

**FORESTRY SERVICE PROVIDERS COMPENSATION FUND**  
***ADMINISTRATIVE AGREEMENT***

This Agreement dated **March 1, 2019**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA**

Represented by the Minister of Forests, Lands and Natural Resource Operations  
(the "Minister")

**AND:**

**Eric van Soeren**

(the Administrative Authority)

(collectively, the "Parties")

WHEREAS the *Forestry Service Providers Protection Act*, S.B.C. 2010, c.16 (the *Act*) provides for a compensation fund for compensating Forestry Service Providers,

AND WHEREAS the Forestry Service Providers Compensation Fund was established by B.C. Reg. 64/2012

AND WHEREAS the *Act* provides for an Administrative Authority, and Eric van Soeren has been so designated as the Administrative Authority,

AND WHEREAS the Parties wish to enter into this Agreement,

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT THE PARTIES AGREE AS  
FOLLOWS:**

## DEFINITIONS

### ***All words or phrases that are capitalized in this agreement are defined***

“Act” means the *Forestry Service Providers Protection Act*.

“Advisory Board” means the board established and maintained by the Administrative Authority under Paragraph 4 of Article 3 of this Agreement.

Administrative Authority” is the person designated by the Minister under Section 31 of the Act.

“Compensation Claim” is a claim that has been submitted by a Contractor or Subcontractor for compensation from the Compensation Fund in accordance with the Act, the Regulations and any policy and procedures approved by the Administrative Authority.

“Compensation Agreement” means an agreement between a Forestry Service Provider and the Administrative Authority associated with a compensation payment made under this Agreement.

“Contractor” means a class of persons providing Services to a Licensee.

“Eligible Claim” means a Compensation Claim where the Administrative Authority has determined that a Forestry Service Provider has incurred a Financial Loss resulting from the Insolvency of a Licensee.

“Financial Loss” means the amount due and payable, but not paid to a Forestry Service Provider for Services provided to a Licensee after February 1, 2013 in the case of the General Services, and May 6, 2016 in the case of Silviculture Services and subject to the limitations on the amount as set out in this Agreement.

“Forestry Service Provider” as defined in the Regulation.

“Forestry Service Providers General Compensation Fund Account” means the General account established under Article 9 of this Agreement.

“Forestry Service Providers Silviculture Compensation Fund Account” means the Silviculture account established under Article 9 of this Agreement.

“Fund” means the Forestry Service Providers Compensation Fund established under the Act and the Regulation.

“Fund Property” includes any property that is in the General or the Silviculture Fund as of the date of this agreement and all property which is subsequently added to the General or the Silviculture Fund or earned on invested funds, and all funds which are recovered through full or partial repayment or amounts previously paid to Forestry Service Providers by the General or the Silviculture Fund, pursuant to the Act, the Regulation, this Agreement and a Compensation Agreement.

General Services” as defined in the Regulation.

“Insolvency” for the purposes of this Agreement, is where a Licensee has ceased paying current obligations in the ordinary course of business as they generally come due, and in the opinion of the Administrative Authority will not be able to meet current obligations within a reasonable timeframe.

“Licensee” means the holder of an agreement referred to in Section 12 of the *Forest Act*, R.S.B.C. 1996, c. 157.

“Regulation” means the Forestry Service Providers Compensation Fund Regulation, B.C. Reg-897/2016.

“Silviculture Services” as defined in the Regulation.

“Sub-contractor” means a class of persons who provide Services to a Contractor.

## **ARTICLE 1            PURPOSE OF AGREEMENT**

The purpose of this Agreement is to describe the relationship and interests of the Parties and to establish rules for the on-going management of the Fund.

## **ARTICLE 2            TERM OF THIS AGREEMENT**

1. The term of the Agreement will commence on March 1, 2019.
2. The term of this agreement is 2 years and will terminate on February 28, 2021.
3. By mutual consent, the Parties may extend the term of this Agreement prior to its termination.

## **ARTICLE 3            DUTIES OF THE ADMINISTRATIVE AUTHORITY**

1. The Administrative Authority will hold the Fund Property during the term of this Agreement upon the trusts set out in this Agreement and will collect, receive, hold, manage, accumulate, retain, distribute, invest, reinvest and generally deal with the Fund Property and income from the Fund as and to the extent permitted by this Agreement.
2. The Administrative Authority may invest the Fund Property only as permitted under the provisions of the *Trustee Act*.
3. The Administrative Authority shall establish an Advisory Board in accordance with the policies and procedures established by the Administrative Authority.

4. The Administrative Authority may establish, in consultation with the Fund Advisory Board, policies and procedures for the ongoing management and operations of the Fund.
5. The Administrative Authority will receive and adjudicate Compensation Claims in accordance with this Agreement.
6. The Administrative Authority will pay compensation to Forestry Service Providers in accordance with the Act, the Regulation, and this Agreement.
7. The Administrative Authority will ensure that an annual financial audit of the Fund is conducted by a third party.
8. The Administrative Authority will perform any other duties required by this Agreement, the Act and the Regulation.
9. The Administrative Authority, in consultation with the Fund Advisory Board, may make recommendations to the Minister with respect to changes to the Act, the Regulation or this Agreement to improve the functions of the Fund.

#### **ARTICLE 4                    COMPENSATION CLAIMS**

1. The Administrative Authority will receive Compensation Claims from a Contractor or Subcontractor.
2. A Compensation Claim must include:
  - a. the amount of compensation being requested;
  - b. evidence of a Financial Loss being incurred;
  - c. if the Compensation Claim is being submitted by a Contractor, a list of all Subcontractors, if there are any associated with the claim and amounts owed to each, accompanied by an acknowledgement from those Subcontractors verifying the information; and
  - d. any other information necessary to establish the claim or pay the compensation, as required by the policies and procedures established by the Administrative Authority.
3. The Administrative Authority may reject a compensation claim if it is not submitted in accordance with Paragraph 2 of Article 4.

4. Upon receiving a Compensation Claim, the Administrative Authority will determine if the Compensation Claim is an Eligible Claim.
5. In making a determination under Paragraph 3 of Article 4, the Administrative Authority will consider the following:
  - a. evidence of Insolvency;
  - b. evidence of the cause of a Financial Loss;
  - c. any other information the Administrative Authority considers relevant to the Compensation Claim; and
  - d. without limiting the generality of the foregoing, the Administrative Authority will consider steps taken by the claimant to collect the money alleged to be owed.
6. The Administrative Authority will promptly notify a contractor or subcontractor who submitted a Compensation Claim of a determination made under Paragraphs 3 and 4 of Article 4.
7. The Administrative Authority may reconsider a determination made under Paragraph 4 of Article 4 at any time based on new information being provided to the Administrative Authority.

## **ARTICLE 5            COMPENSATION PAYMENT**

1. If the Administrative Authority determines a Compensation Claim is an Eligible Claim under Article 4, the Administrative Authority will approve or vary the amount of compensation requested in the Compensation Claim based on any direction provided in the Act, the Regulation, and this Agreement, or any policy or procedures established by the Administrative Authority.
2. The Administrative Authority will pay compensation of the amount determined in Paragraph 1 of Article 5 in accordance with the Act, the Regulation and this Agreement.
3. Subject to Articles 4, 5, 6, and 7 of Article 5 of this Agreement, the amount of compensation paid under Paragraph 2 of Article 5 will equal the Financial Loss that accrued for Services provided during the normal pay period prior to the first non-payment of an invoice plus the losses incurred from non-payment for Services provided during the following 30 days only.
4. A compensation payment will be for a maximum of 60 days of Services provided.

5. The Administrative Authority may pay compensation directly to Subcontractors to ensure that Sub-contractors are paid or may make other arrangements which the Administrative Authority believes are appropriate in the circumstances.
6. The Administrative Authority will not pay compensation from the General Fund under Paragraph 2 of article 5 if the effect would be to draw down the balance in the General Fund to less than \$250,000, or from the Silviculture Fund if the effect would be to draw down the balance in the Silviculture Fund to less than \$50,000.
7. Subject to Paragraph 6 of Article 5, at a given time if the total of Eligible Claims in the General or the Silviculture Funds exceeds the balance in the General or Silviculture Fund, the Administrative Authority will prorate the Compensation Payments from each accordingly. In the event that future contributions are made to the General or Silviculture Fund, Forestry Service Providers who have not received payment in full of their Eligible Claims may be eligible to receive further compensation to the extent of any shortfall, at the times and in the amounts that are provided for in any subsequent Administrative Agreement or by the Regulation.

## **ARTICLE 6                    COMPENSATION AGREEMENT**

1. Prior to and as a condition of paying compensation under Article 5, the Administrative Authority and the Contractor or Subcontractor receiving compensation payment shall enter into a Compensation Agreement.
2. A Compensation Agreement must include an assignment to the Administrative Authority of all accounts due to the Contractor or Subcontractor associated with any Compensation Claim for which compensation is to be paid from the Fund.
3. The Administrative Authority must take all reasonable steps to pursue collection of assigned claims. The proceeds from such claims must be deposited to the General or Silviculture Fund as appropriate without undue delay.
4. The Administrative Authority will refund any amount of an assigned claim that was collected and was over and above the compensation that was paid to the Contractor or Subcontractor.

## **ARTICLE 7                    FUND MANAGEMENT COSTS**

1.     The Administrative Authority may, in the discharge of his duties under this Agreement, retain, employ or otherwise engage any lawyer, accountant, or any other adviser.
2.     The Administrative Authority may make payments or distributions to cover the reasonable costs that are incurred for the management and administration of the Fund, and will apportion those costs to the General or Silviculture Fund as appropriate.
3.     The Administrative Authority is entitled to receive remuneration at the rate of \$235 per hour for the time engaged in the management and administration of the Fund.
4.     The Administrative Authority may reimburse members of the Advisory Board for the following expenses incurred in the course of carrying out the functions of an Advisory Board member:
  - a.     Reasonable travel expenses, including automobile mileage allowances.
  - b.     Accommodation and meal expenses.
  - c.     Other out-of-pocket expenses incurred by members of the Advisory Board as a direct result of their duties as members of the Advisory Board, but only to the extent that the Administrative Authority considers that reimbursement is reasonable.
5.     The Administrative Authority shall not use any part of the Fund Property to pay for any other expense incurred by the Advisory Board or by a member of the Advisory Board.

## **ARTICLE 8                    POWERS TO OPERATE BANK ACCOUNTS**

1.     The Administrative Authority may open and maintain accounts with any financial institution operating in Canada.
2.     The main operating account of the Fund will be called the Forestry Service Providers Compensation Fund General Account.
3.     The silviculture operating account of the Fund will be called the Forestry Service Providers Compensation Fund Silviculture Account.
4.     If separate accounts are established for investment or compensation purposes the Administrative Authority is to keep separate records of the funds in each account.

## **ARTICLE 9 FUTURE CONTRIBUTIONS TO THE FUND**

1. Any further contributions to the Fund from the Government of British Columbia will be transferred to the Administrative Authority and deposited in the Forestry Service Providers Compensation Fund General or Silviculture Account as appropriate.
2. The Administrative Authority will, without undue delay, deposit in the Forestry Service Providers Compensation Fund General or Silviculture Account as appropriate any contribution from the Province of British Columbia and any monies which the Administrative Authority has recovered as a creditor in legal or other collection proceedings related to Compensation paid from the General or Silviculture Fund.

## **ARTICLE 10 DISCRETIONARY POWERS OF THE ADMINISTRATIVE AUTHORITY PREVAIL**

A person has no right or entitlement to receive any portion of the income or capital of the Forestry Service Providers Compensation Account unless and until the Administrative Authority exercises discretion in favor of that person.

## **ARTICLE 11 REPORTING**

1. Within 15 days after the end of each fiscal quarter, the Administrative Authority shall issue a report to the Minister summarizing activities, achievements and the financial state of the Fund
2. Within 60 days after the end of each fiscal year of the Fund, the Administrative Authority must provide to the Minister an annual report in respect of that fiscal year that includes the following information:
  - a. Payments or distributions from the Fund.
  - b. A detailed breakdown of administrative expenses incurred in the fiscal year and the reason for having incurred those expenses.
  - c. The aggregate of all administrative expenses incurred in the last two years.
  - d. A copy of the annual audit by an independent auditor.
3. The Minister may request, or the Administrative Authority on his own initiative may provide, a report at any time on the financial health of the Fund and of measures that could be considered to improve the health of the Fund.
4. Within 15 days after the end of each fiscal quarter, the Administrative Authority shall issue a report to the members of the Advisory Board summarizing activities, achievements and the financial state of the Fund.



## **ARTICLE 12                    TRANSFER OF FUND PROPERTY**

1.     The following will apply if the Administrative Authority ceases to act as the Administrative Authority for any reason:
  - a.     All right, title and interest in and to all Fund Property will vest in the next person designated by the Minister as the Administrative Authority;
  - b.     The person who has ceased to act as Administrative Authority will transfer and deliver all Fund Property to the next person designated by the Minister as the Administrative Authority; and
  - c.     Upon such transfer and delivery being made, the person who has ceased to act as Administrative Authority shall be discharged of all duties and obligations imposed on the Administrative Authority, other than the duty to account for all matters under or arising out of such person's role and function of Administrative Authority.

## **ARTICLE 13                    LIABILITY OF THE ADMINISTRATIVE AUTHORITY**

1.     The Administrative Authority shall not be responsible for any loss or damage that results from the Administrative Authority acting in accordance with any opinion, advice or direction given by any Adviser, provided that the Administrative Authority has acted reasonably in relying on such opinion, advice or direction. The Administrative Authority shall be deemed to have acted reasonably in relying on any opinion, advice or direction given by an Adviser if that Adviser has a reasonable degree of competence in the field in respect of which such opinion; advice or direction has been given.
2.     The Administrative Authority will be entitled to limit the liability of the Administrative Authority in respect of any contract, agreement, transaction or event in such a way that the only recourse for any breach or other cause of action will be against the Fund Property.
3.     The Administrative Authority will bear no liability of any kind whatsoever in respect of any act or omission of that person provided that the person performs the duties of the office of Administrative Authority in good faith.
4.     The Administrative Authority will be deemed not to have acted in good faith if the person is guilty of fraud or gross negligence in performing the duties of the office of Administrative Authority.
5.     Without limiting the generality of this section, the Administrative Authority shall not be liable for any of the following if the person has performed the duties of the office of Administrative Authority in good faith.
  - a)     any loss to the Fund Property.
  - b)     any diminution in value of the Fund Property.

- c) any loss caused by any inopportune investment, even if the investment was the result of poor judgment on the part of the Administrative Authority.
6. Any act or failure to act, including any exercise or any failure or refusal to exercise any power, right, authority or discretion granted to the Administrative Authority.
7. All Eligible Persons and any other person who receives any portion of the Fund Property shall be deemed to have had notice of the provisions of this section.

#### **ARTICLE 14 ENTIRE AGREEMENT**

This Administrative Agreement is the entire agreement between the parties and supersedes any prior understanding or agreement existing between the parties at the date of execution of this Agreement.

#### **ARTICLE 15 JURISDICTION**

This Agreement will be governed by the laws of the Province of British Columbia.

#### **ARTICLE 16 MISCELLANEOUS**

1. No partnership, joint venture or agency will be created or deemed to be created by this Agreement or any action of the Parties under this Administrative Agreement.
2. The Administrative Authority must not, in any manner whatsoever commit or purport to commit the Province to the payment of any money to any person.
3. Any notice, document, statement, report, demand or payment desired or required to be given or made under this Agreement, must be in writing and may be given or made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed,

if to the Province:

Doug Stewart, Director, Forest Tenures Branch  
Ministry of Forests, Lands, Natural Resource Operations and Rural Development  
P.O. Box 9510 Stn Prov Govt, 2<sup>nd</sup> Floor, 1520 Blanshard Street  
Victoria, British Columbia, V8W 9C2

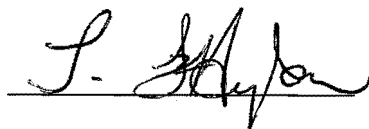
if to the Administrative Authority:

Eric van Soeren  
730 Walker's Hook Road  
Salt Spring Island, British Columbia, V8K 1N5

4. Any such notice, document, statement, report, demand or payment so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed given to and received by the addressee when actually delivered to the address of the addressee set out above.
5. Any notice, document, statement, report or demand transmitted by facsimile transmission from either party to the other will be conclusively deemed validly given to and received by the intended recipient when so transmitted to the following numbers:  
  
If to the Province: (250) 356-7903.  
If to the Administrative Authority: (250) 537-1534
6. Either party may, from time to time, advise the other by notice in writing of any change of address or facsimile number of the party giving such notice and from and after the giving of such notice, the address or facsimile number specified in the notice will, for the purposes of this Agreement, be deemed to be the address or facsimile of the party giving such notice.
7. In the event of any conflict between this Agreement and the Act or Regulation, the Act and Regulation shall govern and the Administrative Agreement will be deemed amended only to the extent necessary to avoid that conflict.

SIGNED by the Administrative Authority

in the presence of the following person:



Signature of Witness

JANINE FERNANDES-HAYDEN

Print Name of Witness



Eric van Soeren

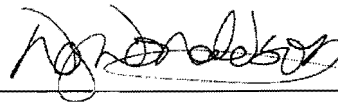
SIGNED on behalf of HER MAJESTY THE  
QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA by the Minister of Forests, Lands,  
Natural Resource Operations and Rural Development  
in the presence of the following person:



Signature of Witness

Tim Renneberg

Print Name of Witness



Honourable Doug Donaldson  
Minister of Forests, Lands,  
Natural Resource Operations  
and Rural Development