

## CONDITIONAL GRANT AGREEMENT

This Agreement is dated for reference the \_\_\_ day of \_\_\_\_\_, 2018.

### BETWEEN:

**THE HABITAT CONSERVATION TRUST FOUNDATION, AS TRUSTEE OF THE HABITAT CONSERVATION TRUST**, a special purpose trust fund created by the *Wildlife Act* and having an office at #107 - 19 Dallas Road, Victoria BC

("HCTF")

### AND:

**LEGAL NAME OF RECIPIENT**, a *{legal entity type}*, incorporated under the laws of the Province of British Columbia (Incorporation #) and having an office at *{street address}*, *{city}*, B.C.

(the "Recipient")

### BACKGROUND

- A. The Recipient has submitted a Proposal to HCTF seeking a grant or contribution of funding to assist it with undertaking the *{Insert Name of Project}* (the "Project") and HCTF wishes to participate in the funding of the Project.
- B. In furtherance of the foregoing, the HCTF wishes to assist the Recipient with the Project by providing a Conditional Grant to the Recipient, based on the terms of this Agreement.

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

### 1.0 INTERPRETATION

- 1.1 **Definitions:** In this Agreement the following words and phrases have the following meanings:

**"Accountable Advance"** means any portion of the Conditional Grant advanced to the Recipient pursuant to Part 3.0, to be applied by the Recipient against Eligible Costs only, and which may become repayable by the Recipient, as provided for in this Agreement;

**"Agreement"** means this Agreement, including all Appendices and all amendments to this Agreement;

**"Appendices"** means the attachments to this Agreement, including without limitation the Proposal and any Funding Conditions and Technical Comments;

**"Auditor"** means an accountant licensed to carry out audits in British Columbia, approved by HCTF, and who is at arm's length from the Recipient and its Subcontractors;

**"Authorization Document"** means the permit, license or other approval between the Recipient and the applicable government body which, when executed and transmitted to the Recipient, gives the Recipient the legal authority and approval to carry out the Project;

**“Books of Account”** means all records and related information as may be necessary or desirable in HCTF’s opinion, to support the reports, statements or documents submitted to HCTF under this Agreement and which may include but not be limited to accurate time records, accounting records, books of accounts, documents, invoices, receipts, vouchers and other supporting documents for the Project;

**“Communications Materials”** means all publications, extension material, signage, presentations, websites, electronic and social media, and other forms of release or communications pertaining to the Project activities under this Agreement;

**“Conditional Grant”** means the funding HCTF agrees to provide to the Recipient pursuant to this Agreement;

**“Eligible Costs”** are the costs and expenses that are set out in the Proposal as amended by the Funding Conditions, and which are in the opinion of the HCTF, necessarily and properly incurred by the Recipient in connection with the Project.

**“Event of Default”** has the meaning as set out in Paragraph 10.3;

**“Final Year Grant Report ”** means a summarized written report on the overall results of a Multi-Year Project which must be prepared in accordance with the requirements of this Agreement and specifically with the requirements set out in Part 7.0;

**“Funding Conditions”** means restrictions and other conditions imposed by HCTF on the Project as set out in Appendix 2 and that must be addressed in writing by the Recipient and approved by HCTF prior to the Recipient receiving any part of the Conditional Grant;

**“Grant Report”** means an accountability measure that provides HCTF with reasonable assurance that the Recipient used the Conditional Grant for its intended purpose This report must be prepared in accordance with the requirements of this Agreement and specifically with the requirements set out in Part 7.0;

**“HCTF’s Website”** means the website set up by HCTF and found at [www.hctf.ca](http://www.hctf.ca);

**“Multi-Year Project”** means Projects with two or more Conditional Grants approved in different years.

**“Parties”** means HCTF and the Recipient;

**“Project”** means the work or undertaking identified by the Recipient in its Proposal and which HCTF has agreed to provide funding toward as set out in this Agreement;

**“Project Deliverables”** means all project related documents to be provided to HCTF, including but not limited to Reporting Deliverables, invoices, the signed Agreement, insurance certificates, photos, and Funding Condition responses;

**“Proposal”** means the proposal submitted by the Recipient to the HCTF pursuant to its call for proposals and which is attached as Appendix 1 to this Agreement;

**“Reporting Deliverables”** means the reports and documents to be provided to the HCTF and include Grant Reports and Final Year Grant Reports, as well as all publications, other reports and associated data arising from the Project;

**“Subcontractor”** means a person, firm, corporation or other legal entity contracting with the Recipient to perform a part of the Project;

**“Technical Comments”** means recommendations for improving the effectiveness of the Project as provided by the Board of Directors of HCTF or an assigned technical review committee as set out in Appendix 2 to this Agreement. These comments are not required to be addressed as a condition of funding approval. It is expected that the Recipient consider these comments when planning implementation of the Project and if applicable, when submitting any new proposals for

continued funding for the Project. HCTF may not approve future submissions that have not addressed these comments; and

“**Term**” means the duration of this Agreement as set out in Part 2.0.

- 1.2 **Appendices:** Each of the Appendices to this Agreement form an integral part of this Agreement as if set out in the body of this Agreement, and the Recipient will comply with all of the terms of the Appendices. If there is a conflict or inconsistency between any of the terms of any of the following, then the order of precedence will be:
- (a) this Agreement;
  - (b) the Funding Conditions; and then
  - (c) the Proposal.
- 1.3 **Laws of British Columbia:** This Agreement and all activities under this Agreement will be governed by and construed in accordance with the laws and regulations of the Province of British Columbia.
- 1.4 **Headings:** The headings appearing in this Agreement are inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any term of this Agreement. This Agreement is divided into the following components:
- 19.0 PART
  - 19.1 Paragraph
    - (a) Section
      - (i) Subsection
- 1.5 **Statutes Referenced:** Any reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all regulations at any time made under that statute and any amendments or replacements to that statute and the regulations.
- 1.6 **Entire Agreement:** This Agreement is the entire Agreement between the Parties regarding the subject matter of this Agreement and no promises, representations, understandings or contracts, whether oral or written, exist between the Parties with respect to the matters set out in this Agreement, except as expressly set out in this Agreement.
- 1.7 **Amendments:** This Agreement may be amended from time to time by mutual consent of the Parties. All amendments to this Agreement must be made in writing and must be signed by authorized signatories for each of the Parties. For certainty, prior written approval by HCTF is required for any changes to activities or budgets related to the Project, including without limitation activities and budgets stated in the approved Proposal, as amended by the Funding Conditions.
- 1.8 **Waiver:** No term of this Agreement and no breach by the Recipient of any such term may be waived, except with the written consent of HCTF. Written waiver in one instance by HCTF of any particular term or breach by the Recipient of this Agreement will not be deemed to be waiver in any subsequent or other instance.
- 1.9 **Time:** Time is of the essence in this Agreement.
- 1.10 **Survival:** Despite any other term of this Agreement, all terms of this Agreement in favour of HCTF and all of the rights and remedies of HCTF, either at law or in equity, survive the expiration or earlier termination of this Agreement.

1.11 **Severance:** Should any term of this Agreement be struck down in whole or in part by a court of competent jurisdiction, the balance of this Agreement will survive and be enforceable.

1.12 **Reasonableness:** Wherever this Agreement provides that

- (a) an action may be taken;
- (b) a consent must be obtained;
- (c) an approval must be obtained; or
- (d) a determination must be made, (collectively for this Paragraph an "Action"),

then the applicable Party will act reasonably in taking such Action. However, where this Agreement states that a Party has sole discretion to take an Action, there will be no requirement to show reasonableness or to act reasonably in taking that Action.

## 2.0 TERM

2.1 The Term of this Agreement will start on **April 1, 2018** and end on **March 31, 2019**

2.2 This funding is for one year only. Any future funding for this Project beyond the Term requires the submission of a new proposal for each subsequent year and written acceptance of continued funding for the Project by HCTF for each future year. HCTF will not be liable to the Recipient in any way if funding is not provided beyond the Term of this Agreement.

## 3.0 CONDITIONAL GRANT

3.1 The monies are to be spent on the Project, as specified in the Proposal including any modifications from the Funding Conditions.

3.2 All funding under this Agreement is conditional on compliance by the Recipient with the terms and conditions of this Agreement and subject to those terms and conditions which may reduce funding.

3.3 The HCTF will provide the Recipient with a Conditional Grant to a maximum of \$<> for Eligible Costs, as follows:

- (a) an Accountable Advance of \$<> (50%), following:
  - (i) the execution and delivery of this Agreement;
  - (ii) the Recipient's submission to HCTF of certificates evidencing insurance requirements as set out in Part 9.0; and
  - (iii) satisfactory evidence Funding Conditions have been satisfied;
- (b) an Accountable Advance of up to \$<> (30%) once the initial 50% Accountable Advance has been fully spent, and an acceptable invoice requesting payment of the next Accountable Advance is submitted. The invoice must clearly indicate that the initial 50% Accountable Advance has been fully spent; and
- (c) a final payment of up to \$<> (20%) upon submission of an acceptable Grant Report, approved by HCTF, with an invoice requesting final payment. The final 20% represents a holdback (i.e. not an advance). The Recipient must complete the Project before requesting final payment.

3.4 Despite Paragraph 3.3, HCTF may, at its sole discretion, refuse to make a payment under that Paragraph if, when the payment is due, the Recipient is in default either:

- (a) under the terms of this Agreement; or
  - (b) if outstanding Project Deliverables exist relating to any other contractual obligations the Recipient may have with HCTF.
- 3.5 All requests for payment should identify the Reference no – *{Insert CAT19-X-XXX}*.
- 3.6 The Recipient must return any unspent funds to HCTF within 60 days of the Project completion or immediately upon the termination of this Agreement.
- 3.7 Expenses claimed (e.g. travel, hotels, and meals) cannot exceed HCTF's travel expense rates as set out on HCTF's Website or available upon request from HCTF.
- 3.8 Despite any other terms of this Agreement, HCTF may deduct from an Accountable Advance or request for final payment:
- (a) any costs claimed by the Recipient that HCTF deems not to be Eligible Costs;
  - (b) any adjustments HCTF is entitled to make under this Agreement; and
  - (c) any amounts the Recipient owes HCTF for any reason.

#### **4.0 DUTIES OF THE RECIPIENT**

- 4.1 The Recipient will:
- (a) complete the Project within the Term;
  - (b) comply with the terms of this Agreement;
  - (c) ensure that necessary Authorization Documents are obtained before commencing work;
  - (d) permit the access at all reasonable times to the work sites or Project areas which are, have been or are to be the subject of this Agreement;
  - (e) not exceed the Eligible Costs as set out in the Proposal, including any modifications in the Funding Conditions;
  - (f) apply all Accountable Advances and the final payment directly against Eligible Costs;
  - (g) provide all equipment, materials, supplies, labour, supervision and accommodation necessary to perform the work necessary to complete the Project;
  - (h) exercise the standard of care, skill and diligence normally exercised and observed by competent persons engaged in the performance of activities similar to the Project;
  - (i) promptly pay all persons employed or engaged in the carrying out the Project or supplying materials, in accordance with the terms of their engagement or employment;
  - (j) with respect to persons employed to carry out the Project, ensure that this employment will comply with all applicable legislation;
  - (k) ensure that all health and safety standards are met;
  - (l) get permission from landowners where needed to enter any land for the purpose of carrying out the Project;
  - (m) ensure that it and any employees, Subcontractors, volunteers or agents employed on the Project are competent, properly trained and instructed as required to undertake and successfully complete the Project;
  - (n) provide an update on Project plans and activities, either in writing or verbally when requested to do so by HCTF, within two weeks of such a request;



- (o) provide for any on-going Project operations and maintenance activities and related costs that are not set out in the Proposal as amended by the Funding Conditions, including any activities or costs that extend beyond the Term of this Agreement;
- (p) address in writing the Funding Conditions as set out in Appendix 2 and submit them for approval by HCTF; and
- (q) consider the Technical Comments when planning implementation of the Project and if applicable, when submitting any new proposals for continued funding for the Project. HCTF may not approve future submissions that have not addressed these comments.

4.2 For greater certainty, regardless of any other provision in this Agreement, the Recipient agrees that it will only spend the Conditional Grant for one or more of the following purposes and for no other purpose, as per Part 3, Section 122 (1) of the Wildlife Act:

- (a) the conservation or enhancement of biological diversity, fish, fish habitat, wildlife or wildlife habitat;
- (b) the acquisition and management of land for the conservation or enhancement of a population of a species of fish or wildlife and its habitat;
- (c) the furthering, stimulation and encouragement of knowledge and awareness of fish or wildlife and their habitat, or of the existence and purpose of the society, by way of promotional, educational or other materials, goods, programs or services;

## **5.0 DUTIES OF HCTF**

5.1 HCTF will:

- (a) provide Accountable Advances and a final payment to the Recipient according to the terms of this Agreement; and
- (b) retain the appropriate internal and external personnel and facilities to carry out its responsibilities under this Agreement.

5.2 The HCTF assumes no liability for loss, injury, or damage suffered or caused as a result of this Project.

## **6.0 SUBCONTRACTING AND ASSIGNMENT**

6.1 HCTF may assign its rights and obligations under this Agreement to another person or party without the Recipient's prior approval. If such an assignment occurs, HCTF will notify the Recipient in writing and provide any applicable instructions for altering the Agreement or the rights and obligations of the Parties.

6.2 The Recipient must not subcontract any obligation under this Agreement without the prior written consent of the HCTF and such approval can be withheld at HCTF's sole discretion. Providing any form of a contribution, gift or grant, either conditional or unconditional, is considered a form of sub-contracting. If a Subcontractor is listed in the Proposal, this is considered sufficient written consent unless the Funding Conditions state otherwise. No subcontract, whether consented to or not, relieves the Recipient from any obligations under this Agreement. The Recipient must ensure that any agent, employee or Subcontractor, used on the Project, fully complies with this Agreement.

6.3 If during the Term of this Agreement, the Recipient sells, transfers or disposes of any interest in its business, other than in the ordinary course of its business, whether by sale of assets, shares or otherwise, that may affect this Agreement then the Recipient will:

- (a) immediately notify HCTF;
  - (b) disclose all relevant information regarding the acquisition or disposition to HCTF; and
  - (c) enter into an Agreement with HCTF to adjust the funding, deliverables and other related matters in the relevant documents upon terms and conditions determined necessary in HCTF's reasonable opinion.
- 6.4 The Recipient will not assign any of its rights or obligations under or any interest in this Agreement without HCTF's prior written approval, which HCTF may in its sole discretion withhold.
- 6.5 The Recipient must not provide any services to any person in circumstances, which could give rise to a conflict of interest between the duties to that person and duties to the HCTF under this Agreement.
- 6.6 The Recipient must not do anything that would result in hired personnel being considered an employee of the HCTF.
- 6.7 The Recipient must not commit or purport to commit the HCTF to pay any money except as authorized by this Agreement.
- 6.8 This Agreement will operate to the benefit of and be binding upon the Recipient and its successors and permitted assigns and HCTF and its assigns.

## **7.0 REPORTS, RECORDS AND AUDITS**

- 7.1 The Recipient must:
- (a) keep Books of Account at the Recipient's main place of business for a period of five years after the earliest of the following:
    - (i) the completion of the Project;
    - (ii) the end of the Term of this Agreement; or
    - (iii) the expiration or earlier termination of this Agreement;
  - (b) permit HCTF, or its agent with written authorization from HCTF, during normal business hours, to examine and copy and take away copies of any or all of the Books of Account that may be necessary or desirable in HCTF's, or its agent's opinion to verify the Recipient's compliance with this Agreement;
  - (c) provide original or certified copies of any Books of Account when requested by HCTF within 7 days of such request; and
  - (d) within 15 days of receiving a request from HCTF, submit further documentation, verification or information to support the Eligible Costs claimed.
- 7.2 All documents submitted to HCTF by the Recipient and their Subcontractor(s) under this Agreement will become the property of the HCTF.
- 7.3 Timelines for reporting requirements are directly linked to the payment process outlined in Part 3 of this Agreement.
- 7.4 A Grant Report consists of written commentary on the completed activities and outcomes of the Project(s) and an expenditure listing that accounts for all expenditures paid to date on the Project(s). The Recipient should use all reasonable efforts to embed high quality images into their Grant Report as this enhances the project documentation. A Grant Report:

- (a) is required for each approved Project for which a recipient submitted a Proposal;
  - (b) must be submitted when requesting the final payment as set out in Paragraph 3.3 or upon termination of this Agreement; and
  - (c) must follow the sample format set out on the HCTF Website.
- 7.5 All reporting requirements must be met within the Term of this Agreement.
- 7.6 A Final Year Grant Report for a Multi-Year Project:
- (a) is only required for the last year of a Multi-Year HCTF funded Project which is defined as the last year as indicated in the original Proposal (e.g. Year 4 of 4);
  - (b) should include some embedded photographic images;
  - (c) must be prepared in accordance with Final Year Grant Report requirements as set out on HCTF's Website;
- 7.7 When submitting a Grant Report and/or Final Year Grant Report, the Recipient must also submit a reasonable number of high quality digital photos, as separate digital files, of any fieldwork components of the Project(s). Note, all submitted photo images are available free of charge to the HCTF for the non-exclusive use in promoting the HCTF. If requested by the Recipient, and if a photo is used by HCTF, photo credit will be given to the photographer.
- 7.8 The Recipient must provide electronic versions of all Reporting Deliverables and invoices to: [reporting@hctf.ca](mailto:reporting@hctf.ca).
- 7.9 At HCTF's discretion, the Recipient may be requested to provide a second electronic copy of only the Final Year Grant Report and any related technical publications to the regional office of the Provincial Government Ministry responsible for Fish and Wildlife management in which the Recipient has undertaken the Project.
- 7.10 At HCTF's sole discretion, any Reporting Deliverables or Communications Materials submitted by the Recipient may be catalogued in a document management system that is accessible to the general public.
- 7.11 The HCTF may provide the Recipient with additional instructions throughout the Term of this Agreement regarding the logistics for submitting Project Deliverables.
- 7.12 All Project Deliverables submitted to the HCTF must identify the HCTF assigned project number, which is **{insert project #}** and the assigned contract number, which is **{insert contract #}**.
- 7.13 If the reports and statements submitted under this Part are incomplete or otherwise not satisfactory to HCTF, at its sole discretion, then, in addition to any other remedies set out in this Agreement, HCTF may require the Recipient to revise the report or statement so as to provide all the information in a manner that is satisfactory to HCTF.
- 7.14 If the Recipient does not submit Reporting Deliverables on time, then, in addition to any other remedies set out in this Agreement, HCTF may disallow the Eligible Costs associated with the preparation of the reports and statements.



- 7.15 Notwithstanding paragraph 2.1, HCTF may elect to evaluate the Project while it is in progress and/or after it is completed. In the event of an evaluation, at its own expense, HCTF may engage the professional services of an external consultant or an Auditor. As per Paragraph 7.1, the Recipient will make available all Books of Account and any other supporting documentation or information relating to the Project that in HCTF's opinion are required to complete the evaluation. The evaluation may include visits by HCTF staff and others to the Project site and/or the Recipient's place of business.
- 7.16 Notwithstanding paragraph 2.1, HCTF may request the Recipient participate in an evaluation workshop while the Project is in progress and/or after it is completed. If requested, the Recipient will make every effort to attend the workshop. If the Recipient cannot attend, another individual involved in the Project (from the Recipient's place of business, or elsewhere) may attend in the Recipient's place. Travel and other costs to attend the workshop should be taken from the Recipient's project budget, if available. If unavailable, the Recipient may make a special request to HCTF to cover the travel and accommodation costs of attending the workshop.
- 7.17 The Recipient will assist HCTF by whatever means are necessary to facilitate the evaluations referred to in Paragraphs 7.15 and 7.16.

## **8.0 COMMUNICATIONS**

- 8.1 The Recipient must recognize funding support from HCTF in all Communications Materials pertaining to the Project activities under this Agreement.
- 8.2 The Recipient and HCTF agree that all Communications Materials, including signs, associated with communications or public awareness relating to this Agreement, produced by or on behalf of the Recipient or HCTF will:
- (a) be developed in accordance with HCTF guidelines set out on HCTF's Website;
  - (b) contain a clear and prominent funding acknowledgement, in accordance with the guidelines on HCTF's website and any additional instructions provided by HCTF;
  - (c) contain a highly visible HCTF logo (available from HCTF's website)
- 8.3 HCTF reserves the right to share Recipient's contact information with interested members of the media or public for purposes of reviewing and discussing Project objectives and outcomes.
- 8.4 HCTF may elect to undertake additional communications initiatives regarding the project. If requested by HCTF, the Recipient agrees to cooperate with HCTF to facilitate these communications activities.

## **9.0 INDEMNIFICATION AND INSURANCE**

- 9.1 The Recipient will indemnify and hold harmless HCTF, its employees and agents (collectively referred to in this Paragraph as "HCTF") from and against any and all losses, claims, damages, actions, causes of action, costs and expenses of whatsoever kind or nature that HCTF may incur, suffer or be put to either before or after the expiration or termination of this Agreement, by reason of any wrongful act or omission of the Recipient, its employees, officers, directors, shareholders or agents, or any Subcontractors or supplier of materials or services or any of their employees, officers, directors, shareholders or agents, as a result of or in any way arising out of this Agreement, the actions of the Recipient, or the Project, except where, and to the extent that, the loss, claim, damage, action, cause of action, cost or expense arises from the negligence or willful default of HCTF. Such indemnification survives the termination or expiration of this Agreement and any sub-contract.

- 9.2 Without limiting its obligations or liabilities under this Agreement, and at its own expense, the Recipient must obtain and maintain insurance which it is required to have by law and insurance which a prudent businessperson conducting similar operations would obtain and maintain to cover the risks it has assumed or may encounter as a result of entering into this Agreement or completing the project during the Term.
- 9.3 All the foregoing insurance will be primary and not require the sharing of any loss by any insurer of HCTF.
- 9.4 The Recipient will provide HCTF with acceptable certificates evidencing that HCTF has been added as an additional insured under the required insurance Comprehensive/Commercial General Liability in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury and property damage. A sample format for a certificate of insurance can be found on HCTF's Website or which is also available upon request from HCTF. When requested by HCTF, the Recipient will provide certified copies of required policies. Upon expiration of or cancellation of any required insurance during the term of this agreement, the Recipient shall submit renewal certificates to HCTF.
- 9.5 All required insurance (except ICBC provided automobile liability insurance), will be endorsed to provide HCTF with 30 days advance written notice of cancellation or material change.
- 9.6 The Recipient hereby waives all rights of recourse against HCTF with regard to damage to the Recipient's property.

## **10.0 TERMINATION, EVENTS OF DEFAULT AND REMEDIES**

- 10.1 This Agreement may be terminated by thirty days written notice by either Party to the other Party.
- 10.2 Where this Agreement is terminated pursuant to Paragraph 10.1 then:
- (a) the Recipient may claim as Eligible Costs all direct reasonable Eligible Costs incurred on the Project up to the date the notice is received by the other Party; and
  - (b) The HCTF, at its sole discretion, may decline to provide any additional funding after the termination date.
- 10.3 The occurrence of any one or more of the following events will constitute an Event of Default under this Agreement:
- (a) the Recipient fails to perform or comply with any term of this Agreement;
  - (b) the Recipient fails to remedy any variation from an Authorization Document, law, statute or enactment within a reasonable period of time as determined by HCTF;
  - (c) if any information, statement, certificate, report or other document given by or on behalf of the Recipient pursuant to, or as a result of, this Agreement is untrue or knowingly incorrect;
  - (d) a change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of HCTF, materially adversely affects the ability of the Recipient to fulfill its obligations under this Agreement; or
  - (e) in HCTF's opinion, the Recipient is unable to meet its obligations as they become due to HCTF or a third party.

- 10.4 If any Event of Default occurs, HCTF may give written notice thereof to the Recipient and HCTF may, at its sole discretion do any, or all of the following:
- (a) terminate this Agreement;
  - (b) withhold, or suspend payment of, all or a portion of the Conditional Grant;
  - (c) disallow the Eligible Costs associated with the Project;
  - (d) require the Recipient to repay HCTF all or a portion of the Conditional Grant;
  - (e) use the withheld or repaid portion of the Conditional Grant to remedy the Event of Default;
  - (f) request, and the Recipient will deliver to HCTF, within 30 calendar days of the request, a written report, in form and content satisfactory to HCTF and prepared by a person acceptable to HCTF, evaluating the financial status and condition of the Recipient; or
  - (g) take any other action HCTF considers appropriate.
- 10.5 If this Agreement is terminated pursuant to 10.1 or 10.4, no claim will be made by the Recipient for damages or losses of whatsoever kind or nature occasioned by that termination, and HCTF will be under no further obligation to the Recipient except for Eligible Costs properly incurred up to the date of termination.
- 10.6 Despite any other terms of this Agreement, if this Agreement ends for any reason and HCTF determines that the Eligible Costs incurred by the Recipient are less than the aggregate amount of the Accountable Advances made to the Recipient by HCTF, or if HCTF determines that the Recipient owes money to HCTF under this Agreement for any other reason, the Recipient will promptly repay money owing to HCTF, together with interest, at an interest rate equal to the prime rate charged by the Canadian Imperial Bank of Commerce plus four percentage points per annum, calculated monthly, not in advance, accrued from the date the money becomes due until the date of actual payment in full to HCTF.
- 10.7 The rights, powers, and remedies conferred on HCTF under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to HCTF under this Agreement, any other Agreement, at law or in equity and the exercise by HCTF of any right, power or remedy will not preclude the simultaneous or later exercise by HCTF of any other right, power or remedy.

## **11.0 OWNERSHIP OF MATERIAL AND ASSETS**

- 11.1 All Material that has been produced or received by the Recipient or any Subcontractor as a result of this Agreement (collectively the "Material"), including, without limitation, accounting records, findings, software, data, specifications, drawings, reports, and documents, whether complete or not and any property HCTF provides to the Recipient or a Subcontractor is HCTF's exclusive property. The copyright in the Material belongs exclusively to HCTF. Upon HCTF's request, the Recipient must deliver to HCTF documents satisfactory to HCTF waiving in its favour any moral rights which the Recipient or its employees or Subcontractors may have in the Material and confirming the vesting of the copyright in HCTF. The Recipient must deliver the Material to HCTF immediately upon request.
- 11.2 The Recipient will not be restricted from presenting publications at symposia, national or regional professional meetings, or from publishing in journals or other publications, accounts of the work pertaining to this Agreement. Publications, conference presentations, symposia and all other dissemination of material pertaining to the work of this Agreement will recognize HCTF.
- 11.3 Original receipts, warranty cards and serial numbers for any equipment or assets purchased with grant funds at a cost of \$1,000 or greater must be kept by the Recipient and if requested, be

made available to HCTF. Equipment or assets costing \$1,000 or greater must be recorded in the appropriate sections of all required reports. Any equipment or asset purchases, costing \$1,000 or greater, required for this Project but not approved in the Proposal must be pre-approved, in writing by the HCTF office.

## 12.0 LEGISLATION

12.1 The Recipient will:

- (a) comply with all federal, provincial, regional and municipal laws, statutes, enactments, legislation, by-laws, rules and regulations and the Authorization Document(s);
- (b) remedy any conditions or matters that arise during the course of completing the Project that must be addressed under any applicable law, legislation, regulation or the Authorization Document(s); and
- (c) remedy promptly, at its own expense, any defaults or any legislative infractions caused by the Recipient, its agents, employees or Subcontractors.

12.2 All Recipient Material, information and reports provided to HCTF may be subject to disclosure in accordance with the *Freedom of Information and Protection of Privacy Act* (British Columbia).

12.3 Notwithstanding Paragraphs 11.2 and 12.2, the Recipient will treat as confidential and will not, without the prior written consent of HCTF, disclose or permit to be disclosed either before or after the expiration or earlier termination of this Agreement, any of the Material or any information supplied to, obtained by, or which comes to the knowledge of the Recipient as a result of this Agreement, except if:

- (a) the disclosure is necessary to enable the Recipient to fulfill its obligations under this Agreement;
- (b) the disclosure is consistent with the terms outlined under Paragraph 11.2 Agreement; or
- (c) the Recipient is required to by applicable law; or
- (d) where such information is readily available to the public.

12.4 For the purposes of the *Workers Compensation Act* and regulations to that Act, the Recipient will be the "Principal Contractor" or "Prime Contractor" for the Project, as described in the Act and/or regulations to the Act, and will carry out the duties described therein.

## 13.0 DISPUTE RESOLUTION

13.1 Where a dispute arises involving this Agreement between the Parties then the Party with the dispute will send written notice to the other Party describing the dispute. The Parties will then use all reasonable efforts to resolve the dispute.

13.2 If the Recipient and HCTF are unable to resolve the dispute within six business days of receipt of the written notice (or such longer period as Parties may agree), then the dispute will be referred to and finally resolved by arbitration pursuant to the *Arbitration Act*, and the place of arbitration will be Victoria, or elsewhere as decided by HCTF at its sole discretion.

13.3 The Party that loses the arbitration will pay the other Party's reasonable costs, other than direct staff costs, up to a maximum of \$10,000 per arbitration, and if the arbitration result is that neither Party loses entirely then the reasonable costs will be apportioned accordingly between the Parties.

## 14.0 REPRESENTATIONS AND WARRANTIES

- 14.1 The Recipient represents and warrants to HCTF, with the intention that HCTF will rely on it in entering into this Agreement that except as disclosed in writing to HCTF:
- (a) the Recipient does not know of any fact that materially adversely affects, or could materially adversely affect, its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;
  - (b) the Recipient is not in breach of, or in default under, any law, statute, enactment or regulation of Canada or of the Province of British Columbia, that applies to or is binding on it, that materially affects or could materially affect its ability to fulfill its obligations under this Agreement;
  - (c) the Recipient has the power, capacity and authority to accept, execute, deliver and perform this Agreement; and
  - (d) this Agreement has been fully reviewed and accepted by the Recipient and it is binding upon and enforceable against the Recipient.

## 15.0 FORCE MAJEURE

- 15.1 If either Party is rendered wholly or partly unable to perform its obligations under this Agreement, other than an ability to make a payment, as a result of an act or event that is beyond the reasonable control or responsibility of that Party, that performance of that Party's obligations will be suspended to the extent so affected, provided that the suspension of performance is of no greater scope and of no longer duration than is reasonably necessary and the non-performing Party uses reasonable efforts to remedy its inability to perform.

## 16.0 RELATIONSHIP

- 16.1 The Recipient is an independent contractor and not the servant, employee, agent or partner of HCTF.
- 16.2 No partnership, joint venture, agency or other legal entity is created by or will be deemed to be created by this Agreement or any actions of the Parties under this Agreement.
- 16.3 The Recipient has no authority to, and will not, commit HCTF to pay any person, firm or corporation.

## 17.0 NOTICES and LIAISON

- 17.1 Any notice, approval, consent, document, report, statement, waiver, offer, demand or payment required to be given under this Agreement will be considered validly given, delivered or paid to and received by the addressee, if made in writing and delivered personally, on the date of that personal delivery, or if mailed by prepaid post, on the tenth business day after the mailing in Canada as follows:

if to HCTF:

Suite #107  
19 Dallas Road,  
Victoria, B.C.  
V8V 5A6

Attention: Finance Officer

and if to the Recipient:

*{insert name}*  
*{insert address}*  
*{insert city}*, British Columbia  
*{insert postal code}*

Attention: *{insert name}*, *{insert title}*



- 17.2 Either Party may, from time to time, advise the other Party by notice in writing, of any change of address of the Party giving such notice and, from and after the giving of such notice, the address specified will, for purposes of this Agreement, be considered to be the address of the Party giving such notice.
- 17.3 During the Term, the Recipient must maintain regular communication with HCTF as follows:
- (a) for all aspects of project delivery, contact the Manager, Evaluation Programs – email: [kathryn.martell@hctf.ca](mailto:kathryn.martell@hctf.ca); phone: 250-940-9785 or 1-800-387-9853;
  - (b) for all financial inquiries, contact the Finance Officer – email: [katelynn.schriner@hctf.ca](mailto:katelynn.schriner@hctf.ca); phone: 250-940-9784 or 1-800-387-9853; and
  - (c) for all Reporting Deliverables and Invoices – email: [reporting@hctf.ca](mailto:reporting@hctf.ca).

**18.0 FURTHER ACTS AND ASSURANCES**

18.1 Each Party, at the reasonable request of the other Party, will do or cause to be done any legal acts, documents and assurances that will carry out the terms of this Agreement more effectively.

TO EVIDENCE THEIR AGREEMENT, the Parties have executed this Agreement on the date appearing below.

SIGNED AND DELIVERED on behalf of HCTF by:

\_\_\_\_\_ Date: \_\_\_\_\_  
 ( Brian Springinotic, CEO - Authorized Signatory)  
 (Print Name and Title)

AND

SIGNED AND DELIVERED on behalf of <RECIPIENT> by:

\_\_\_\_\_ Date: \_\_\_\_\_  
 ( \_\_\_\_\_ - Authorized Signatory)  
 (Print Name and Title)

