

## Terms and Conditions

### The Canadian Red Cross Society PPE and Training Agreement (the "Agreement") COVID-19 PPE and Training in respect of Personal Protective Equipment

These terms and conditions are incorporated by reference to the Agreement.

The CRCS hereby agrees to endeavour to provide (a) components of personal protective equipment ("PPE"), such as protective face masks and gloves, on an as-is basis; and (b) training on the use of personal protective equipment, such as protective face masks and gloves, for low to medium risk activities ("**Training**") to the Grantee in accordance with the terms of this Agreement. By signing this Agreement, the Grantee hereby agrees to the following terms and conditions:

**1. Definitions.** Capitalized terms not defined in this document have the definitions set out in the Emergency Support for Community Organizations – Prevention Disease Transmission Training and Equipment Program Guidelines (the "**Training and PPE Guidelines**") or the Project Description agreed upon between the Parties.

**2. Entire Agreement.** The Agreement includes these Terms and Conditions, the Training and PPE Guidelines and the Project Description as accepted by both parties in writing. In the event of a conflict or inconsistency between any of these documents, the order of precedence shall be the following: (a) the Agreement and these Terms and Conditions; (b) the Training and PPE Guidelines, and (c) the Project Description.

**3. Term.** This Agreement shall commence on the Effective Date and shall continue in effect throughout the Term or until either party terminates the Agreement in accordance with the provisions of Article 9 below.

**4. Use and availability of PPE.** If PPE is provided by the CRCS to the Grantee, then the Grantee will only use the PPE to help carry out its activities and will not sell or otherwise assign or dispose of the PPE without the consent of the CRCS in writing. The Grantee covenants and agrees that the information provided to the CRCS in its COVID-19 Emergency Response Support Program Application Form (the "**Application Form**") is accurate and up to date, including but not limited to the Grantee's need for PPE in the quantity requested informed by the number of full time equivalents submitted as part of the Application Form. The provision and delivery of PPE to the Grantee is subject to, among other things, the general availability of PPE in quantities and form acceptable to the CRCS and the ability of the CRCS to receive, distribute and deliver such PPE during the COVID-19 pandemic. The PPE may be delivered to the

Grantee on different dates and in different shipments and this Agreement shall apply to all deliveries of PPE from the CRCS.

**5. Equipment.** In the event that the CRCS provides capital equipment to the Grantee, such equipment shall be owned by the CRCS and the CRCS shall retain all rights with respect to the equipment. On the completion or termination of this Agreement for any reason, unless otherwise agreed to in writing, such equipment (or the then fair market value of same) shall be returned to the CRCS.

**6. Relationship.** Nothing in this Agreement shall constitute or be construed to create a partnership, agency, joint venture or an employment relationship as between the parties and neither party shall hold itself out as partner, agent, 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. 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. Nothing in this Agreement creates any undertaking, commitment or obligation by the CRCS to provide additional or future PPE or Training beyond the Term, or to provide PPE that exceeds the maximum PPE contribution specified in this Agreement.

**7. Insurance.** Without in any way limiting the liability of the Grantee under this Agreement, it shall be the sole responsibility of the Grantee to maintain and keep in force and effect during the term of this Agreement sufficient insurance as is customarily kept by an organization conducting similar activities.

**8. 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 (a) publicly known, or (b) is known to the receiving party at the time of disclosure without obligation of confidentiality to the disclosing party, 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 CRCS may share information with its advisors and the Government of Canada as required. Notwithstanding the foregoing, the Grantee consents to the use and disclosure publicly or to other humanitarian organizations or government agencies, of data, outcomes, information, reports, statistics, modelling, and other materials related to the Project for the purposes of research, service delivery improvement, emergency preparedness and other humanitarian purposes and reporting to the Government of Canada.

**9. Termination.** The CRCS shall have the right to terminate this Agreement at any time and for any reason on ten (10) days' written notice to the Grantee. In the event of improper use of the PPE and Training by the Grantee under, or a material breach by the Grantee of, any term of this Agreement, as determined by the CRCS, the CRCS may terminate this Agreement effective immediately upon delivery of written notice of termination to the Grantee. In the event of termination, the Grantee will forthwith return to the CRCS any unused PPE, cease to use the Training and the CRCS and Employment and Social Development Canada logos and the CRCS will have no further obligations under the Agreement.

**10. Books and Records and Reporting.** The Grantee is responsible for maintaining full and complete books and records of the Project. The CRCS reserves the right to audit the Grantee and the Grantee shall provide reasonable access to its books and records for this purpose for a period of seven years following completion of the Project. The Grantee shall provide reports, including results achieved or discrepancies in respect thereof, on the Project to the CRCS in the form required by the CRCS. The Grantee shall immediately notify the CRCS regarding any changes to its eligibility for receiving PPE and Training from the CRCS as set out in the Training and PPE Guidelines.

**11. Recognition.** The Grantee shall recognize the support of the CRCS and Employment and Social Development Canada in any publicly available information and other materials related to the PPE in accordance with the Training and PPE Guidelines. Without limiting Article 8, CRCS may list the Grantee's name, location and pertinent details of the Project on the CRCS' website and social media platforms and may use photographs, recordings and other testimonials provided by the Grantee on the CRCS website and in

social media and in reports to the Government of Canada and other partners. The Grantee acknowledges that information obtained by the CRCS pertaining to this Agreement may be disclosed through a freedom of information request.

**12. Logos and Trademarks.** For the sole purpose of public communications and publicity for the Project, the CRCS consents to the Grantee's use of its name, trademarks, trade names, logo and other branding. For the purpose of public communications, research, reporting and publicity for the Project, the Grantee consents to the CRCS' and the Government of Canada's use of its name, trademarks, trade names, logo and other branding. Any and all use of marks mentioned in this section by a party (the "recipient") shall enure to the benefit of the owner of the marks (the "grantor") only and the recipient shall co-operate fully and in good faith with the grantor to establish and/or protect the grantor's rights, title, interest and/or goodwill in and to the marks used by the recipient. The recipient agrees that all such marks are owned by the grantor, and that nothing in this Agreement gives the recipient any rights, title, interest and/or goodwill in and to the marks used by the recipient, other than to use the grantor's marks in accordance with this Agreement. No party shall allow third parties to use the marks of the other party without prior written consent, which consent shall be in the form determined by the grantor. When using a trade-mark of the grantor, the recipient shall display with the trade-mark, (i) in the case of a registered trade-mark, "[TRADE-MARK] is a registered trade-mark of [GRANTOR], used under license by [RECIPIENT]", and (ii) in the case of an unregistered trade-mark, "[TRADE-MARK] is a trade-mark of [GRANTOR], used under license by [RECIPIENT]". The grantor's consent to use of a trade-mark by the recipient may be revoked upon failure by the recipient to comply with any term of this Agreement, or if the grantor is otherwise dissatisfied with the manner in which the trade-mark is being depicted, or with the character or quality of the goods or services in association with which the trade-mark is being used.

**13. Monitoring and Evaluation.** The Grantee will be responsible for the routine management and monitoring of the Project. The Grantee consents to the provision of contact information of members of the board of directors and/or management 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. The Grantee, in carrying out the

Project, shall comply with any instructions provided by the CRCS.

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

**16. Intellectual Property Ownership.** The CRCS owns all right, title, and interest, including all intellectual property rights, in and to the Training materials. If the Grantee or any of its employees, contractors and agents sends or transmits any communications or materials to the CRCS by mail, email, telephone, or otherwise, suggesting or recommending changes to the Training, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), all such Feedback is and will be treated as non-confidential. The Grantee hereby assigns to the CRCS on its behalf, and shall cause its employees, contractors, and agents to assign, all right title and interest in, and the CRCS is free to use, without any attribution or compensation to the Grantee or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although the CRCS is not required to use any Feedback.

**17. Contractual Commitments with Third Parties.** The CRCS shall not be held liable for any contractual commitments entered into by the Grantee with any third party for the performance of the Project.

**18. 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, municipal or local that affect the Project. The Grantee shall obtain, prior to the commencement of the Project, all permits, licences, consents and other authorizations that are necessary for carrying out the Project. 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.

**19. Dispute Resolution.** In the event a dispute arises out of or in connection with this Agreement, the dispute shall be settled by arbitration before a single arbitrator

in Ottawa, Ontario, in accordance with the Arbitration Act, 1991 (Ontario) or as otherwise agreed upon by the parties to the dispute. All proceedings relating to arbitration shall be kept confidential, and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law.

**20. Indemnity.** The Grantee agrees, both during and following the Term, to defend, indemnify, and hold the CRCS, its directors, officers, members, employees, volunteers, agents and affiliates, 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) the use of the PPE and Training; (b) this Agreement or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder; (c) the negligence or wilful misconduct of the Grantee in connection with or related to the performance of its obligations pursuant to this Agreement; (d) any misrepresentation made by the Grantee in any application to or communication with the CRCS or made by the Grantee in furtherance of its performance pursuant to this Agreement; or (e) any breach or default by the Grantee of any of its obligations pursuant to this Agreement.

**21. NO WARRANTY.** THE PPE AND TRAINING IS PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING THE PPE IS STRICTLY BETWEEN THE GRANTEE AND THE THIRD-PARTY MANUFACTURER OR SUPPLIER OF THE PPE AND NOT THE CRCS. THE CRCS MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE USE OF THE PPE AND TRAINING, INCLUDING, WITHOUT LIMITATION, ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. BY ACCEPTING THE PPE AND TRAINING, THE GRANTEE ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION, CONDITION OR WARRANTY MADE BY THE CRCS, OR ANY OTHER PERSON ON THE CRCS' BEHALF.

**22. Damages.** The Grantee understands and agrees that PPE is just one infection prevention control measure and should be used in accordance with health authority guidance. The Grantee also understands and agrees that it is the Grantee's sole responsibility to ensure its

personnel perform activities safely and in accordance with local and national infection prevention control guidance and requirements. The Grantee accepts and acknowledges that the CRCS is not liable for any losses, liability or damages (collectively "**Damages**") relating to the PPE and Training or the use of the PPE and Training. Such Damages include direct, indirect, consequential, special, or incidental damages, even if such Damages were reasonably foreseeable. Further, the Grantee hereby releases and waives any claim or demand it has or may have against the CRCS, its employees, directors, officers, agents, any of its affiliated or related entities, and their respective employees, directors, officers, agents and all those for whom the CRCS is responsible at law (i) in connection with the PPE and Training or its use, and (ii) for any detriment, damage, accident or injury of any nature whatsoever or however caused with respect to any action taken or things done or maintained in connection with the PPE and Training, its use, or this Agreement, or the exercise in any manner of rights arising herein.

**23. WAIVER AND RELEASE.** The Grantee hereby expressly waives and releases any and all claims which it has or may in the future have against the CRCS, its directors, officers, employees, agents, representatives, members, successors and assigns, and its affiliates, and their respective directors, officers, employees, agents, representatives, members, successors and assigns (collectively, "**Releasees**"), arising out of or attributable to the use of the PPE and Training, due to any cause whatsoever, including, without limitation, the negligence of the CRCS or any other Releasee, breach of contract, or breach of any statutory or other duty of care. The Grantee covenants not to make or bring any such claim against the CRCS or any other Releasee, and forever releases and discharges the CRCS and all other Releasees from liability under such claims. The Grantee hereby acknowledges and agrees that should it hereafter make any claim or demand, or commence or threaten to commence any action, claim or proceeding against the Releasees for or by any reasons of any cause, matter or thing in connection with any of the claims released by virtue of this Agreement, this Agreement may be raised as an estoppel and complete bar to any such claim, demand, action or proceeding.

**THE GRANTEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT AND THAT IT IS VOLUNTARILY WAIVING SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE THE CRCS AND THE RELEASEES.**