

## **INFORMATION SHARING AGREEMENT**

This Information Sharing Agreement (the “**Agreement**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ (the “**Effective Date**”).

BETWEEN:

**WORLD WILDLIFE FUND CANADA (“WWF-Canada”)**

AND:

\_\_\_\_\_ (“**Organization**”)

The terms “WWF-Canada” and “Organization” shall hereinafter collectively be referred to as “**Parties**” and individually as a “**Party**”.

### **RECITALS:**

- A) WHEREAS, as part of WWF-Canada’s initiative titled as “Mission Restoration”, WWF-Canada is collaborating with lands and rightsholders across Canada to track, monitor and increase major restoration efforts consistent with the Government of Canada’s national and international targets.
- B) WHEREAS, the Organization has expressed its interest in collaborating with WWF-Canada in its Mission Restoration initiative and will share Information (defined below) with WWF-Canada throughout the Information Sharing Period (defined below) to help WWF-Canada use and process the Information in connection with “Mission Restoration”.
- C) WHEREAS, WWF-Canada will use the Information for research and analytical purposes and will include the aggregated form of the Information within the final report(s) that could be used by the Organization as well as Environment and Climate Change Canada (“**Purpose**”).
- D) AND WHEREAS, both the Parties hereto have mutually agreed to enter into this Agreement on the terms and conditions agreed hereunder.

**NOW THEREFORE**, in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree each with the other as follows:

## 1) **DEFINITIONS**

1.1. For the purposes of this Agreement:

**“Authorized Use”** shall have the meaning ascribed to that term in Section 2.1.

**“Business Day”** means any working day (Monday to Friday inclusive) excluding statutory and other holidays and any other day on which the respective province has elected to be closed for business.

**“Early Termination”** means an event where this Agreement is terminated by either of the two Parties prior to completion of Information Sharing Period in accordance with Section 6.2.

**“Effective Date”** means the date first written above.

**“Expiration”** or **“Expire”** is a term which, for the purpose of this Agreement, refers to the successful completion of Information Sharing Period and this Agreement shall be deemed to expire on 31<sup>st</sup> day of December 2030.

**“Environment and Climate Change Canada”** or **“ECCC”** means the department of the Government of Canada responsible for coordinating environmental policies and programs, as well as preserving and enhancing the natural environment and renewable resources.

**“Force Majeure Event”** shall have the meaning given to that term in Section 9.6.

**“Indigenous”** is an umbrella term that includes First Nations, Métis, and Inuit peoples in Canada.

**“Indigenous Community”** is a term that refers to Indigenous peoples who are the original peoples of North America and their descendants.

**“Information”** means any Raw Data, Traditional Knowledge as well as any other information whether commercial, technical, scientific or cultural, including, know-how, data, processes, databases, tables, lists, designs, photographs, drawings, specifications, samples, geographic, co-ordinates, spatial information, species numbers and names, whether disclosed in writing, orally, by visual means, or in any other form, to WWF-Canada, but not including any information that was already known to WWF-Canada as evidenced by written record pre-dating disclosure by the Organization.

**“Information Sharing Period”** means the period commencing from 01<sup>st</sup> day of January, 2020 and until 31<sup>st</sup> day of December, 2030, both days inclusive.

**“Project”** means the initiative of WWF-Canada titled as “Mission Restoration”.

**“Purpose”** in connection to this Agreement has been defined in the recitals above.

**“Raw Data”** means all reports, maps, and non-digital data and may include ecological monitoring data or other information recorded by observing and monitoring the Territory.

**“Term”** has the meaning given to that term in Section 6.1.

**“Territory”** means the territorial jurisdiction to which the Information relates and as approximately depicted in Schedule A attached to this Agreement. The Parties can, at any time after the Effective Date, include any additional Territory to the Project through a mutual understanding.

**“The First Nations Principles of OCAP”** means the First Nations principles of ownership, control, access, and possession – more commonly known as OCAP® – assert that First Nations have control over data collection processes, and that they own and control how this information can be used.

**“Traditional Knowledge”** means cultural heritage and traditional cultural expressions of an Indigenous Community, and knowledge of traditional lifeways and systems, whether embodied in tangible or intangible form, whether transmitted from ancient to contemporary times from generation to generation or otherwise received.

## **2) AUTHORIZED USES**

2.1. Information shall be utilized by WWF-Canada solely for the Purpose outlined in this Agreement and in connection to the Project. The Parties may however, from time to time, approve of additional Authorized Use(s) of the Information, provided that WWF-Canada has prior informed consent in writing of the Organization for every such Authorized Use.

2.2. WWF-Canada agrees that in case the Information belongs to an Indigenous Community and includes Traditional Knowledge, then the same shall be used by WWF-Canada in accordance with prior, informed consent and on the respective Indigenous Community’s own terms.

2.3. The Parties hereto agree that there shall be no monetary compensation associated with this Agreement. WWF-Canada agrees that the receipt of Information and its ability to use said Information in connection with the Project is adequate consideration. The Organization also agrees that being able to collaborate with WWF-Canada and participate in the Project with a possibility of receiving processed information and reports from WWF-Canada shall be the sole and exclusive consideration for the Organization.

## **3) OWNERSHIP OF INFORMATION**

3.1. The Parties hereto agree that the Organization sharing the data shall retain ownership rights over the Information shared through this Agreement.

- 3.2. In case the party named as “the Organization” is an Indigenous Nation or Community, WWF-Canada acknowledges and agrees that all intellectual property (including Traditional Knowledge) in the Information remains the property of the respective Indigenous Community. The Parties acknowledge that Traditional Knowledge shared under this Agreement is sacred and integral to the cultural identity of the Indigenous Community and that WWF-Canada will engage with the Indigenous Nation or Community in a culturally respectful manner, adhering to its cultural protocols, and respecting the Indigenous Nation or Community’s wishes in how the Traditional Knowledge is used, shared, or repatriated.
- 3.3. Subject to the terms of this Agreement, the Organization grants a non-exclusive, royalty free, sub-licensable licence to WWF-Canada to use the Information shared only for the Authorized Uses stated in this Agreement or any other use with the prior written consent of the Organization.
- 3.4. The Organization agrees and acknowledges that WWF-Canada will use, collate, analyze and process the Information into an aggregated report which will be made available to the Organization and to ECCC. Except for the provisions of Section 6, the Organization further agrees that all the final, aggregated reports either in whole or in part shall be used, licenced, or distributed by WWF-Canada in any manner as it may deem reasonable as long as such use is connected with the Project.

#### **4) REPRESENTATIONS AND REPOSIBILITIES OF EACH PARTY**

##### **4.1. Each Party shall:**

- 4.1.1. share Information according to principles of fairness and efficiency;
- 4.1.2. strive to provide Information in a meaningful and efficient manner;
- 4.1.3. respect the privacy, dignity, cultures, practices, traditions and rights of the Indigenous Community with respect to its Traditional Knowledge; and
- 4.1.4. take all reasonable action necessary to ensure compliance with this Agreement.

- 4.2. Each Party represents and warrants that (i) it possesses the full right, power and authority to enter into and fully perform this Agreement and grant the rights granted in this Agreement, (ii) it is free of any contractual obligation that would prevent it from entering into or performing its obligations under this Agreement, (iii) the execution, delivery and performance of this Agreement by each Party has been duly authorized by all necessary corporate action, if applicable, and (iv) it will not act in a manner or enter into any oral or written agreements inconsistent with this Agreement.

4.3.WWF-Canada shall, to the best of its capabilities, adhere to the reasonable security measures in respect of maintaining and storing the Information while in its possession. The Organization agrees and acknowledges that any security measures implemented by WWF-Canada in connection with the storage of Information in its possession shall not fully guarantee the prevention of any data breach or unauthorised access to Information. The Organization further agrees that WWF-Canada shall not be liable for any such data breach and/or unauthorised access to Information provided that the same resulted due to factors not attributable to WWF-Canada's negligence. In any such instance of a data breach and/or unauthorised access to Information, WWF-Canada shall, without any inordinate delay, provide the Organization with a notification of the incident along with a summary of remedial actions being taken by WWF-Canada in response to such incident.

4.4.In case the Information includes Traditional Knowledge, WWF-Canada shall take all reasonable measures to handle, store and process the Information in accordance with The First Nations Principles of OCAP.

## **5) EXCEPTIONS AND DISCLAIMERS**

5.1.The Parties hereto agree that the covenants, obligations and responsibilities of WWF-Canada in connection with the Information shall not apply if:

- 5.1.1. any Information which is, at the commencement of the term of this Agreement or at some later date, publicly known under circumstances involving no breach of this Agreement;
- 5.1.2. disclosure of Information and such disclosure has the prior written consent of the Organization;
- 5.1.3. Information has already been released in the public domain pursuant to this Agreement; or
- 5.1.4. disclosure of Information is required by a court of law, any law in force or by any other competent authority.

5.2.Nothing in Section 5.1 shall apply in case the Information comprises Traditional Knowledge.

5.3.The Organization acknowledges that WWF-Canada will use its best efforts to complete the Project and share the aggregated report(s) with the Organization as and when available. The Organization agrees that WWF-Canada may, due to reasons or factors beyond its reasonable control, be unable to proceed ahead with this Project and share any aggregated report(s) with the Organization. In such circumstances, WWF-Canada shall not be liable for any claims, compensation, direct or indirect damages.

5.4.WWF-Canada makes no representation or warranties, either expressed or implied, that the information or data contained in the aggregated report(s) will i) meet the Organization's requirements, ii) be accurate and complete, or iii) be free from errors but will be provided on an "AS IS" basis.

## **6) TERM AND TERMINATION**

6.1.This Agreement shall commence on the Effective Date and will continue to remain in full force and effect until the Information Sharing Period lapses due to efflux of time. Provided, however, the Parties hereto agree that each Party may terminate this Agreement by giving no less than ninety (90) Business Days notice to the other Party.

6.2.In the case of Early Termination, WWF-Canada shall cease using the Information available in its records and shall delete all copies in its records unless otherwise required under law. The Organization understands and acknowledges that while WWF-Canada will destroy all copies of the Information available in its records, legal requirements excepted, WWF-Canada will not have any control over any report(s) already shared with ECCC which contain references to the Information in an aggregated form.

6.3.In case the Organization belongs to an Indigenous Community, upon Early Termination WWF-Canada shall:

- 6.3.1. repatriate the Information to the Organization and any additional procedures for the repatriation of Information to the Organization will be determined at the time by the Parties using a process that will be culturally appropriate and will follow the Indigenous Community's practices for managing and caring for its Information; or
- 6.3.2. at the request of the Organization, destroy the Information and any additional procedures for the destruction of the Information will be determined at the time by the Parties.

6.4.In an event this Agreement Expires due to effluxion of time and is not terminated by either Party by invoking Section 6.1 above, it is the mutual understanding of the Parties hereto that WWF-Canada shall, post Expiration, be permitted to use the Information available in its records for purposes similar or ancillary to the Project unless the Organization expressly requires otherwise. The Organization shall be entitled to withdraw this permission at any time after this Agreement expires by providing a written notice to WWF-Canada.

## **7) NOTICES AND COMMUNICATION**

- 7.1. Every notice or other communication required or contemplated by this Agreement shall be delivered either by (1) personal delivery, (2) postage prepaid, or (3) email confirmed as received, followed by postage prepaid mail, addressed as follows:

**To WWF-Canada:**

World Wildlife Fund Canada  
410 Adelaide Street West, Suite 400  
4<sup>th</sup> Floor, Toronto, ON, M5V 1S8  
Attention:  
Email:

**To Organization:**

[Name]  
[Address]  
[Address]  
Attention:  
Email:

## **8) WITHOUT PREJUDICE**

- 8.1. Nothing in this Agreement is intended to affect the existence or scope of, or justify any infringement of, any aboriginal rights, or to prevent the Indigenous Community from exercising its aboriginal rights, either during the currency of this Agreement or otherwise, nor shall anything in this Agreement be interpreted as affecting the legal relationship between the Parties.

## **9) GENERAL PROVISIONS**

- 9.1. When the Information pertains to or involves an Indigenous Community, it will be governed by The First Nations Principles of OCAP.
- 9.2. This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each Party submits to the exclusive jurisdiction of the courts of Ontario for the purpose of any suit, action or other proceeding arising out of this Agreement.
- 9.3. This Agreement may not be assigned without the express consent of the other Party. This Agreement will be binding on any successors to the Parties.
- 9.4. The Parties hereto agree that WWF-Canada may, if it deems necessary, amend this Agreement either in whole or in part and notice of any such amendment(s) shall be given to the Organization. In case the Organization does not agree with any of the changes made to the Agreement, it shall have the right to terminate this Agreement by providing the termination notice to WWF-Canada as set forth in Section 6.2. Provided, however, that the

Organization's continued collaboration with WWF-Canada in connection with the Project shall be deemed as automatic acceptance of the amendment(s) to this Agreement.

- 9.5. The provisions of this Agreement shall be severable and the parties agree that in the event that any provision hereof shall be found by any court to be unenforceable, this finding shall not affect the enforceability of the remaining provisions of this Agreement. The Parties agree to substitute for the invalid provision or invalid portion thereof a valid provision which most closely approximates the intent and economic effect of the invalid provision or invalid portion thereof.
- 9.6. This Agreement may be signed by original or facsimile or electronic transmission and executed in any number of counterparts, and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement and, notwithstanding the date of execution, shall be deemed to bear the Effective Date set forth above.
- 9.7. In the event either Party is unable to perform its obligations under the terms of this Agreement because of acts of God, fires, floods, weather, epidemics, war, cyberattacks, government restrictions, change in applicable laws, or any other cause(s) reasonably beyond its control, not reasonably foreseeable, not caused by acts or omissions of the affected Party and that could not have been avoided through a work-around plan, which results in failure to perform or underperform the obligations of this Agreement, the affected Party's respective obligations under this Agreement may be suspended during the period required to remove such Force Majeure Event. The affected Party will promptly notify the other Party of the Force Majeure Event and its cause. Notwithstanding the foregoing, in the event the Force Majeure Event lasts longer than thirty (30) calendar days, either Party shall have the right to terminate this Agreement upon written notice to the other Party without any penalty, liability or further obligation.
- 9.8. The Parties hereto agree to have duly negotiated the terms of this Agreement in order to come to a mutual understanding of this Agreement, and therefore, this Agreement is not a contract of adhesion within the terms of Civil Code of Quebec and/or any other law applicable within the province of Quebec.
- 9.9. It is the express wish of the Parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cet accord et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.



**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first above written.

World Wildlife Fund Canada

[Name of the Organization]

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Name:

Title:

Date:

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Name:

Title:

Date:

**SCHEDULE A**

**DETAILS OF TERRITORY**