

## ATMOSPHERIC BENEFIT AGREEMENT

THIS AGREEMENT made the 26th day of June, 2024 (the “**Effective Date**”)

### BETWEEN:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented jointly by the Minister of Forests, the Minister of Environment and Climate Change Strategy, and the Minister of Indigenous Relations and Reconciliation.

(the “**Province**”)

### AND

**MAAQUTUSIIS HAHOUTLHEE STEWARDSHIP SOCIETY**, a society formed pursuant to the laws of the Province of British Columbia by Ahousaht *Haw’it* (the hereditary leadership of the principal houses of Ahousaht) and the Ahousaht elected Chief and Council, as represented by its board of directors that comprise *Haw’it* members

(“**MHSS**”)

(Each a “**Party**” and collectively, the “**Parties**”)

### RECITALS:

A. MHSS asserts that:

- (a) Ahousaht First Nation (“**Ahousaht**”) holds Ahousaht Rights within *hahoulthee* (Ahousaht Territory);
- (b) Ahousaht has used, occupied, managed, and protected hahoulthee since time immemorial;
- (c) The historic and contemporary uses and stewardship of land, water and resources by Ahousaht are integral to Ahousaht society, governance and economy;
- (d) The *Haw’it* are the individuals (and their delegates) who are duly authorized in accordance with Ahousaht Indigenous laws, governance and customs to represent the three principal houses of Ahousaht and perform duties of and govern Ahousaht, including with respect to Ahousaht Rights, stewardship and development of the land and water within the *hahoulthee*, and have the authority to represent Ahousaht with respect to the Ahousaht Rights;

- (e) The Ahousaht Hahoulthee Declaration recognizes that *Haw'it* declare sovereignty over *hahoulthee* on behalf of Ahousaht *muschim* (Ahousaht members);
  - (f) As part of Ahousaht Indigenous laws and customs, the *Haw'it* have an important role and obligation to maintain the lands, waters and resources for current and future Ahousaht *muschim* generations for economic, social and cultural purposes. This obligation includes giving careful consideration to the impacts of aquaculture practices within *hahoulthee*;
  - (g) MHSS was established by the Ahousaht *Haw'it* and the Ahousaht elected Chief and Council to develop economic opportunities and steward the lands and waters within *hahoulthee* on behalf of Ahousaht, and its board of directors is made up of *Haw'it* members;
  - (h) As recognized in the Protocol between MHSS and the Ahousaht Chief and Council dated October 3, 2013, MHSS has the authority to manage economic development of all resources within *hahoulthee* for the benefit of Ahousaht *muschim*;
  - (i) The Project Site is located within *hahoulthee*.
- B. MHSS, on behalf of *Haw'it*, wishes to change the management of the Project Site in a manner that will increase the amount of carbon sequestered from the atmosphere on the Project Site and generate Offset Units;
- C. Some or all portions of the Project Site are Crown Land as defined in the *Land Act*;
- D. In order to generate Offset Units from the Project, the EOPR requires persons claiming Offset Units to establish that they have acquired the following rights from every other person who could reasonably have a claim to those rights:
- (a) entitlement to submit a Project Plan for the Project to the Director under GGIRCA, and
  - (b) entitlement to Offset Units or any other benefits issued in respect of the Project's Project Reductions and Project Removals; and
- E. As between them, the Parties intend to clarify MHSS, on behalf of Ahousaht and the *Haw'it's* rights in respect of Atmospheric Benefits arising from the Project. This intention is also grounded in the Province's interest and commitment to advance reconciliation with Ahousaht, guided by the framework provided under the United Nations Declaration on the Rights of Indigenous Peoples.

Now therefore in consideration of the premises and the covenants and agreements set out below, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1.0 DEFINITIONS

In this Agreement:

**"Act"** means *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

**"Agreement"** means this Atmospheric Benefit Agreement between the Parties, including any Schedules to this Agreement, all as may be amended from time to time in writing by the Parties;

**"Ahousaht Rights"** means the Aboriginal rights, title and interests of Ahousaht First Nation, including those recognized and affirmed by the *Constitution Act, 1982* (Canada) and those enshrined as minimum standards for the survival, dignity and well-being of the Indigenous peoples in the United Nations Declaration on the Rights of Indigenous Peoples;

**"Atmospheric Benefits"** means reductions in GHG caused by reduction or avoidance of GHG emissions or increases in removals of GHG from the atmosphere, occurring at the Project Site, resulting from the implementation of the Project;

**"Atmospheric Benefit Rights"** means any proprietary or contractual entitlement to rights or benefits associated with the Atmospheric Benefits, including any entitlement, subject to rules and regulations applicable to an Emission Offset Program, to obtain Emission Offsets under such program, to seek approval or acceptance of a plan associated with the Project, or to obtain any benefit in respect of the Atmospheric Benefits, but does not include any possessory rights associated with carbon sequestered in Reservoirs;

**"Baseline Scenario Emissions and Removals"** means the GHG emissions to the atmosphere and removals of GHG from the atmosphere determined in accordance with, or assumed by, a Project Plan for the Project, for the purpose of calculating GHG emissions to, and removals from, the atmosphere, that would occur on the Project Site in the absence of the Project;

**"Business Days"** means all days excluding: Saturday, Sunday, statutory holidays, and Monday immediately following a statutory holiday if the statutory holiday falls on a Saturday or Sunday;

**"CCA" or "Crown Carbon Account"** means an account that holds the Province's allocation of Offset Units under Atmospheric Benefit Agreements and is used to address potential Government Reversal Events or other reversals caused by Provincial land management decisions;

**"CCA Share" or "Crown Carbon Account Share"** means the share of Offset Units issued in respect of the Project, excluding issuances to the Contingency Account, that must be transferred to the Province in accordance with section 6.1.

**"Contingency Account"** has the meaning ascribed to it in GGIRCA;

**“Crediting Period”** has the meaning ascribed to it in EOPR;

**“Director”** has the meaning ascribed to it in GGIRCA;

**“Effective Date”** means the date ascribed on the first page of this Agreement;

**“Emission Offset”** means any tradable credit, offset or unit that represents an estimated atmospheric benefit from a GHG reduction project and is recognized or issued by an Emission Offset Program and used to offset GHG emissions from other sources, and, for greater clarity, includes an Offset Unit;

**“Emission Offset Program”** means a voluntary or regulatory program for the recognition or issuance of Offset Units, including the program for issuance of Offset Units established under GGIRCA;

**“EOPR”** means the *Emission Offset Project Regulation*, B.C. Reg 250/2015;

**“First Nation’s Project Plan”** means the Project Plan for the Project that is accepted by the Director and any amendments to that plan that are approved by the Director, in accordance with the GGIRCA;

**“Forest Carbon Offset Protocol” or “FCOP”** means the British Columbia Greenhouse Gas Offset Protocol: Forest Carbon, established under section 10 of GGIRCA, or such other protocol under section 10 of GGIRCA, or under any subsequent Provincial statutory instrument, for forest carbon projects that is established from time to time;

**“GGIRCA”** means the *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

**“GHG” or “greenhouse gases”** means any or all of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride;

**“Government Reversal Event”** means an Impaired Project Reduction caused directly by Provincial government decision making on public land;

**“Impaired Project Reduction”** has the meaning ascribed to it in EOPR;

**“Offset Unit”** has the meaning ascribed to it in GGIRCA;

**“Parties”** has the meaning ascribed above;

**“Project”** means the Project as described in Schedule A;

**“Project Plan”** has the meaning ascribed to it in EOPR;

**“Project Reduction”** has the meaning ascribed to it in EOPR;

**“Project Removal”** has the meaning ascribed to it in EOPR;

**“Project Report”** means a project report prepared in accordance with Division 3 of Part 2 of the EOPR;

**“Project Report Period”** has the meaning ascribed to it in EOPR;

**“Project Site”** means those areas that are identified in Schedule A, excluding any areas held in fee simple as of the Effective Date by a person other than the Province;

**“Project Start Date”** means the “start date” as defined in the EOPR for the Project;

**“Proponent”** means MHSS, or, if MHSS is not, in relation to the Project, the “project proponent” as defined by GGIRCA, the person who is the “project proponent” in relation to the Project;

**“Reservoir”** means a place where carbon is sequestered from the atmosphere in vegetation, including trees and soils, but does not include underground geological formations;

**“Reversal Event”** has the meaning ascribed to it in EOPR;

**“Term”** means the term set out in section 5.1;

**“Termination Date”** means the earlier of:

- (c) 25 years from the earlier of the Project Start Date or acceptance by the Director of the Project Plan; or
- (d) the date this Agreement is terminated under section 5; and

**“Validation Statement”** has the meaning ascribed to it in GGIRCA.

## **2.0 INTERPRETATION**

2.1 In this Agreement:

- (a) “Includes” and “including” are not intended to be limiting;
- (b) Unless the context otherwise requires, references to sections by number or Schedules are to sections or Schedules, as applicable, of this Agreement;
- (c) Unless otherwise specified, a reference to an enactment by name means the enactment of the Province by that name, as amended or replaced from time to time;
- (d) A reference to GGIRCA or another enactment includes regulations and other statutory instruments made under the authority of that enactment, including protocols;

- (e) The headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it; and
  - (f) Unless the context otherwise requires, words expressed in the singular include the plural and vice versa.
- 2.2 Schedules to this Agreement are only included for the purpose of the Schedule identified in the main body of the Agreement, and in the event of any conflict between the contents of a Schedule and the main body of the Agreement, the main body prevails.

### 3.0 PURPOSE OF AGREEMENT

- 3.1 **Purpose.** This Agreement defines the understanding and agreements between the Parties regarding ownership of Atmospheric Benefits, Atmospheric Benefit Rights, and the carrying out of the Project.
- 3.2 **Non-derogation.** Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that no provision of this Agreement shall prejudice, limit, or derogate from any Aboriginal or treaty rights. Further, nothing in this Agreement does or is intended to create or modify any treaty or Aboriginal rights.

### 4.0 OWNERSHIP OF ATMOSPHERIC BENEFITS

- 4.1 **Assertions and acknowledgements regarding claims to Atmospheric Benefits.** The Parties make the following assertions and acknowledgments as to the ownership of Atmospheric Benefits and Atmospheric Benefits Rights in the Project Site:
- (a) the Province asserts that, except in relation to established Aboriginal title lands, in the absence of any agreement or legislation to the contrary, the Province is the owner of any atmospheric benefits and associated atmospheric benefit rights, on land it owns in fee simple;
  - (b) MHSS asserts that Ahousaht is the owner of the Atmospheric Benefits and associated Atmospheric Benefit Rights, and that the *Haw'it*, as represented by MHSS, has the responsibility to hold and manage the Atmospheric Benefits and associated Atmospheric Benefit Rights for the benefit of Ahousaht *muschim*;
  - (c) the Parties acknowledge that other persons or entities may potentially claim ownership of Atmospheric Benefits and associated Atmospheric Benefit Rights, including:

- (i) other Indigenous communities that may assert overlapping claims in the Project Site; and
  - (ii) holders of leasehold interests or forest tenures granted by the Province; and
- (d) the Parties assert and agree that despite such potential claims acknowledged under section 4.1(c):
- (i) holders of leasehold interests or forest tenures granted by the Province do not acquire ownership of Atmospheric Benefits or Atmospheric Benefit Rights as a result of holding such interests or tenures, or as a result of any reductions in harvesting;
  - (ii) no other person or entity has Atmospheric Benefits or Atmospheric Benefit Rights in relation to Project Site; and
  - (iii) nothing in this Agreement imposes any obligations or restrictions on MHSS, Ahousaht, the *Haw'it*, or Ahousaht elected Chief and Council in regards to any such potential claims.

4.2 **Transfer of Province's rights to past Atmospheric Benefits.** Subject to this Agreement and without prejudice to any claims MHSS, Ahousaht or the *Haw'it* has to ownership of Atmospheric Benefits and Atmospheric Benefit Rights independent of this Agreement, effective as of the date of the Validation Statement respecting the First Nation's Project Plan, the Province transfers to MHSS all legal, beneficial and other interests the Province has in:

- (a) Atmospheric Benefits occurring between the Project Start Date and the date of the Validation Statement in respect of the First Nation's Project Plan; and
- (b) Atmospheric Benefit Rights associated with the Atmospheric Benefits referred to in section 4.2(a).

4.3 **Acquisition of Province's Rights to future Atmospheric Benefits.** Subject to this Agreement and without prejudice to any claims MHSS, Ahousaht or the *Haw'it* has to ownership of Atmospheric Benefits and Atmospheric Benefit Rights independent of this Agreement, the Parties agree that, in accordance with this Agreement, MHSS will acquire any legal, beneficial or other interest the Province would otherwise have in:

- (a) Atmospheric Benefits arising in a Project Report Period starting on or after the date of the Validation Statement respecting the Project Plan and ending on or prior to the Termination Date; and

- (b) Atmospheric Benefit Rights associated with the Atmospheric Benefits referred to in sub-section a).

4.4 **Representation and warranty regarding ownership.** The Province represents and warrants as of the Project Start Date and as of the date of any Verification Statement made in respect of Atmospheric Benefits occurring during the Term that it has not transferred to any other party any Atmospheric Benefits or Atmospheric Benefit Rights, or entered into any agreement with any other party giving them any rights whatsoever to the Atmospheric Benefits or Atmospheric Benefit Rights.

4.5 **Termination & removal effects on ownership.** Termination of this Agreement does not affect:

- (a) MHSS' Atmospheric Benefit Rights in relation to Atmospheric Benefits occurring in a Project Report Period prior to the Termination Date;
- (b) MHSS' entitlement to have a Project Plan in respect of such rights accepted by the Director; and
- (c) MHSS' ownership of Offset Units issued in relation to Atmospheric Benefits occurring in Project Report Periods prior to the Termination Date.

4.6 **Atmospheric Benefits occurring outside of Term.** For greater certainty, this Agreement does not provide MHSS with ownership of Atmospheric Benefits occurring in Project Report Periods after the end of the Term or resulting Atmospheric Benefit Rights, regardless of whether those benefits result from the carrying out of the Project.

4.7 **Emission Reductions accounting and reporting.** Nothing in this Agreement prohibits the Province from reporting GHG emission reductions or GHG removals occurring on forest land within the political boundaries of the Province of British Columbia, including the Project Site, for the purposes of provincial GHG inventories or reporting progress towards, or outcomes related to, provincial GHG reduction targets.

4.8 **No claim by Carbon Neutral Government.** Notwithstanding section 4.7, the Province will not claim that the Atmospheric Benefits contribute to provincial public sector organizations' requirements under its Carbon Neutral Government Program, as legislated under the *Climate Change Accountability Act*, SBC 2007, c 42, unless the Province purchases from MHSS Offset Units generated by the Project.

4.9 **International Rights.** The Parties acknowledge that any rights in relation to internationally transferred mitigation outcomes under Article 6.2 of the Paris Agreement or credits under Article 6.4 of the Paris Agreement or any other

instruments created or recognized under international law are outside the jurisdiction of British Columbia and cannot be transferred or affirmed by this Agreement.

#### 4.10 **Park Act.**

- (a) Park Act. Without fettering the ability of the Minister responsible for the Parks Act to administer it in accordance with the law, the Parties acknowledge and agree that, if section 9(9) of the Park Act, RSBC 1996, c 344 applied, the rights and benefits provided under this Agreement will not hinder any development, improvement and use of any conservancies in accordance with section 5(3.1) of the *Park Act*.

### 5.0 **PROJECT DEVELOPMENT AND GENERATION AND DIVISION OF OFFSET UNITS**

5.1 **MHSS to develop Project.** MHSS represents that, as of the Effective Date, MHSS has carried out a feasibility study regarding the potential to generate Offset Units from implementation of the Project, which feasibility study indicates that generation of Offset Units from the Project is commercially viable, and MHSS therefore intends to:

- (a) cause the Proponent to prepare a Project Plan for the Project, and have the Project Plan validated and accepted by the Director, all in accordance with the GGIRCA; and
- (b) cause the Proponent to prepare Project Report(s) for the Project, and have those Project Reports verified and submitted to the Director along with an application to the Director for issuance of Offset Units.

5.2 **FCOP.** Atmospheric Benefits resulting from the implementation of the Project must be quantified by FCOP. In addition to section 13.16, the Parties acknowledge and agree that, in the event of any changes made by the Province to the FCOP during the Term, including any cancellation of the FCOP during the Term, each of the Parties remain committed to upholding the scope of benefits and rights provided to MHSS pursuant to this Agreement, and the Parties therefore agree to promptly meet in the event of any such proposed changes by the Province and use discuss in good faith means to continue such scope of benefits and rights to MHSS notwithstanding such changes to the FCOP.

- 5.3 **Project to be developed under GGIRCA.** The Parties agree that, unless otherwise agreed-to in advance by the Parties, including as a result of discussions conducted pursuant to section 5.2, MHSS will not attempt to have a Project Plan for the Project or Project Report(s) for the Project accepted or approved under any Emission Offset Program other than the program established by GGIRCA and will not attempt to have Offset Units in respect of the Project issued or recognized under any other program.
- 5.4 **Costs.** Subject to any other agreements on funding between the Parties, the Parties agree all costs associated with carrying out feasibility studies, and preparing, validating, verifying and submitting Project Plans, Project Reports and Monitoring Reports, or doing any other thing related to the generation of Offset Units from the Project shall be borne solely by MHSS.
- 5.5 **No partnership, agency or joint venture.** The Parties acknowledge and agree that nothing in this Agreement creates a business partnership, agency or joint venture between them, and neither Party will do anything that indicates or could reasonably be interpreted as indicating that it is an agent, representative or business partner of the other Party.

## 6.0 TRANSFER OF OFFSET UNITS

- 6.1 **Transfer of Offset Units to the Contingency Account.** MHSS acknowledges that to ensure permanence, the Province in issuing Offset Units in respect of the Project will issue a percentage of the Offset Units determined in accordance with FCOP to a Contingency Account held by the Province.
- 6.2 **Transfer of Offset Units to CCA.** Subject to section 6.6, MHSS agrees that it will cause the Proponent to, immediately upon any issuance of Offset Units associated with the Atmospheric Benefits, transfer to the Province's CCA 20% of the Offset Units issued in respect of the Project, excluding Offset Units issued to the Contingency Account (the "**CCA Share**").
- 6.3 **Use of CCA Share.** For the purposes of ensuring that any Offset Units issued in relation to the Project that are used to offset GHG emissions represent permanent reductions in atmospheric GHG emissions, the Province will manage a portion of the CCA Share for the purpose of mitigating the impact on the atmosphere of any Government Reversal Events.
- 6.4 **Pooled CCA.** The Province may pool the portion of the CCA Share referred to in section 6.3 with Offset Units derived from other projects and use a portion of the pooled Offset Units for the purposes of offsetting emissions to the atmosphere of carbon sequestered as result of those projects, provided that Offset Units from those other projects are also

available to mitigate Government Reversal Events associated with the Project.

- 6.5 **Government Reversal Events.** If a Government Reversal Event associated with the Project occurs, the Province will, subject to availability, retire a number of Offset Units equal to the Reversal caused by the Government Reversal Event from the portion of the CCA Share referred to in section 6.3 or the portion of the pooled fund referred to in section 6.4. Alternatively, the Province may fulfill its obligations under this section by cancelling or retiring Offset Units from the portion referred to in section 6.4 or 6.5 without applying the units to specific Government Reversal Events.
- 6.6 **Limited liability for Government Reversal Events.** The Province does not warrant the adequacy of its management policies or practices in relation to fully offsetting the impact of Government Reversal Events.
- 6.7 **Change of policy.** The Province represents that it is in the process of reviewing generally applicable Provincial policies and practices in relation to portion of offset units generated by a project that constitute the CCA Share, how the CCA Share is used, and how atmospheric benefit sharing agreements should deal with the risk of government decisions causing Government Reversal Events or Impairments of Project Reductions, including but not limited to the provision of releases and indemnities. The Province agrees that within 12 months of the Effective Date, or such other time as the Parties agree, it will meet with MHSS to consider changes to this Agreement that align with Provincial policy and allow MHSS to benefit from any changes to provincial policy, including as such changes are made to further the purposes of, and pursuant to, the *Declaration on the Rights of Indigenous Peoples Act*.

## 7.0 NO IMPLIED ENDORSEMENT, WARRANTY OR REPRESENTATIONS

- 7.1 **No endorsement.** The Parties agree that nothing in this Agreement implies an endorsement by the Province of the Project or constitutes an opinion of the Province or any provincial official that:
- (a) the Project would not have been carried out but for the incentive created by Emission Offsets;
  - (b) Baseline Scenario Emissions and Removals represent what would have occurred in the absence of the Project or the absence of the incentive created by Emission Offsets; or
  - (c) the Project or any related Project Plan meets the requirements under GGIRCA or any other Emission Offset Program.
- 7.2 **No warranties.** The Parties agree that the Province does not make any representation or warranty regarding:

- (a) the eligibility of any Project Plan associated with the Project to be accepted under the provisions of GGIRCA or any other Emission Offset Program;
- (b) the qualification or quantification of the Atmospheric Benefits achieved by the Project under any Emission Offset Program or market relating to offset units; or
- (c) the marketability or value of Offset Units.

7.3 **Acknowledgement regarding offset qualification.** MHSS acknowledges that MHSS' and Proponent's ability to convert Atmospheric Benefits or Atmospheric Benefit Rights into Offset Units is subject to the requirements of GGIRCA, and this Agreement does not obligate the Province or any other person to issue or allocate Offset Units to MHSS or Proponent in respect of the Atmospheric Benefits achieved by the Project. Any issuance of Offset Units or acceptance of Project Plans under GGIRCA will be governed solely by GGIRCA.

7.4 **Acknowledgement regarding Offset Unit purchase.** MHSS acknowledges that nothing in this Agreement implies an intention on the part of the Province to purchase or have its agent purchase Offset Units from the Project.

## 8.0 MANAGEMENT OF THE LAND

8.1 **Land Management.** The Parties agree that nothing in this Agreement limits the Province, Ahousaht, MHSS or *Haw'it's* authority to manage the Project Site or imposes conditions on the management of the Project Site.

8.2 **Project Risks.** MHSS:

- (a) acknowledges that wildfire, windfall, insect infestation, drought, flood, disease and human disturbances, including trespass, or disturbances carried out, or authorized, by MHSS, the Province or a party obtaining rights from MHSS or the Province, (collectively "**Natural or Human Caused Disturbances**") are risks to the Project, and that Natural or Human Caused Disturbances could result in reductions in Project Reductions and corresponding revenue to MHSS from Offset Unit Sales, or liabilities under law applicable to proponents of emission offset projects;
- (b) agrees that the Province is not responsible under this Agreement to ensure the continued existence, growth or health of the trees on the Project Site or continued sequestration of carbon on the Project Site or other non-atmospheric reservoirs; and

- (c) releases the Province, its employees, officers and agents from all claims related to reductions in Atmospheric Benefits, Impairments of Project Reductions, Reversal Events or loss of sequestered carbon to the atmosphere caused by Natural or Human Caused Disturbances.

## **9.0 INDEMNITY**

- 9.1 **Indemnity.** MHSS will indemnify and save harmless the Province, its officers, employees and agents from and against all losses, liabilities, damages and claims, and all related costs and expenses that the Province or any of its officers, directors, employees and agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of, or occur, directly as a result of this Agreement including any damages or claims relating to the quality, permanence or reversal of the Atmospheric Benefits acquired by MHSS under this Agreement.

## **10.0 TERM, TERMINATION, AND WITHDRAWAL**

- 10.1 **Term.** The Term of this Agreement is from the Effective Date to the Termination Date, unless it is terminated earlier under this section 10.
- 10.2 **Termination by MHSS.** MHSS may terminate this Agreement by providing the Province thirty (30) Business Days written notice of termination.
- 10.3 **Termination by Province.** Subject to section 10.5, the Province may terminate this Agreement upon thirty (30) Business Days written notice to MHSS if:
  - (a) MHSS is not in material compliance with its obligations under this Agreement;
  - (b) any representation or warranty made by MHSS in this Agreement is untrue or incorrect;
  - (c) subject to section 10.6, GGIRCA, or regulations under it, are repealed or amended in a manner that no longer authorizes the issuance of Offset Units from the Project;
  - (d) subject to section 10.7, a Project Plan for the Project is not accepted by the Director within 5 years of its submission to the Director; or
  - (e) the acceptance of the Project Plan for the Project is revoked in accordance with GGIRCA or the Crediting Period for the Project ends prior to the Termination Date.

- 10.4 **Effect of Termination.** Termination of this Agreement will not affect any rights, liabilities or obligations of either Party arising before such termination or out of the events causing such termination.
- 10.5 **Opportunity for collaborative negotiation before termination.** The Province will not terminate this Agreement under section 10.3 without providing a reasonable opportunity for collaborative negotiation with MHSS in accordance with section 12.
- 10.6 **Engagement on GGIRCA amendments.** The Province will engage the MHSS on proposed amendments to GGIRCA, or regulations under it, that may adversely affect the issuance of Offset Units from the Project or the rights of MHSS under this Agreement.
- 10.7 **Delay in Project acceptance.** The Province may not terminate under section 10.3(d) if satisfied that MHSS is making commercially reasonable efforts to obtain acceptance of a Project Plan for the Project and that there is a reasonable likelihood of Project acceptance.

## 11.0 COMMUNICATIONS AND INFORMATION EXCHANGE

- 11.1 **Cooperation in public statements.** The Parties each acknowledge and agree to provide to each other written notice of intention to make written public communications relating to this Agreement and provide opportunity to review and comment on such communications before they are published or issued.

## 12.0 DISPUTE RESOLUTION

- 12.1 **Initial meeting.** The Parties are committed to seeking, in good faith, to promptly resolving any disputes that may arise in the implementation of this Agreement. Prior to engaging in the process set out in section 12.2, the Parties will meet to discuss and seek consensus on ways to resolve the dispute.
- 12.2 **Mediation.** If a dispute arising in the implementation of this Agreement is not resolved through collaborative negotiation in accordance with section 12.1 within thirty (30) Business Days of the initial meeting held pursuant to section 12.1, or such longer time agreed-to by the Parties, either Party may, by written notice to the other Party, elect to proceed by mediation under the rules of the ADR Institute of BC. In the event that a Party elects to proceed by mediation, the Parties agree to proceed with the mediation in as timely a manner as reasonably possible.
- 12.3 **Arbitration.** If the dispute remains unresolved within sixty (60) Business days of the initial meeting held pursuant to section 12.1, or such longer time agreed-to by the Parties, the matter will be referred to a single arbitrator under the *Commercial Arbitration Act*, SBC 1986, c 3 whose decision

thereon will be final, binding and conclusive. The place of arbitration will be Victoria, British Columbia, unless otherwise agreed by the Parties. A decision of an arbitrator under this Agreement, including any decisions as to costs, will be final and binding on the Parties.

- 12.4 **Continued performance obligations.** Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.

### 13.0 MISCELLANEOUS

- 13.1 **Survival.** The following terms of this Agreement survive termination: sections 4.5, 4.6, 4.7, 4.8, 6.3, 6.4, 6.5, 6.6, 13.1 and Article 9.
- 13.2 **Governing Law.** This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
- 13.3 **Amendments.** This Agreement may only be amended by written agreement of the Parties.
- 13.4 **Enurement.** This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.
- 13.5 **No Assignment.** This Agreement may not be assigned, either in whole or in part, by any Party, except that MHSS may assign its rights under the Agreement to the Proponent.
- 13.6 **Notice.** A notice, document, request, approval, authorization, consent or other communication (each a "**Communication**") required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways, to the addresses or emails referred to in section 13.8:
- (a) Delivered personally or by courier;
  - (b) Transmitted by e-mail transmission; or
  - (c) Mailed by post in Canada in any form which requires a receipt.
- 13.7 **Notice deemed effective.** A Communication will be considered to have been given or made, and received:
- (a) If delivered personally or by courier, at 9:00 a.m. on the Business Day after the day on which it was received by the addressee or a responsible representative of the addressee;

- (b) If sent by e-mail, at such time as the recipient of the email confirms receipt thereof, excluding automatically generated confirmation of receipt; or
- (c) If mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

13.8 **Contact information.** A communication must be delivered, transmitted to the e-mail or mailed to the postal address of the intended recipient set out below:

**For: The Province**

Attention: Jessica Coster

E-mail: jessica.coster@gov.bc.ca

Postal deliver: 7060 Forestry Rd, Mesachie Lake, BC, V0R 2N0

**For: Maaqutusiis Hahoulthee Stewardship Society**

Attention: Tyson Atleo

E-mail: ikaatius@mhssahousaht.ca

Postal delivery: PO Box 1245, Tofino BC, V0R 2Z0

13.9 **Only agreement.** This Agreement constitutes the entire agreement and understanding of the Parties pertaining to the subject matter of this Agreement and supersedes any earlier agreements in regards thereto. The Parties agree that there are no oral or written agreements, promises, warranties, guarantees, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in or contemplated by this Agreement.

13.10 **No waiver.** No failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13.11 **Further assurances; consents and approvals.** Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. Whenever this Agreement requires or contemplates any action, consent or approval, such Party shall act

reasonably and in good faith and (unless the Agreement expressly allows exercise of a Party's sole discretion) shall not unreasonably withhold or delay such action, consent or approval.

- 13.12 **Severability**. Any provision in this Agreement which is prohibited or unenforceable will be ineffective, to the extent of such prohibition or unenforceability, without invalidating the remaining provisions of this Agreement.
- 13.13 **Payment of fees and expenses**. Each Party will pay its own fees, expenses and disbursements incurred in connection with the negotiation and finalization of this Agreement.
- 13.14 **No fettering**. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.
- 13.15 **Nature of agreement**. The Parties acknowledge that:
- (a) this Agreement is not a treaty or lands claims agreement within the meaning of section 25 and section 35 of the *Constitution Act, 1982*,
  - (b) this Agreement does not define, limit, amend, abrogate or derogate from any of the Ahousaht First Nation's Aboriginal title or rights; and
  - (c) the Province's position (which position MHSS does not hold) is that further processes are required to establish the scope and geographic extent of Ahousaht Rights.
- 13.16 **Changes in Law**. The Parties agree that if there is a change (including deletion of provisions) in any law, including statute, regulation or directive which materially interferes with the ability of the Parties to carry out this Agreement in accordance with its original intent, the Parties agree to meet to negotiate such changes as may be necessary to carry out the Agreement in accordance with its original intent. The Parties further agree that if the Province changes treasury board directive 2/15 regarding atmospheric benefit agreements to authorize atmospheric benefit agreements that do not require use of protocols approved by the Province, the Province will, at the request of MHSS meet with MHSS to discuss changes to this Agreement including sections 5.2 and 5.3.

## 14.0 EXECUTION IN COUNTERPARTS


- 14.1 **Execution**. This Agreement may be executed in counterparts. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document. It will

have the same effect as if the Parties had signed the same original document.

**THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED** as of the Effective Date

EXECUTED in the presence of

) **HIS MAJESTY THE KING**  
) **IN RIGHT OF THE PROVINCE**  
) **OF BRITISH COLUMBIA**  
) as represented by the Minister of  
) Forests

)   
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EXECUTED in the presence of

) **HIS MAJESTY THE KING**  
) **IN RIGHT OF THE PROVINCE**  
) **OF BRITISH COLUMBIA**  
) as represented by the Minister of  
) Environment  
) and Climate Change Strategy

)   
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EXECUTED in the presence of

) **HIS MAJESTY THE KING**  
) **IN RIGHT OF THE PROVINCE**  
) **OF BRITISH COLUMBIA**  
) as represented by the Minister of  
) Indigenous Relations and Reconciliation

)   
\_\_\_\_\_

SIGNED ON BEHALF OF MAAQUTUSIIS HAHOUTLHEE STEWARDSHIP SOCIETY  
on its own behalf and on behalf of its members.

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**As to the signature of the**

**Richard George, Hasheukumiss**

**Schedule A: Project**

**Designation of the Project Site or portions of the Project Site as a conservancy and management of the conservancy in accordance with the Park Act.**

**Schedule B: Project Site**

