) of force majeure continues for a period in excess of 10 (ten) days, a Party not claiming force majeure may elect, at its sole discretion and upon written notice to the other Party to terminate this Agreement.

16 CONFIDENTIALITY

- 16.1 Any Party shall treat information furnished by the other Party or another person for purposes of the execution of this Agreement, as confidential.
- 16.2 Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.
- 16.3 The Parties agree that this Agreement is not intended to restrict use or disclosure of any portion of such information which:
- 16.3.1 is made known to the public through no default by the receiving Party of its obligations under this Agreement;
- 16.3.2 is rightfully received by the receiving party from a third party having no obligation of confidentiality to the disclosing party;
- 16.3.3 is independently developed by the receiving party by persons who did not have access to Confidential Information of the disclosing party; or
- 16.3.4 is disclosed by the receiving party after receipt of written permission from the disclosing party.
- 16.4 The provisions of this clause will survive the termination of this Agreement.

17 PROCESSES AND NOTICES

- 17.1 The Parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 17.2 For purposes of this Agreement the Parties' respective addresses shall be –
The Department at: [insert],

Email: [insert]

Attention: [insert]

The Beneficiary at: [insert]

Email: [insert]

Attention: [insert]

- 17.3. or at such other address in South Africa of which the Party concerned may notify the others in writing provided that no street address mentioned in this sub clause shall be changed to a post office box or poste restante.
- 17.4. Any notice given in terms of this Agreement shall be in writing and shall:-
- 17.4.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 17.4.2. if posted by prepaid registered post be deemed to have been received by the addressee on the eighth day following the date of such posting;
- 17.4.3. if transmitted by email be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.
- 17.5. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of email shall be adequate written notice or communication to such Party.

18 ATTESTATION

18.1 The Parties hereby acknowledge having read and signed this Agreement, the contents of which are understood and accepted by all the undersigned Parties.

For the Department of Tourism

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2018.

WITNESSES:

1 _____

2 _____

MR VICTOR THARAGE

For the Beneficiary

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2018.

WITNESSES:

1 _____

2 _____
