

**TEMPORARY OUTDOOR PATIO, FITNESS AREA & RETAIL SPACE
PROGRAM
SCHEDULE A: TERMS AND CONDITIONS**

1. CONDUCT OF ACTIVITIES

- 1.1. The Applicant shall operate the temporary outdoor patio, fitness area or retail space and ensure that all activities carried out under this Agreement are carried out:
- a. In a good and workpersonlike manner;
 - b. In accordance with all applicable Town, Provincial and Federal laws, regulations, orders, bylaws and enactments, and the terms of all required permits and approvals, including those relating to physical distancing;
 - c. In accordance with the Declaration Form, the Town's Temporary Outdoor Patio, Fitness Area and Retail Space Guidelines, and these Terms and Conditions (collectively, the "**Agreement**");
 - d. In such a manner that the site of the Applicant's activities are kept neat, clean and safe; and
 - e. In accordance with any directives issued by the Town.

2. USE OF PUBLIC PROPERTY

- 2.1. If the Applicant uses public property for the purposes of the Program, including sidewalks, public parks, municipally owned parcels, or reserve parcels ("**Public Property**") the following terms and conditions shall apply to such use:
- a. The Applicant shall not modify the Public Property or any improvements thereon (including any landscaping) or affix anything to the Public Property except with the prior written authorization of the Town, which shall be in the Town's sole discretion;
 - b. The Applicant shall not store or keep any furnishings or other items on the Public Property outside of the hours of operation of the outdoor patio or retail space except with the prior written authorization of the Town, which shall be in the Town's sole discretion; and
 - c. The Applicant shall not bring, permit, or allow any hazardous substances (as defined in the *Environmental Protection and Enhancement Act*) onto the Public Property.
- 2.2. The Applicant's authorization to use Public Property is temporary in nature. No ongoing right to use Public Property outside of the Program is granted or implied by this Agreement. No exclusive right to occupy Public Property is granted or implied by this Agreement.

3. TERM AND TERMINATION

- 3.1. The Program shall continue annually from April 1st to October 31st of each calendar year unless terminated earlier as described herein or extended by the Town in the Town's sole

discretion. This Agreement shall remain in effect until the expiry or termination of the Program, unless terminated earlier hereunder.

- 3.2. The Town may terminate the Program at any time on twenty-four (24) hours' notice to the Applicant, or immediately if:
 - a. The Program is found to be contrary to any applicable Town, Provincial or Federal laws, regulations, orders, bylaws, or enactments, including those relating to physical distancing.
- 3.3. The Town may terminate this Agreement at any time on twenty-four (24) hours' notice to the Applicant, or immediately if:
 - a. The Applicant is found to have breached any term of the Applicant's Declaration Form, including these Terms and Conditions and any other document referenced therein; or
 - b. If the Applicant is using Public Property, the Town requires use of the Public Property and issuing twenty-four hours' notice to the Applicant is not feasible, in the sole opinion of the Town.
- 3.4. The Applicant may terminate this Agreement at any time on notice to the Town.
- 3.5. Within twenty-four (24) hours after the expiry or termination of the Program or this Agreement, the Applicant shall restore any Public Property used by the Applicant as part of this Program to its prior condition, subject only to reasonable wear and tear.

4. LIABILITY, RISK AND INSURANCE

- 4.1. The Applicant's participation in the Program and the operations of any outdoor patio or retail space shall be at the Applicant's sole risk and expense.
- 4.2. The Applicant shall indemnify and hold harmless the Town and the Town's officials, managers, employees, contractors and insurers from and against any claim, demand, action, cause of action, costs or damages resulting from the participation in the Program, the operation of any outdoor patio or retail space, or any negligence, wilful misconduct or breach of this Agreement by the Applicant or the Applicant's officials, officers, directors, managers, employees, contractors, invitees, guests, or any other person for whom the Applicant is responsible at law.
- 4.3. If the Applicant is using any Public Property for the purposes of this Program, the Applicant shall obtain and at all times maintain insurance as follows, at the Applicant's sole expense:
 - a. Commercial general liability insurance on an occurrence form in an amount of not less than:
 - i. two million dollars (\$2,000,000.00) per occurrence if the Applicant is not serving or allowing alcohol in the outdoor patio or retail space; or
 - ii. five million dollars (\$5,000,000.00) per occurrence if the Applicant is serving or allowing alcohol in the outdoor patio or retail space

for personal injury (including death) and / or property damage, which shall name the Town as an additional insured, shall include an undertaking by the insurer to notify the Town at least thirty (30) days prior to cancellation of the policy, and if alcohol is being served or allowed in the outdoor patio or retail space shall include an endorsement for liquor liability; and

- iii. Property insurance for the full value of the Applicant's equipment, stock, and other property on or being used in respect of the Applicant's activities on the Public Property.
- 4.4. Prior to commencing operations and at any time and from time to time within five (5) days of request by the Town, the Applicant shall provide the Town with a certificate or certificates of insurance for all insurance policies required to be carried pursuant to this Agreement.
 - 4.5. The Applicant shall be responsible for all deductibles and premiums associated with all insurance required to be carried pursuant to this Agreement.
 - 4.6. The Applicant's obligation to obtain insurance shall in no way limit or restrict the Applicant's obligations hereunder to indemnify and hold harmless the Town.

5. GENERAL

- 5.1. The headings in this Agreement are for convenience only and shall not affect their interpretation. Where the singular or masculine form of a term is used in this Agreement, it includes the plural, feminine or neutral, and *vice versa*.
- 5.2. Any notices to be issued to the Applicant under this Agreement may be issued by delivering such notices to the property identified in the Declaration Form, posting such notices prominently at the property identified in the Declaration Form, or emailing such notices to the email address provided in the Declaration Form. Notices delivered to the property or posted at the property shall be deemed received at the time of delivery or posting, and notices sent by email shall be deemed received the next business day.
- 5.3. Any notices to be issued to the Town under this Agreement may be issued by sending such notices to the Town by email to planning@okotoks.ca. Notices sent by email shall be deemed received the next business day.
- 5.4. The indemnities and other provisions in this Agreement which by their nature are intended to survive the termination or expiry this Agreement or the Program shall survive such termination or expiry.
- 5.5. The Applicant's rights under this Agreement are non-transferable.
- 5.6. The Applicant must obtain all permissions, authorizations and approvals necessary from any government or regulatory entities and the owner of any property to be used by the Applicant as part of the Program (excluding Public Property, the use of which is governed herein).