

SECTION 5: TERMS AND CONDITIONS

By submitting an application, the Applicant hereby agrees to the following terms and conditions:

1. Definitions. Capitalized terms not defined in the Terms and Conditions have definitions set out in the Community Services Recovery Fund (“**CSRF**”) Applicant Guide (the “**Applicant Guide**”) or Funding Letter to be entered into between the Applicant and UWC.

2. Entire Agreement. This agreement includes these Terms and Conditions, the Applicant Guide and the Funding Letter, as accepted by both parties (the “**Agreement**”). In the event of a conflict or inconsistency between these documents, the order of precedence shall be the following: (a) the Funding Letter and these Terms and Conditions; and (b) the Applicant Guide.

3. Payment. Any payments by United Way Newfoundland and Labrador (“**UWC**”) to the Applicant can only be used by the Applicant for Project expenses incurred during the Project Period and cannot be used for any ineligible activities as set out in the Applicant Guide. Payment of any funding under this Agreement is subject to the availability of funds and may be cancelled or reduced in the event that the Government of Canada cancels or reduces its funding to the UWC. The UWC may advance funds to the Applicant prior to the commencement of the Project. This amount will be considered an advance against fees and expenses incurred by the Applicant and will be accounted for in any reporting by the Applicant on the Project.

4. Repayment. The Applicant shall repay to the UWC the amount of any funds provided to which it is not entitled, including the amounts of any payments: (i) made in error; (ii) made for costs in excess of the amount actually and properly incurred for those costs; and (iii) that were used for costs that were not eligible under this Agreement. Such amounts shall be promptly repaid to the UWC, upon receipt of notice to do so and within the period specified in the notice, together with interest.

5. Assets and Inventory. For the purpose of this Section, “capital asset” shall mean any single item, or a collection of items which form one identifiable functional unit, that is not physically incorporated into another product or not consumed by the end of the Project, has a purchase or lease value of more than \$5,000 (before taxes).

During the Project Period, the Applicant shall preserve any capital asset provided

by the UWC to the Applicant or purchased by the Applicant using Project funds, and shall not dispose of it unless the UWC authorizes its disposition. At the end of the Project Period, or upon termination of this Agreement, the UWC reserves the right to direct the Applicant to dispose of any such capital assets by:

- i. selling it at fair market value and applying the funds realized from such sale to offset the funding of any Eligible Expenditures;
- ii. turning it over to another organization or to an individual designated or approved by the UWC; or
- iii. disposing of it in such other manner as may be determined by the UWC.

Where the UWC elects to exercise its right under this section 6, the Applicant agrees to comply with the related direction provided by the UWC.

6. Progress Reports and Payments. Payment and reporting expectations are set out in the Funding Letter. Payments may be made in installments, at the sole discretion of the UWC. If the Applicant is not abiding by the terms of this Agreement, then the UWC, in its sole discretion, may reduce installment payment amounts, or withdraw or withhold funds or other resources. The Applicant shall immediately notify the UWC regarding any changes to its eligibility for funding from the UWC as set out in the Applicant Guide.

7. Relationship. Nothing in this Agreement shall constitute or be construed to create a partnership, joint venture, or an employment relationship as between the parties and neither party shall hold itself out as partner, joint venturer, or employee of the other or any other type of relationship that renders one party liable for the debts or obligations of the other party except as specifically provided for in this Agreement. Nothing in this Agreement creates any undertaking, commitment, or obligation by the UWC respecting additional or future funding of the Project beyond the Term, or that exceeds the maximum contribution specified in this Agreement. In addition, nothing in this Agreement creates nor is to be interpreted, construed, or held out as creating any role, responsibility, obligation, or interest for or in the Government of Canada.

8. Insurance. Without in any way limiting the liability of the Applicant under this Agreement it shall be the sole responsibility of the Applicant to maintain and keep in force and effect during the term of this Agreement sufficient insurance against liability resulting from anything done or omitted by the Applicant in carrying out the activities under this

Agreement, for such coverage limits as a reasonably prudent Party carrying out the same or similar activities might obtain.

9. Confidentiality. Each Party acknowledges that, during the term of this Agreement, it may be required from time to time to disclose to the other Party certain confidential and proprietary materials, information and data relating to that Party's activities (all of which is referred to as "Confidential Information"). Each Party acknowledges that the other's Confidential Information, other than that which is publicly known, is confidential and proprietary information. The Parties shall not, during the term of this Agreement or thereafter, use, disclose, divulge, or make available each other's Confidential Information to any third party either directly or indirectly in any manner whatsoever without the prior written consent of the other Party, except that the UWC may share information with its advisors, Community Foundations of Canada and its members, the Canadian Red Cross, and the Government of Canada as required. The Applicant acknowledges that the Government of Canada is subject to the *Access to Information Act, RSC 1985, Chapter A-1*, and information obtained by the Government of Canada pertaining to this Agreement may be disclosed by the Government of Canada to the public upon request under the *Access to Information Act*.

10. Termination. The UWC shall have the right to terminate this Agreement at any time and for any reason on ten (10) days' written notice to the Applicant. In the event of improper use of the funds by the Applicant under, or a material breach by the Applicant of, any term of this Agreement, as determined by the UWC, the UWC may terminate this Agreement effective immediately upon delivery of written notice of termination to the Applicant. In the event of termination, the Applicant will forthwith refund to the UWC any monies advanced by the UWC and not expended in accordance with the terms of this Agreement and the UWC will have no further obligations under the Agreement.

11. Books and Records and Reporting. Each party shall maintain full and complete books and records of the Project in accordance with generally accepted accounting principles. The UWC, the Government of Canada, and/or Auditor General of Canada reserves the right to audit the Applicant and the Applicant shall provide reasonable access to its books and records for this purpose for a period of six (6) years following completion of the Project. The Applicant shall provide full and complete reports, including invoices, receipts, vouchers, payment records, results achieved or any discrepancies thereof, on the Project to the UWC, the Government of Canada, and/or the Auditor General of Canada in the form required by the UWC, the Government of Canada, and/or the Auditor General of Canada. In addition to the foregoing, the

Applicant will cooperate with any inquiry into the use of the funds by the UWC, the Government of Canada and/or the Auditor General of Canada and their agents or representatives and grant access to its documents, records, and premises as required for such inquiry. The Applicant understands that any concerns may be discussed by the Government of Canada and/or Auditor General of Canada with the UWC and/or the Applicant and that the results may be reported to Parliament.

12. Monitoring and Evaluation. The Applicant will be responsible for the routine management and monitoring of the Project. The Applicant shall permit the UWC or the Government of Canada to enter any premises used by the Applicant in connection with the Project at reasonable times and upon reasonable notice, in order to observe and evaluate the activities and inspect all records relating to the Project. The Applicant consents to the provision of contact information of members of the board of directors and/or staff of the organization so that they can participate in a survey, interview, case study or other data collection exercise initiated by the Government of Canada.

13. Amendment. This Agreement may be amended upon mutual written agreement of the parties. Notwithstanding the foregoing, the UWC may amend the Agreement by providing ten days' written notice to the Applicant.

14. Assignment or Subcontracting. Neither party may assign, pledge, mortgage or otherwise encumber any of its rights under this Agreement without the prior consent of the other.

15. Contractual Commitments with Third Parties. The UWC shall not be held liable for any contractual commitments entered into by the Applicant with any third party for the performance of the Project.

16. Compliance with Laws and Governing Laws. Each of the parties agree to comply with all laws, ordinances, rules, and regulations of any government or administrative agency, federal, provincial, state, or local that affect the Project. The Applicant shall obtain, prior to the commencement of the Project, all permits, licences, consents, and other authorizations that are necessary for carrying out the Project. The Applicant shall ensure that professionals delivering specialized services as part of or related to the Project have the relevant certifications or checks. This Agreement and the rights and obligations and relations of the parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

17. Indemnity. The Applicant agrees, both during and following the Term, to defend, indemnify, and hold the Government of Canada, UWC, its directors, officers, members, employees, volunteers, agents and affiliates, and their respective directors, officers, members, employees, volunteers, agents harmless from and against any direct loss, claim, cause of action, suit, injury, expense, damage or liability, including reasonable legal costs, relating to or as a result of: (a) this Agreement or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder; (b) the negligence or wilful misconduct of the Applicant in connection with or related to the performance of its obligations pursuant to this Agreement; (c) any misrepresentation made by the Applicant in any application to or communication with the UWC or made by the Applicant in furtherance of its performance pursuant to this Agreement; or (d) any breach or default by the Applicant of any of its obligations pursuant to this Agreement.

18. Government of Canada No Responsibility. The Applicant agrees nothing in this Agreement shall have the effect of, or be interpreted as creating any responsibility, commitment, obligation, or liability for the Government of Canada.

19. Procurement. The Applicant must use a competitive process for the procurement of goods, assets and services for the Project that enhances access, transparency, competition and fairness and results in best value. The Applicant shall ensure that a reasonable number of suppliers are given an opportunity to bid and should avoid situations where there may be a bias toward awarding a contract for goods, services, or assets for the Project to a specific person or entity. The above requirement shall apply, unless otherwise authorized in writing by the UWC, to all goods or services contracts valued at more than \$40,000 (before taxes). The Applicant must not unnecessarily divide a requirement for goods or services into a number of smaller contracts to avoid this requirement.

20. Intellectual Property. Any work, including, without limitation, deliverables, reports, data collected and processed, creative assets, course materials, drafts, apps, software tools or edits to the UWC programs, created by or during the activities using funds contributed by the Government of Canada and provided by UWC shall be the sole property of UWC. The Applicant shall, and shall have its employees and contractors, execute all documents, do all other acts necessary and generally assist UWC to secure and protect its ownership on, and intellectual property rights in and to such work.

Additionally, the Applicant: (i) warrants that the works shall not infringe on the copyrights of others; and (ii) shall include an acknowledgement, in a manner satisfactory to the Government of Canada, on any work which is produced by it with funds contributed by the Government of Canada and provided by UWC under this Agreement, acknowledging that the works were produced with funds contributed by the Government of Canada, and identifying the Applicant as being solely responsible for the content of such work . All materials supplied by UWC to Applicant in connection with this Agreement, including, without limitation, and as may be applicable, all manuals, reports, data, artwork, graphics, logos, video and other products and documents, are and shall remain the sole property of UWC ("**UWC Materials**"). No rights are transferred to Applicant with respect to the UWC Materials, except to the extent necessary to perform the Project. All materials of Applicant, which may include, without limitation, pre-existing materials, templates, forms, know-how, processes, precedents, software and technologies, created, developed and/or produced outside of the activities and without using the funds contributed by the Government of Canada and provided UWC, are and shall remain the sole property of Applicant ("**Applicant Materials**"). No rights are transferred to UWC with respect to the Applicant Materials, except to the extent necessary for the performance of this Agreement.

21. Publicity, Public Recognition and Media Communication. The Applicant agrees to abide at all times, by the UWC's rules for publicity, public recognition and media communication the details of which shall be provided in the Funding Letter, which shall survive the termination of this Agreement.

22. Conflict of Interest. No current or former public servant or public office holder to whom the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2), the *Policy on Conflict of Interest and Post-Employment* or the *Values and Ethics Code for the Public Sector* applies shall derive a direct benefit from this Agreement unless the provision or receipt of such benefit is in compliance with the said legislation or codes. No member of the Senate or the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising from it that is not otherwise available to the general public.