

OQO AGREEMENT

This Agreement is made as of the day of , 2018

BETWEEN **THE NATURE CONSERVANCY OF CANADA**
(Hereinafter referred to as “NCC”)

AND **<INSERT NAME OF ORGANIZATION HERE>**
(Hereinafter referred to as the “Organization”)

WHEREAS:

- (a) By agreement made as of the 11th day of September, 2014 (hereinafter called the “Funding Agreement”), Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment and Climate Change Canada (hereinafter called “ECCC”) agreed with NCC to provide to NCC an amount (hereinafter called the “Fund”) to be used to support the delivery of a land conservation initiative which will, among other things, accelerate and increase the volume of private land conservation, (hereinafter called the “Program”);
- (b) ECCC and NCC agreed that NCC may transfer an amount from the Fund not exceeding \$5,000,000 in the aggregate to other qualified organizations, to be used in accordance with the terms of the Funding Agreement and to support the Program; and
- (c) NCC has agreed to provide to the Organization the Amount (defined in Section 4.01 below) conditional upon NCC having received such amount from ECCC, to be provided to and used by the Organization to support the Program in accordance with the Application Form and this Agreement.

Now, therefore, in consideration of the sum of \$2 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual promises and agreements hereinafter set out, NCC and the Organization (hereinafter called the “Parties”) agree as follows:

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1.0 DEFINITIONS

1.01 Definitions. In this Agreement, unless something in the subject matter or context is inconsistent therewith, all capitalized terms shall have the meanings set out as below:

“Agreement” means this document along with the schedule in the preceding list, which together form an integral part of this Agreement, and together constitute the entire agreement between Parties.

“Application Form” means the application form submitted by the Organization to NCC, and subsequently approved by NCC, including any necessary subsequent changes/revisions made to the Application Form in order to reflect any necessary updates to the Land or Interest in Land (also known as the property).

“Conservation Agreement” also referred to as a conservation easement, conservation servitude, or conservation covenant, means an agreement in which a landowner agrees to restrictions on activities that would threaten the environmental value of the land.

“Conservation Planning Framework” means the planning framework used by the Organization to define priority areas for acquisition and long term stewardship.

“Easement” means the right of access to the Land granted by the Organization to NCC and ECCC in Article 5.7 for the purposes outlined in this agreement and without limiting the generality of the foregoing, for the purpose of monitoring compliance by the Organization with the Land Ownership responsibilities described in Article 5.0.

“Formal Events” means those communication events or activities identified as opportunities for the involvement of the Minister of Environment, or designate. These events require a message event proposal, prepared by ECCC Communications.

“Funding Approval” means those communications provided by NCC to the Organization which confirm approval of the Project and the approved maximum Amount to be provided to the Organization for the purposes set out in this Agreement.

“Informal Events” means those communication events or activities which provide opportunities for Program and/or project recognition but are not as significant as Formal Events. Informal events may include walking tours of a property with a local Member of Parliament or a press tour, or news release or similar types of activities.

“In-kind Funding” means the cash-equivalent funding in the form of a useful and valuable good including donated Land, donated Interest in land, amount of unpaid fair market value of Land or Interest in land (e.g. difference between appraised value and paid or receipted value), service or other support provided to the Program, for which no cash is exchanged but that is essential to the Program and that would have to be purchased on the open market, or through negotiation with the provider, if it were not provided on this basis.

“Interest in Land” means Conservation Agreements and/or other development rights and possibly other types of interests in land.

“Land” means the land or interest in lands more particularly described in Schedule 1.

“Matching Funds” means funding (cash or In-kind Funding) in support of the Program received by the Organization through sources other than Canadian federal government investments, including the amount of unpaid fair market value of Land or Interest in land (e.g. difference between appraised value and paid or receipted value), contribution to stewardship endowment and all costs described in Section 4.04.

“Natural Area Conservation Plan” means a multi-year, science-based, conservation planning document developed for priority natural areas based on biodiversity values, level of threat and opportunity for conservation action. These plans are developed by NCC staff and stakeholders, peer-reviewed and approved by NCC management. Plans contain strategies and actions to conserve target species and habitats and Plan implementation is assessed periodically by NCC management.

“NAWMP” means North American Wetland Management Plan (NAWMP). NAWMP is an international (Canada, USA, Mexico) plan to conserve waterfowl and migratory birds in North America. It was authorized by the North American Wetlands Conservation Act of 1989 (P.L. 101-233), and is administered by the Fish and Wildlife Service, with USDA agencies participating as appropriate.

“NAWMP Priority Area” means areas under the NAWMP which are prioritized and refined through formal NAWMP Implementation Plans and related science-based assessments.

“Other Events” means OQO-led public gatherings where the Program and/or projects may be highlighted. These events may include community breakfasts, town halls, and volunteer engagement events or similar types of events, best defined as ‘business as usual’, but providing opportunities to highlight the Program.

“Project” means the securement of the Land or perpetual Interest in Land as approved per Schedule 1 and the Application Form, in addition to any information also provided in the Application Form which informs the Land or Interest in Land.

1.02 Statutes and Regulations. Any reference in this Agreement to all or any part of any statute or regulation shall, unless otherwise expressly stated, be a reference to that statute or regulation or the relevant part thereof, as amended, substituted, replaced, or re-enacted from time to time.

2.0 PURPOSE

2.01 The Purpose of this Agreement: The purpose of this Agreement is to enable the Organization to participate in and support the delivery of the Program by helping to conserve areas of high ecological significance across southern Canada.

2.02 The Effective Date of this Agreement: This Agreement is effective as per the date the last of the two parties binds (signatures) this Agreement.

2.03 Focus of the Program: In general, lands secured will primarily address ECCC priorities by protecting habitat for species at risk (per Schedule 1 of the federal Species at Risk Act) and/or species assessed as Endangered, Threatened or of Special Concern by the Committee on the Status of Endangered Wildlife In Canada, protecting habitats for migratory birds identified through bird habitat conservation planning, including final Environment Canada Bird Conservation Strategies and creating or enhancing connections or corridors between protected areas or other protected areas (including National Wildlife Areas, National Parks, and Migratory Bird Sanctuaries). In addition, lands may be secured that have national or provincial significance based on ecological criteria, or reduce significant land-use stressors adjacent to protected areas. The Organization shall prioritize for securement of land or interest in land, properties and activities within one of the following: An NCC Natural Areas Conservation Plan, a NAWMP Priority Area, or an approved Conservation Planning Framework adopted or developed by the Organization.

3.0 REPRESENTATIONS & WARRANTIES

3.01 Representations and Warranties of the Organization. The Organization represents and warrants to NCC that:

- (a) it is a registered Canadian charity that is an approved recipient of ecological gifts under Environment Canada's Ecological Gifts program;
- (b) it is proposing to secure Land located within a Natural Area Conservation Plan, or a NAWMP Priority Area, or an area defined by the Organization's respective Conservation Planning Framework as approved per the Application Form.
- (c) the information contained in the Application Form was, when completed, and is now, accurate, true and complete and sets out fully all the facts necessary to enable NCC to make an informed decision to fund the project described therein (the "Project");
- (d) it has the requisite power to own its assets and to carry on its activities as contemplated by this Agreement;
- (e) the execution and delivery of this Agreement by it, and the carrying out by it of all of the activities contemplated hereby, have been duly authorized by all requisite action of its Board of Trustees;
- (f) it has full power to execute and deliver this Agreement and to perform its obligations hereunder;
- (g) this Agreement constitutes a legally binding obligation of the Organization, enforceable against it in accordance with its terms, subject to enforcement of remedies to applicable bankruptcy, insolvency, reorganization and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (h) the execution and delivery of this Agreement and the performance by the Organization of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:
 - (i) violate the provisions of the Organization's by-laws, any other corporate governance document subscribed to by the Organization or any resolution of its Board of Trustees;

- (ii) violate any judgement, decree, order or award of any court, government agency, regulatory authority or arbitrator made in respect of the Organization; or
 - (iii) conflict with or result in the breach or termination of any material term or provision of, or constitute a default under or cause any acceleration under, any licence, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, deed of trust or any other instrument or agreement by which it is bound;
- (i) (i) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Organization, threatened against the Organization; and
- (ii) to the best of the Organization's knowledge, there is no order, judgment or decree of any court or governmental agency against it, in either case which could materially and adversely affect the activities contemplated by this Agreement and the performance by the Organization of its duties and obligations under this Agreement.

3.02 Representations and Warranties of NCC. NCC represents and warrants to the Organization that:

- (a) the execution and delivery of this Agreement by it, and the carrying out by it of all of the obligation contemplated hereby, have been duly authorized by all requisite action of its Board;
- (b) it has full power to execute and deliver this Agreement and to perform its obligations hereunder;
- (c) this Agreement constitutes a legally binding obligation of NCC, enforceable against it in accordance with its terms.

3.03 Survival. All representations and warranties will survive the execution of this Agreement.

4.0 FUNDING BY NCC

4.01 Funding Approval and Amount: The parties acknowledge that the Organization has submitted to NCC an Application Form and that NCC has delivered to the Organization a notice of Funding Approval, in which it agrees to disburse an amount of up to \$ (the "Amount") to the Organization provided that the Organization is, at the time of such disbursement, in compliance with its obligations under this Agreement.

4.02 Use of Funds:

- (a) The Organization agrees to use the Amount in accordance with and for the purposes set out in the Application Form and in this Agreement, including those set out below.
- (b) The Organization acknowledges and agrees to the following obligations before final payment of the Amount is issued to the Organization:

- (i) the Organization agrees to design and install Property-based recognition signage on the Land, provided that the Land was secured and is owned by the Organization in fee simple;
 - (ii) the Organization agrees to commission an independent third-party audit by an external professional auditor of the allowable expenditures related to the Project as per Section 4.04 of this Agreement and the receipt and expenditure of Matching Funds as per Section 4.06 of this Agreement;
- (c) The Organization acknowledges that failure to meet the obligations described in subsection 4.02 above will result in the Organization forfeiting final payment of the Amount and, in circumstances where payments have already been made, full repayment of any such Amount.

4.03 Acknowledgement re: Obligations to ECCC

- (a) NCC acknowledges as per the Funding Agreement to ensure that all the terms and conditions of the Funding Agreement would apply to Other Qualified Organizations which access funds provided hereunder, and NCC agrees in accordance with the Funding Agreement to manage and oversee this further distribution.
- (b) The Organization acknowledges that NCC is required to provide certain confirmation to ECCC about further distribution of the Fund and, in respect of such confirmation:
 - (i) the Organization agrees that the public purpose of the Program and the need to provide transparent, fair and equitable service shall be respected.
 - (ii) the Organization agrees with the expectations pertaining to the obligations outlined in this Agreement.
 - (iii) the Organization agrees to carry out its financial and non-financial roles and responsibilities under this Agreement in a manner that permits NCC to meet its related obligations under the Funding Agreement.
 - (iv) the Organization agrees that the decisions made between it and NCC will be transparent and open, having regard to their legitimate interests in protecting their proprietary rights and their rights of privacy.
 - (v) the Organization acknowledges and agrees with ECCC's right to conduct periodic audits of Program performance and compliance with terms and conditions of the Funding Agreement by NCC and the Organization as set out in this Agreement.
 - (vi) the Organization agrees that ECCC may obtain from NCC a copy of all signed agreements between NCC and the Organization relating to the Fund, Matching Funds, the Amount, and the Program, and any audit reports or any financial, progress or other reports conducted pursuant to this Agreement.
 - (vii) the Organization agrees that ECCC may assess the Organization's performance to ensure that it is in line with ECCC's and NCC's expectations.

- (c) The Organization agrees to provide to NCC and ECCC (i) such right of access to information (including geospatial data and related metadata) as may be necessary and, (ii) the Easement for access to the Land.
- (d) The Organization agrees that it will at all times comply with the provisions of the Application Form and this Agreement save where to do so would cause it to contravene one or more provisions of this Agreement.
- (e) The Organization consents to the public disclosure by ECCC of any information provided under this Agreement, including without limitation information which relates to activities and objectives, which are the subject of this Agreement, except where such information would not be disclosed pursuant of Section 2.0 of the *Access to Information Act* R.S.C. 1985, c. A-1. It is expressly agreed that ECCC may disclose, among other information, the following elements of information:
 - (i) The Organization as a named recipient of funds under the Program;
 - (ii) Amount Payable;
 - (iii) Purpose of the Agreement;
 - (iv) Activities to be undertaken under the Agreement, with the exception of specific land securement details (identity of donors/land owners, property location, property value);
 - (v) Duration of the Agreement;
 - (vi) Analysis, audit and evaluation reports relating to the Program performed by either of the parties.
- (f) The Organization agrees to permit NCC and/or ECCC to access any available species at risk data, including but not limited to the organization's records (if so requested), as well as any publically available information (e.g. NatureServe, Conservation Data Centres) in relation to the Land for reporting purposes under the Program.

4.04 Allowable expenditures. The Amount can be used to support:

- (a) The direct costs of securing the Land, including:
 - (i) purchase price of the Land as determined by an AACI-accredited appraisal and in addition to the appraisal practices outlined in the Canadian Land Trust Standards and Practices;
 - (ii) associated costs (costs necessary to secure the Land) including, but not limited to, appraisals, surveys, legal services, land transfer fees (including land transfer taxes and applicable goods and services taxes);
 - (iii) staff time and/or consultant time for securement and/or the cost to develop/draft a Baseline Documentation Report (BDR) and Conservation Agreement;
 - (iv) costs associated with the design and installation of Property-based recognition signage (signage which publically acknowledges NCC and ECCC's contribution to the land), only if the Land was secured by the Organization and is owned in fee-simple;
 - (v) project financial audit costs; and
 - (vi) other direct costs necessary for the securement of a property that may be agreed to in writing by NCC from time to time upon confirmation from ECCC.

- (b) Short Term Land Stewardship. The Organization acknowledges and agrees that no part of the Amount may be used for short term stewardship of land (e.g. conducting biological inventories and developing management plans).
- (c) Long Term Land Stewardship. The Organization acknowledges and agrees that no part of the Amount may be used for long-term stewardship of the Land (e.g. restoration of land, demolition of buildings, surveying species).
- (d) Fundraising. The Organization acknowledges and agrees that no part of the Amount may be used to support fundraising efforts of, or lobbying activities directed towards any level of government.

4.05 Method of Payment. Within the limits of and subject to the terms of the Funding Approval and this Agreement, the Amount will be disbursed by NCC to the Organization in the manner determined by NCC.

4.06 Matching Funds. The Organization is expected to raise Matching Funds, (as evidenced by a written document executed by the donor) in a ratio of 2:1, through non-federal donations of money and perpetual interests in land.

4.07 Donations. The Organization shall not accept donations in support of the Program offered with conditions that are contrary to the purposes and objectives stated in this Agreement or in the Funding Agreement

5.0 LAND OWNERSHIP

5.01 Perpetual Conservation: Land secured by the Organization under the Program are to be held for the purposes of perpetual conservation. Land secured by the Organization in fee simple ownership under the Program shall be subject to this Agreement being registered on title in favour of NCC.

5.02 Title: The Organization shall hold title to the Land so long as the Organization uses the Land for long-term conservation and the Organization shall ensure that there is effective stewardship of the Land, with 'stewardship' meaning effective monitoring, protection (legal and physical), preservation, maintenance, and including the restoration, rehabilitation and enhancement of the natural features of the Land and including all activities related to the Land.

5.03 Transfer of Land: The Land shall remain the property of the Organization, in whole or in part, and may only be transferred, with prior written consent of NCC, not to be unreasonably withheld,

- (a) to a registered Canadian charity that is an approved recipient of ecological gifts under Environment Canada's Ecological Gifts Program or government department or agency;
- (b) provided the transferee first enters into an agreement with the Organization covenanting to be bound by the provisions of this Agreement and in particular Article 5, which shall be registered on title.

5.04 Encumbrances: (Fee simple acquisition)

Land secured by the Organization in fee simple under the Program may not be mortgaged, charged, or otherwise financially encumbered. Other existing normal-course encumbrances (i.e. hydro rights of way) may be permitted with the prior consent of NCC.

Where the Interest in Land being secured under the Program is a Conservation Agreement:

- (a) The Organization acknowledges and agrees that it may not use any portion of the Amount for acquisition of a Conservation Agreement affecting Land that is encumbered by a financial encumbrance unless that encumbrance is subordinated (postponed) to the Conservation Agreement;
- (b) The Organization acknowledges and agrees that a Conservation Agreement acquired using part or all of the Amount may not be mortgaged, charged, financially encumbered or otherwise encumbered by the Organization without the prior written consent of NCC.

5.05 Stewardship Endowment: The Organization acknowledges that upon acquisition of the Land it will hold in a separate account or fund established for this purpose and invested in such a way as to produce an investment return on the capital, the sum of [REDACTED] (herein referred to as the “Capital”) the investment income from which will be used for stewardship of the Land or, if not fully required for stewardship of the Land, then for stewardship of other lands located within the Natural Area Conservation Plan, NAWMP Priority Area, or areas defined within the Organization’s respective Conservation Planning Framework as per the Application Form.

5.06 The Organization acknowledges that in the event that the Land (or any portion thereof) is disposed or encumbered in a manner inconsistent with this Agreement, in particular Article 5, the Organization shall repay to NCC the full Amount transferred by NCC to the Organization.

5.07 The Organization: (i) hereby grants to NCC and ECCC the Easement over the Land, (provided that such Land was secured and is owned by the Organization in fee simple) for reasonable pedestrian, vehicular and aerial (drone) traffic for the purpose of monitoring compliance by the Organization with the Land Ownership responsibilities described in this Agreement, and (ii) in all other cases where the Land was secured but is not owned by the Organization in fee simple shall use its best efforts to provide similar access to the Land if such access is requested by NCC or ECCC.

5.08 The Organization, except under exceptional circumstances, shall make the Land, if it was secured in fee simple, accessible to the public and shall permit recreational use by members of the public, subject to measures necessary to protect the ecological integrity of the Land.

5.09 The Organization shall indemnify and save harmless NCC against all claims, charges, costs, actions, causes of action and demands whatsoever that may in any way arise from the ownership and management of the Land or the Capital by the Organization under and in regard to this Agreement. The Organization shall, at its expense, carry public liability insurance in an amount of no less than \$2,000,000.

5.10 The parties agree that notice of this Agreement shall be registered on title to the Land at the Organization's expense, provided that the Land was secured and is owned by the Organization in fee simple.

6.0 AUDIT, EVALUATION & REPORTING

6.01 Project Financial Audit. The Organization acknowledges that it has agreed to commission an independent third-party audit by an external professional auditor accredited Certified Public Accountant (CPA) of the allowable expenditures related to the Project as per Section 4.04 of this Agreement and the receipt and expenditure of Matching Funds as per Section 4.06 of this Agreement.

6.02 Review of Fund Operations. The Organization agrees that NCC and ECCC may choose to conduct their own reviews of the expenditures of the Amount. NCC may also undertake to conduct independent audits of the expenditures of the Amount to ensure compliance with the Funding Agreement. The Organization will co-operate and provide access to the appropriate records to enable NCC and, if required by NCC, ECCC, to conduct these reviews and audits. Should NCC and/or ECCC choose to conduct these reviews and audits, they will be responsible for the cost thereof.

6.03 ECCC to Request a Performance Audit. The Organization acknowledges that each of ECCC and the Auditor General of Canada may, at their own cost, after consultation with NCC, conduct performance (value-for-money) and compliance audits with respect to the use of funds received by NCC from ECCC. NCC may provide the Organization with a description of the scope and criteria of the performance and compliance audits required by each of the auditors; the auditor will be entitled to such information as, in his/her opinion, is necessary for the fulfilment of its responsibilities. The Organization agrees to cooperate and provide access to the appropriate records and staff to the auditor to conduct such audits. The auditor will share a copy of the resulting report with NCC, and with ECCC when the auditor is the Auditor General of Canada and NCC may share with the Organization excerpts thereof, if any, relevant to the Project. The auditor is expected to discuss at his/her discretion any concerns raised in the performance and compliance audits with the Organization and NCC, and with ECCC when the auditor is the Auditor General of Canada. The Organization acknowledges that where the audits are conducted by the Auditor General of Canada, the results may be reported to Parliament in a Report of the Auditor General, and that where the audit is conducted by ECCC, ECCC may make the results public and report them to Parliament.

7.0 CONFLICT OF INTEREST

7.01 The Organization shall ensure that no member of the House of Commons or the Senate shall be admitted to any share or part of the funding under this Agreement or to any benefit arising from it that is not otherwise available to the general public. The members of the House of Commons and the Senate shall not be appointed as Directors on the Board of Directors of the Organization.

7.02 The Organization shall ensure that no former or current public office holder or public servant to whom the Conflicts of Interest Act, the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service applies shall derive benefit from this Agreement unless the provision or receipt of such benefit is in compliance with such legislation and codes.

7.03 The Organization shall ensure that no bribe, gift or other inducement has been paid, given, promised or offered to any person for, or with a view to, the obtaining of this Agreement by the Organization, and that it has not employed any person to solicit or secure this Agreement upon any agreement for commission, percentage, brokerage or contingent fee.

7.04 The Organization shall ensure that no member of its Board of Directors, staff or other representative of the Organization who is not in compliance with the Organization's Conflict of Interest Policies, be admitted to any share or part of the funding under this Agreement or to any benefit arising thereof.

8.0 PUBLIC COMMUNICATIONS

8.01 Communications. NCC and the Organization both recognize that public awareness of land securement enabled by the Amount are mutual objectives insofar as such awareness does not impact negatively on their ability to acquire other lands for conservation. The Organization will, from time to time, provide information to NCC for inclusion in publications highlighting the Program for the general public.

8.02 Public Recognition and Acknowledgement.

- (a) Due acknowledgement of NCC's and ECCC's funding to the Organization shall be made, where appropriate, in the Organization's communications products, such as publications, public information releases, advertising, promotional announcements, activities, speeches, lectures, interviews, ceremonies and websites;
- (b) Where projects are linked to other federal programs (e.g., Ecological Gifts Program), the Organization shall ensure that public recognition includes the appropriate details to highlight the linkages;

8.03 Event Planning.

- (a) In an effort to recognize the Program and its securement accomplishments, the Organization will maintain and share with NCC a three-month look-ahead calendar of proposed Formal Events, Informal Events and Other Events celebrating the Program and/or its accomplishments. The calendar will be shared with ECCC Communication staff at NCC's and ECCC's quarterly communications meetings.
- (b) Proposed Formal Events.
 - (i) At Formal Events, the NACP boilerplate and the Government of Canada wordmark will be clearly visible.
 - (ii) Event emcees, or Organization spokespeople, will recognize the funding of the Government of Canada and the involvement of NCC in the Program in their remarks.

- (iii) Accompanying communications products (news releases, etc.) will be shared with NCC and ECCC Communication staff Canada for review prior to release.
 - (c) Informal Events and related news releases.
 - (i) Require a one month advance notice to ECCC.
 - (ii) News releases will include the standard Ministerial boilerplate quote, which may be amended by ECCC Communication staff from time to time.
 - (d) Other Events should highlight the Program where appropriate.
- 8.04 News releases.
- (a) News releases will be shared with NCC and ECCC Communication staff in advance for review and addition of quote(s).
 - (b) News releases pertaining to the Program will include NACP boilerplate in order to promote the Government of Canada's funding.
 - (c) The Organization must ensure news releases intended for general distribution are provided in both official languages.
- 8.05 Program related advertising and public service announcements (PSA).
All Program-related print advertising and public service announcements will feature the NACP boilerplate with the GC wordmark. Where appropriate, video advertising or PSA will include the NACP boilerplate at the end of the production followed three seconds later by the GC wordmark (with the rolling flag). Program-related audio advertising will include the NACP boilerplate in spoken word.
- 8.06 Property-based Program recognition signage
- (a) All fee simple lands secured by the Organization under the Program require property-based Program recognition signage. No signage is required for Conservation Agreements.
 - (b) Property-based Program recognition signage will include the NCC logo, the NACP boilerplate and the GC wordmark.
 - (c) Property-based Program recognition signage design requires ECCC Communication approval prior to installation.
 - (d) The signage will make it clear that lands acquired with the Amount are accessible to the public, subject to measures needed to protect the ecological integrity of the land.
- 8.07 Land securement notification. NCC reserves the right to alert Parliamentarians, and to copy the Minister of Environment's Office, of completed land securement projects in their riding/region within 30 days after title registration by the Organization.

9.0 MISCELLANEOUS

9.01 Severability. If any provision of this Agreement is determined to be invalid or unenforceable by an arbitrator or a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed therefrom and the remaining provisions of this Agreement shall not be affected thereby and shall remain valid

and enforceable; provided that in the event that any portion of this Agreement shall have been so determined to be or become invalid or unenforceable (the "offending portion"), the Parties shall negotiate in good faith such changes to this Agreement as will best preserve for the Parties the benefits and obligations of such offending portion.

9.02 Amendments. This Agreement may only be amended, modified or supplemented by a written agreement signed by both of the Parties.

9.03 Waiver. No waiver of any of the provisions of this Agreement by either Party shall be deemed to constitute a waiver of such provision by the other Party or a waiver by such Party of any other provision (whether or not similar); nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby.

9.04 Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Land is located and the laws of Canada applicable therein.

9.05 Entire Agreement. Except as otherwise provided for herein, this Agreement constitutes the entire agreement between the Parties pertaining to the matters contemplated hereby and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties in respect of the Amount and the Program.

9.06 Public Access to Information. NCC may provide public access to information related to results and accomplishments achieved under the Program.

9.07 Relationship of the Parties. Nothing contained in this Agreement shall be construed to place the Parties in the relationship of partners or joint ventures and neither Party shall have any right to obligate or bind the other Party in any manner.

9.08 Indemnification and Limitation of Liability. The Organization shall indemnify and hold harmless NCC from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by, attributable to, or arising from any wilful or negligent act, omission or delay on the part of the Organization, or the directors, members, officers, employees or agents of the Organization relating to the use of the Amount and the delivery of the Program. Notwithstanding anything to the contrary contained herein, neither of the Parties will be liable for the indirect, or consequential damages of the other Party nor for the loss of revenues or profits. Therefore, the Parties expressly acknowledge and agree that they will not be liable for each other's indirect, or consequential damages or for damages for lost profits or lost revenues under this Agreement, regardless of whether such a liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term, misrepresentation, breach of warranty, breach of fiduciary duty, indemnification or otherwise.

9.09 Further Assurances. The Parties will, from time to time during the course of this Agreement or upon its expiry and without further consideration, execute and deliver such other documents and instruments of clarification, transfer, conveyance and assignment and

take such further action as the other may reasonably require to effect the activities contemplated thereby or to otherwise advance the objectives of this Agreement.

9.10 Notices. Any notice, direction or other instrument required or permitted to be given under this Agreement shall be in writing (including telecopier, telex or any other means of communication by which words are capable of being visibly and instantaneously reproduced at a distant point of reception) and given by delivering it or sending it by telecopy or other similar means of communication addressed:

- (a) if to NCC, at:

The Nature Conservancy of Canada
410 - 245 Eglinton Avenue E
Toronto, Ontario
M4P 3J1

Telephone: (416) 932-3202

Attention: Lisa McLaughlin, VP, Conservation Policy and Planning

- (b) if to the Organization at:

<Insert Name of Organization>
<Insert Address of Organization>

Telephone: <Insert Organization's Telephone Number>

Attention: <Insert Name>, <Insert title>

Any such notice, direction or other instrument given as aforesaid shall be effective upon receipt, unless received on a day, which is not a business day. Either Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

9.11 Time of the Essence. Time shall be of the essence in this Agreement.

9.12 Third Party Beneficiaries. Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the Parties and no Person, other than the Parties, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, or hearing or other forum.

9.13 Assignment and Successors. This Agreement and any rights or duties hereunder may not be transferred, assigned or delegated to any other person, firm, corporation or other entity by either Party without the express prior written consent of the other Party to this Agreement, such consent not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon, the Parties, their successors and permitted assigns.

9.14 Remedies Cumulative. All rights, powers and remedies provided under this Agreement or otherwise available in respect thereof at law or in equity shall be cumulative and not alternative and the exercise or beginning of the exercise of any thereof by either Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party.

9.15 Costs and Expenses. Except as otherwise or expressly provided in this Agreement, each Party shall pay its own costs and expenses incurred in authorizing, preparing, executing and performing this Agreement and the activities contemplated thereunder including, without limitation, all fees and expenses of legal counsel, auditors, accountants, investment advisors or other representatives or consultants.

9.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

9.17 Excusable Delays. The dates and times by which either Party is required to perform any obligation under this Agreement shall be postponed automatically to the extent, for the period of time, that the Party is prevented from so performing by circumstances beyond its reasonable control. Said circumstances shall include acts of nature, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, communications failures, power failures, earthquakes or other disasters.

9.18 Termination. This Agreement is in effect until the Amount has been spent for the purposes of this Agreement, and all obligations outlined in this Agreement are fully executed by both parties.

IN WITNESS WHEREOF the Parties have caused their duly authorized representatives to execute this Agreement effective as of the date first above written.

THE NATURE CONSERVANCY OF CANADA

Per: _____

Name:
Position:

I have authority to bind the corporation.

ORGANIZATION

Per: _____

Name:
Position:

I have authority to bind the corporation.

Schedule 1

attached to and forming part of the Agreement between
THE NATURE CONSERVANCY OF CANADA and <INSERT ORG NAME>

dated the ____ day of _____ 2018

The terms and conditions of this Agreement apply to the following Land, namely: