

TRADITIONAL KNOWLEDGE PROTOCOL
THIS AGREEMENT dated April 10, 2006 is AMONG:

THE SISKA BAND and SISKA TRADITIONS SOCIETY
(collectively, the “Siska Band”)

AND:

THE UNIVERSITY OF BRITISH COLUMBIA
(“UBC”)

BACKGROUND:

- A.** The Siska Band is comprised of members and is located in the Fraser River Canyon, approximately 11 kilometres south of Lytton. The Siska Band represents the Aboriginal rights, titles and interests of its members. The Siska Band is a member of the Nlha7kapmx (Nlaka’pamux) Nation. The Siska Band has extensive knowledge relating to the use of Non-Timber Forest Resources (the “NTFR”) within their culture and traditions. The Siska Traditions Society is a non-profit society with a purpose to manage and develop NTFR on behalf of the Siska Band.
- B.** UBC is the University of British Columbia, Canada.
- C.** The Siska Band and UBC have agreed to work in collaboration for the purpose of community health education and promotion through sustainable use of NTFR. Together, Siska and UBC have developed a Siska Traditional Knowledge Research Project (the “Traditional Knowledge Project”) with the purpose of enhancing aboriginal community health and education through intergenerational NTFR apprenticeship and contemporary translation, as described in the attached Schedule “A”.
- D.** The sharing, respect, understanding and use of Traditional Knowledge will be a key element of the Traditional Knowledge Project.
- E.** Traditional Knowledge is integral to the way of life of the Siska Band.
- F.** The Siska Band needs assurance that UBC will respect the guardianship interests of the Siska Band in Traditional Knowledge.
- G.** UBC acknowledges the importance to the Siska Band of maintaining the integrity of Traditional Knowledge.
- H.** The use of Traditional Knowledge in furtherance of the Traditional Knowledge Project will be governed by this Traditional Knowledge Protocol (the “Protocol”).

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 DEFINITIONS

1.1 “Confidential Information” means all information, regardless of its form disclosed by UBC to the Siska Band and which is clearly identified in writing as "Confidential" either at the time of disclosure or within thirty (30) days thereafter, or disclosed by the Siska Band to UBC and which is clearly identified in writing as "Confidential" either at the time of disclosure or within thirty (30) days thereafter. Except that "Confidential Information" does not include information:

1.2

- a) possessed by the recipient (the "Recipient") prior to receipt from the disclosing party (the "Discloser"), other than through prior confidential disclosure by the Discloser, as evidenced by the Recipient's business records;
- b) published or available to the general public otherwise than through a breach of this Agreement;
- c) obtained by the Recipient from a third party with a valid right to disclose it, provided that the third party is not under a confidentiality obligation to the Discloser in respect of the same; or
- d) independently developed by employees, agents or consultants of the Recipient who had no knowledge of or access to the Discloser's information as evidenced by the Recipient's business records.

1.2. “Inventory” means an inventory that may be held at the Siska Band containing Traditional Knowledge in written, audio, video or other digital or electronic form, including maps designating specific traditional land use and occupation within the Traditional Territory.

1.3. “Non-Timber Forest Resources Research Committee” or the “Committee” means the committee established by the Siska Band or the Siska Traditions Society for the purposes of overseeing and providing direction on the Traditional Knowledge Project and the implementation of this Agreement.

1.4. “Non-Timber Forest Resources” or “NTFR” means materials derived from living systems which are plant-based including but not necessarily limited to berries, herbs, mosses, fungi, ferns, leaves, resins, roots, sap, branches, bark, cones, and are utilized for food, health, social, economical, commercial and ceremonial use by Siska Band members, but does not include the timber of the tree.

- 1.5. “Parties” means the UBC and the Siska Band and “Party” means one of them.
- 1.6. “Research Thesis” is a written, academic publication of the theoretical framework, objectives, methods and findings of the research.
- 1.7. “Project Report” means a written narrative that includes the nature and scope of the Traditional Knowledge Project including objectives, methods and findings, including all versions, editions and drafts thereof. It is written documentation co-developed by Siska community members in collaboration with UBC, and shall remain the intellectual property of the Siska Band. The Project Report is distinct from the UBC Research Thesis, and non-confidential findings contained in the Project Report may be used to create the Research Thesis.
- 1.8. “Sacred Site” means a site used and/or identified by the Siska Band for sacred purposes since time immemorial, including but not limited to, burial sites and sites of ceremonial, social and/or cultural significance.
- 1.9. “Siska Band” means the collective membership of the Siska Indian Band, and “Siska Band member” means a member of the Siska Band.
- 1.10. “Traditional Knowledge” includes tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. “Tradition-based” refers to knowledge systems, creations, innovations and cultural expressions which have generally been transmitted from generation to generation; are generally regarded as pertaining to the Siska Band or its Traditional Territory; and, are constantly evolving in response to a changing environment. Categories of Traditional Knowledge could include: agricultural knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-related knowledge; “expressions of folklore” in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of languages, such as names, geographical indications and symbols; and, movable cultural properties.
- 1.11. “Traditional Territory” means that portion of the traditional territory of the Siska Band located within the Fraser Canyon and to the headwaters of the mountains, as set out in the map entitled “Siska Band’s Traditional Territory”, a copy of which is attached as Schedule “B” to this Protocol.
- 1.12. “Traditional Knowledge-holders” means members of the Siska Band that have traditional knowledge and have been given the responsibility by elders to act as custodians of particular Traditional Knowledge to ensure the preservation of such Traditional Knowledge for future generations.

- 1.13. “Workplan” means the plan in effect from time to time for gathering, documenting and preserving Siska Band Traditional Knowledge and appended as Schedule “C” to this Protocol.

2.0 PRINCIPLES

The Parties agree to the following principles:

- 2.1 **Asserted Rights.** The UBC acknowledges that the Siska Band has asserted Aboriginal rights and title over the land, waterways and the natural resources within the Traditional Territory.
- 2.2 **Self-Determination.** The UBC acknowledges that the Siska Band has the right to self-determination regarding Traditional Knowledge.
- 2.3 **Traditional Guardianship.** The UBC acknowledges that the Siska Band has a holistic interconnectedness with the ecosystems within its Traditional Territory and the Siska Band’s obligation and responsibility to preserve and maintain its role as traditional guardian of these ecosystems through the maintenance of Siska culture, spiritual beliefs, and customary law.
- 2.4 **Active Participation.** The UBC acknowledges the crucial importance of the Siska Band to actively participate in all phases of the Traditional Knowledge Project and documentation, and in the integration, use and application of such Traditional Knowledge.
- 2.5 **Full Disclosure.** The UBC acknowledges that the Siska Band is entitled to be fully informed about the nature, scope and ultimate integration of the Traditional Knowledge (including methodology, data collection, and the dissemination and application of results) into the Research Thesis. This information is to be given in a form and style that has meaning to the Siska Band, including translated information where possible.
- 2.6 **Support of Siska Band Traditional Knowledge Research.** The UBC acknowledges the Siska Band’s need to develop capacity to undertake their own Traditional Knowledge research and publications and in utilizing their own collections and databases.
- 2.7 **Support of UBC.** The Band acknowledges the research assistance of UBC for the Traditional Knowledge Project.

3.0 PURPOSE OF THIS PROTOCOL

- 3.1 The purposes of this Protocol include the following:
- (a) documentation of Traditional Knowledge to ensure the continuity of Siska Band’s customs, practices and traditions from one generation to the next;

- (b) provide a process to gather, preserve and integrate the Traditional Knowledge with respect to the Traditional Knowledge Project;
- (c) set out the mutual understanding of the Parties about ownership, protection and use of such Traditional Knowledge;
- (d) set out a Workplan for the purpose of carrying out the Traditional Knowledge Project; and
- (e) commence research to enhance aboriginal community health and education through intergenerational knowledge apprenticeship and translation for the direct economic and social benefit of the Siska Band.

4.0 PHASES OF THE TRADITIONAL KNOWLEDGE PROJECT

4.1 The Traditional Knowledge Project will consist of five phases:

- (a) **Phase 1:** Community consultation meetings informing members of the Siska Band of the Traditional Knowledge Project and introducing the UBC researchers to Siska members and resource personnel.
- (b) **Phase 2:** Reviewing, gathering and documenting Traditional Knowledge from participating Traditional Knowledge-holders with the assistance of a Siska Research Coordinator and Research Assistants from the Siska Band.
- (c) **Phase 3:** Preparation of Traditional Knowledge Documentation by UBC in collaboration with the Siska Band.
- (d) **Phase 4:** Review by the Committee of the Traditional Knowledge Documentation.
- (e) **Phase 5:** Integrate Traditional Knowledge into:
 - (i) Community health and cultural education and promotion activities and resources;
 - (ii) Language preservation (Siska Nlaka'pamux language integrated into all documentation, education, and health programs);
 - (iii) NTFR Product Procedure manual for management, harvesting, processing;
 - (iv) Policy Documents for Siska management and stewardship of NTFR products; and
 - (v) Data for preparation of Research Thesis, containing Traditional Knowledge from the Traditional Knowledge Project (even if previously published) will be first approved by Siska Band and the NTFR Research Committee.

4.2 The particulars of the work to be performed, services to be provided and payment with respect thereto will be as established in the Workplan.

- 4.3 The Parties agree that the Traditional Knowledge Research Project coordinator, UBC M.Sc. student Nancy MacPherson, will be co-authoring the final Project Report with the Siska Band. As well, Nancy MacPherson will be utilizing information contained in the final Project Report to the Siska Band for development of a Research Thesis for UBC. The Research Thesis is not to contain any Traditional Knowledge or Confidential Information disclosed to UBC by Siska Band that may be in the Project Report, and to ensure this the Research Committee will be given the opportunity to review the Research Thesis for any Traditional Knowledge or Confidential Information prior to finalization and publication of the Research Thesis by UBC. If any Traditional Knowledge or Confidential Information is found in the Research Thesis, it will be removed prior to publication of the Research Thesis by UBC unless the Siska Band provides authorization that the information can be included in the Research Thesis.
- 4.4 All publications arising from the Traditional Knowledge Project will be either authored, or co-authored by the Siska Band/Siska band members, except for the Research Thesis, which will be authored by student Nancy MacPherson, who will own the copyrights in the Research Thesis.
- 4.5. This Protocol held between UBC and Siska Band shall remain in accordance with UBC policies regarding scholarly conduct (Policy #85) and Research (Policy 87), appended as Schedule **D**.

5.0 RESPONSIBILITIES OF THE UBC

- 5.1 For the purposes set out in Clause 3 of this Protocol, the UBC will do the following:
- (a) respect the privacy, dignity, cultures, practices, traditions and rights of the Siska Band;
 - (b) recognize that the Siska Band's rights to ownership, protection and custody of their Traditional Knowledge;
 - (c) ensure that the Traditional Knowledge Project occurs in an orderly, legal and respectful manner with due regard to the peaceable enjoyment of the Siska Band to the Traditional Territory;
 - (d) offer to, and if accepted, respect the anonymity of the Traditional Knowledge-holders;
 - (e) in the manner set out in the Workplan, assist the Siska Band to develop the capacity to carry out the Workplan; and
 - (f) take any reasonable action required to ensure compliance with this subsection as requested by the Siska Band.
- 5.2 The UBC will not, without the prior informed consent of the Siska Band:

- (a) use or permit the Traditional Knowledge to be used by any other person or body other than for the purposes of or incidental to the Traditional Knowledge Project;
- (b) knowingly undertake any collection of heritage or cultural materials;
- (c) disclose any aspect of the Traditional Knowledge which is not publicly available and which was communicated to or observed by the UBC pursuant to the Traditional Knowledge Project, except as set out in Clause 10;
- (d) seek to obtain any Traditional Knowledge of the medicinal and cosmetic properties of plants from a Traditional Knowledge holder which is not publicly available; and
- (e) sell or claim rights to sell plants as herbal medicines or cosmetic products that were obtained as a result of the Traditional Knowledge Project.

5.3 **Sacred Sites.** In the event of and upon becoming aware of any Sacred Site within the Traditional Territory, the UBC will adhere to the following procedure:

- (a) not undertake any activities which could reasonably be expected to damage or interfere with the Sacred Site;
- (b) disclose the location of the Sacred Site to the Siska Band or a designated representative thereof,
- (c) treat all information with respect to the Sacred Site as confidential to the benefit of the interests of the Siska Band, and
- (d) seek the advice of the Siska Band regarding the Sacred Site.

5.4 The UBC will not, without the prior informed consent of the Siska Band, knowingly enter upon any Sacred Site.

6.0 RESPONSIBILITIES OF SISKA BAND

6.1 For the purposes set out in Clause 3 of this Protocol, the Siska Band will do the following:

- (a) instruct and supervise the Traditional Land Stewards, Siska Research coordinator, and Siska researchers in their gathering, analyzing and documentation of Traditional Knowledge;
- (b) provide the Traditional Knowledge as described by the Workplan;
- (c) use reasonable efforts to secure the cooperation and participation of the Traditional Knowledge-holders;

- (d) in a timely manner, bring information, matters or issues of concern forward for discussion and resolution in order to assist the UBC in the planning and development of the Traditional Knowledge Project;
- (e) provide advice and assistance to the UBC, as necessary, to enable it to fulfill its responsibilities under this Protocol;
- (f) on a regular basis or when requested by the UBC, provide an update of progress on the Traditional Knowledge Project to the UBC; and
- (g) take any reasonable action to ensure compliance with this subsection as agreed to by the UBC.

7.0 PRIOR INFORMED CONSENT

- 7.1 **Prior Informed Consent.** The UBC acknowledges that the prior informed consent of the Siska Band must be obtained before the Traditional Knowledge or any work associated with the Traditional Knowledge Project is transmitted from Traditional Knowledge-holders to the UBC. Ongoing consultation is necessary to maintain the prior informed consent throughout the Term of the Traditional Knowledge Project. This principle will be satisfied by meeting the obligations set out in Clause 8 herein.
- 7.2 **Siska Band's Responsibilities and Obligations to the Siska Band Members.** Pursuant to internal Siska Band protocols and for the purposes of the Traditional Knowledge Project, the Siska Band must seek, obtain and maintain the prior informed consent of the Siska Band members with respect to the protection, preservation and maintenance of Traditional Knowledge, which may include the recommendations of the Committee.
- 7.3 The Siska Band responsibilities and obligations to the Siska Band member with respect to the gathering, collection, integration and use of Traditional Knowledge are further elaborated in the Workplan.
- 7.4 **The UBC Responsibilities and Obligations to the Siska Band.** The UBC recognizes and respects that the Siska Band's Traditional Knowledge is collectively owned, managed and controlled by the Siska Band.
- 7.5 Unless authorized by the Siska Band, the UBC will not approach individual Traditional Knowledge-holders in an effort to obtain Traditional Knowledge.
- 7.6 When requested by the Siska Band, the UBC will explain the potential benefits and outcomes associated with the Traditional Knowledge Project to Siska Band members.
- 7.7 For clarity, the Parties acknowledge that ongoing consultation and provision of information will be required throughout the duration of the Traditional Knowledge Project to maintain prior informed consent.

7.8. For further clarity, the UBC acknowledges that the Siska Band may withdraw their prior informed consent in writing or by termination of this Protocol. All information and Traditional Knowledge documented prior to withdrawal of the Traditional Knowledge Project will be returned to the Siska Band and no information arising prior to withdrawal will be used in any way by UBC.

8.0 BENEFIT-SHARING

8.1 **Benefits to the Siska Band.** As agreed to by the Parties and for the purposes of the Traditional Knowledge Project, benefits relating to the Traditional Knowledge Project may include, but are not limited to, the following:

- (a) training of community members;
- (b) equipment;
- (c) production of procedure manuals;
- (d) video/audio recordings;
- (e) contribution to the Siska Band by cultural, commercial or community-based undertakings related to the Traditional Knowledge Project;
- (f) remuneration, including honoraria, as set out in the Workplan and
- (g) any other matters set out in the budget of the Workplan.

8.2 **Benefits to the UBC.** The benefit to the UBC includes, but is not limited to, the following:

- (a) Siska Band assistance and advice to the UBC for the purpose of original research education experience and scholarly contribution in the form of an interdisciplinary Research Thesis;
- (b) opportunities to establish positive engagement of the Siska Band; and
- (c) the authenticity and evidentiary value of the Traditional Knowledge contributions will be enhanced through Siska Band participation in the development of the Traditional Knowledge Project.

8.3 **Mutual Benefits to the Parties.** Mutual benefits to the Parties include, but are not limited to, the following:

- (a) protection and enhancement of the Siska Band's cultural pursuits and traditional activities;
- (b) protection of areas of traditional use and sites of cultural importance to the Siska Band;

- (c) preservation, access, control and regeneration of Traditional Knowledge;
and
- (d) furthering the development of positive, beneficial and harmonious relationships between the Parties.

9.0 CONFIDENTIALITY

- 9.1 The UBC acknowledges that the Siska Band has information concerning their Traditional Knowledge, including particular aspects of their culture, traditions, spiritual beliefs and customary laws that must be maintained and treated as confidential by the UBC. This principle will be satisfied by meeting the obligations set out in Clause 9 herein.
- 9.2 Unless otherwise agreed by the Parties, neither Party will disclose, divulge, or otherwise communicate to a third party any Confidential Information received from the other party as a result of this Traditional Knowledge Project nor use such Confidential Information for any purpose.
- 9.3 Where Traditional Knowledge that is confidential is required or requested by a third party, the Parties will make reasonable efforts to engage, negotiate and conclude an agreement with the third party that will safeguard that Traditional Knowledge from public disclosure.

10.0 OWNERSHIP

- 10.1 **Siska Band Exclusive Ownership of the Traditional Knowledge.** The Siska Band shall remain the exclusive copyright owner of the Traditional Knowledge. The UBC acknowledges and agrees that it has no interest whatsoever in the ownership of the Traditional Knowledge, including any intellectual property rights there under. The UBC hereby waives any intellectual property and/or any other rights that the UBC may have with respect to the Traditional Knowledge. If, notwithstanding the foregoing, rights to Traditional Knowledge are recognized by a third party as residing in the UBC, the UBC will take all reasonable efforts to waive or transfer all or any such rights to the benefit of the Siska Band.
- 10.2 **The UBC Use of Traditional Knowledge.** For the consideration provided under this Protocol, the UBC will be able to use the Traditional Knowledge for the purposes set out in the Traditional Knowledge Project and Workplan, subject to terms and conditions set out by the Committee. For clarity, the Parties do not intend that this use of the Traditional Knowledge includes any grant of ownership to the UBC.
- 10.3 The UBC shall retain ownership of the intellectual property contained in the Research Thesis, and shall retain the right to publish all or portions of the Research Thesis after a maximum of 12 months from termination of the project, or submission of the Project Report to Siska Band, whichever is later, according to UBC Policies. The Siska Band shall be given the opportunity to review the

Research Thesis, for any Confidential Information and Confidential Traditional Knowledge information, before publication of the Research Thesis by UBC.

11.0 PROCESS MATTERS

- 11.1 **Review of the Traditional Knowledge Documentation by the Committee.** Prior to the release of the Traditional Knowledge documentation to the UBC for the purpose of writing the Research Thesis, a draft report of the Traditional Knowledge documentation will be distributed to the Committee for its review and approval.
- 11.2 **The UBC Comments on the Traditional Knowledge Documentation.** The UBC shall have the opportunity to review and provide comment on the Traditional Knowledge documentation before it is finalized by the Siska Band for the use of Siska Band.
- 11.3 **Communications.** All external communications with respect to this Protocol or initiatives pursuant to this Protocol will be undertaken by joint communiqué, as authorized by the Parties.
- 11.4 **Communities Information Strategy.** The Parties, by their designated representatives, will collaborate in the development and implementation of a Siska Band community information strategy with respect to the Traditional Knowledge Project and any and all agreements, including the preparation of a summary thereof.

12.0 DISPUTE RESOLUTION

- 12.1 **Notice.** In the event that the Siska Band or the UBC finds a conflict with the fulfillment of the terms, conditions or responsibilities set forth in this Protocol, that Party shall give written notice to the other Party.
- 12.2 **Meeting.** The Parties shall convene a meeting within 15 days of receiving the notice and shall attempt to reach a mutually acceptable resolution within 7 days.
- 12.3 **Appointment of a Third Party.** If the Parties cannot resolve the dispute within 7 days they shall agree to designate a third party mediator to mediate the dispute.
- 12.4 **Resolution by Third Party.** The parties shall attempt to reach a resolution with the assistance of the third party mediator. If a resolution cannot be reached within 30 calendar days of the designation of the third party mediator, the third party shall provide recommendations on how to resolve the dispute.

13.0 TERM, EXPIRY, AMENDMENT AND ASSIGNMENT

- 13.1 The Parties agree that this Protocol is a document of a “living nature” and may be amended from time to time to continue to achieve the purposes of this Protocol or such other objectives as may be agreed upon by the Parties from time to time.

- 13.2 This Protocol and the Workplan may be amended by agreement of the Parties in writing.
- 13.3 Unless the Parties agree otherwise in writing, the term of this Protocol is indefinite. If the Parties do agree to terminate this Protocol, the specific conditions and covenants that survive termination must be specifically agreed. For clarity, section 9 – Confidentiality and section 10 – Ownership, will survive termination of this Protocol.
- 13.4 This Protocol may not be assigned without the express written consent of the other Party.

14.0 MISCELLANEOUS

- 14.1 **Implementation of this Protocol.** The UBC and the Siska Band acknowledge that a serious ongoing commitment by both Parties and the dedication of necessary resources to implement this Protocol will be required to meet its objectives in a timely and complete way.
- 14.2 **Non-Derogation.** Nothing in this Protocol does or will abrogate, derogate and/or prejudice any of the Siska Band’s Aboriginal rights, titles and interests in the Traditional Territory.
- 14.3 **Third Party Consultation.** Nothing in this Protocol does or will limit the Parties ability to participate in consultations, discussions and agreements with any third party.

14.4 The Parties agree that this Protocol may be executed in separate counterparts, each of which so executed shall be deemed to be an original. Such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the effective date set forth above.

TO EVIDENCE THEIR AGREEMENT each of the Parties has executed this Protocol on the date appearing above.

UBC

By: _____

Barbara M. Campbell

Title: **Associate Director**

**University-Industry Liaison
Office**

Date: **April, 21, 2006**

SISKA BAND

By: _____

Fred Sampson

Title: **Chief- Siska Indian Band**

Date: **April, 21, 2006**

By: _____

Betsy Munro

Title: **Councillor- Siska Indian Band**

Date: **April, 21, 2006**

By: _____

Angela Phillips

Title: **Councillor- Siska Indian Band**

Date: **April, 21, 2006**