

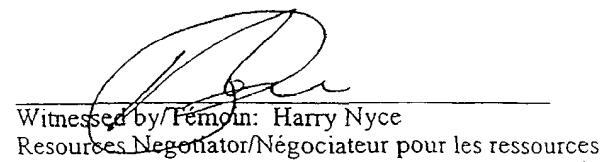
**NISGA'A  
FINAL AGREEMENT**

Signed by the Parties to the Nisga'a Final Agreement and dated for reference this 27<sup>th</sup> day of April, 1999.  
/Signé par les Parties à l'Accord définitif Nisga'a et ayant comme date de référence ce 27e jour d'Avril, 1999.

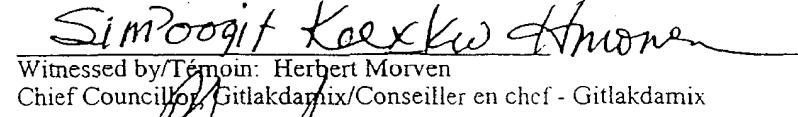
**FOR THE NISGA'A NATION/POUR LA NATION NISGA'A:** signed in the province of British Columbia, this 27<sup>th</sup> day of APRIL, 1999/signé dans la province de la Colombie-Britannique, ce 27<sup>e</sup> jour d'AVRIL, 1999.



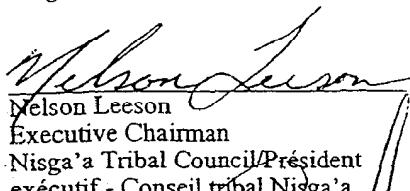
Dr. Joseph Gosnell Sr.  
President, Chief Negotiator  
Nisga'a Tribal Council/Président et  
négociateur en chef - Conseil tribal  
Nisga'a



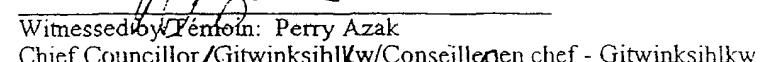
Witnessed by/Témoin: Harry Nyce  
Resources Negotiator/Négociateur pour les ressources



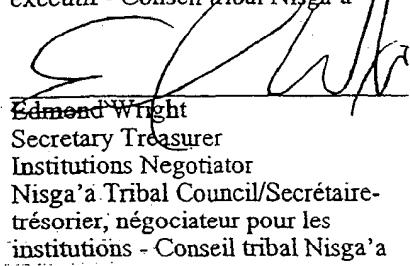
Witnessed by/Témoin: Herbert Morven  
Chief Councillor, Gitlakdamix/Conseiller en chef - Gitlakdamix



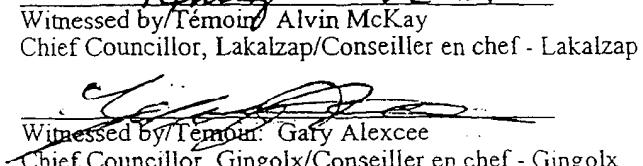
Nelson Leeson  
Executive Chairman  
Nisga'a Tribal Council/Président  
exécutif - Conseil tribal Nisga'a



Witnessed by/Témoin: Perry Azak  
Chief Councillor/Gitwinksihlkw/Conseiller en chef - Gitwinksihlkw



Edmond Wright  
Secretary Treasurer  
Institutions Negotiator  
Nisga'a Tribal Council/Secrétaire-  
trésorier, négociateur pour les  
institutions - Conseil tribal Nisga'a

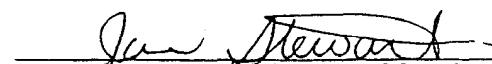


Witnessed by/Témoin: Alvin McKay  
Chief Councillor, Lakalzap/Conseiller en chef - Lakalzap

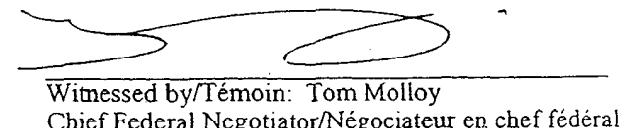


Witnessed by/Témoin: Gary Alexcee  
Chief Councillor, Gingolx/Conseiller en chef - Gingolx

**FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA/POUR SA MAJESTÉ LA REINE DU CHEF DU CANADA:** signed in the province of Ontario, this 4 day of May, 1999/signé dans la province de Ontario, ce 4 jour de Mai, 1999.



Jane Stewart  
Her Majesty the Queen in Right of Canada as represented by/Sa Majesté la Reine du chef du Canada représentée par  
The Honourable Jane Stewart, P.C., M.P., Minister of  
Indian Affairs and Northern Development/l'honorable  
Jane Stewart, C.P., députée Ministre des Affaires  
indiennes et du Nord canadien

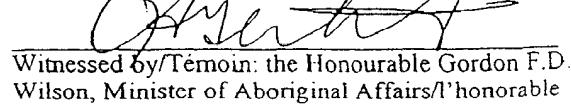


Tom Molloy  
Witnessed by/Témoin: Tom Molloy  
Chief Federal Negotiator/Négociateur en chef fédéral

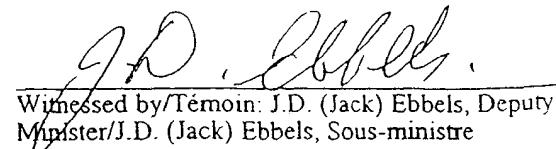
**FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA/POUR SA MAJESTÉ LA REINE DU CHEF DE LA COLOMBIE-BRITANNIQUE:** signed in the province of British Columbia, this 27<sup>th</sup> day of APRIL, 1999/signé dans la province de la Colombie-Britannique, ce 27<sup>e</sup> jour d'AVRIL, 1999.



Glen Clark  
Her Majesty the Queen in Right of British Columbia as represented by/Sa Majesté la Reine du chef de la Colombie-Britannique représentée par: the Honourable  
Glen Clark, Premier/l'honorable Glen Clark, Premier  
Ministre



Gordon F.D. Wilson  
Witnessed by/Témoin: the Honourable Gordon F.D.  
Wilson, Minister of Aboriginal Affairs/l'honorable  
Gordon F.D. Wilson, Ministre des Affaires  
autochtones



J.D. (Jack) Ebbels  
Witnessed by/Témoin: J.D. (Jack) Ebbels, Deputy  
Minister/J.D. (Jack) Ebbels, Sous-ministre

**TABLE OF CONTENTS**

<b>PREAMBLE .....</b>	<b>1</b>
-----------------------	----------

<b>CHAPTER 1 - DEFINITIONS .....</b>	<b>3</b>
--------------------------------------	----------

<b>CHAPTER 2 - GENERAL PROVISIONS .....</b>	<b>17</b>
---	-----------

Nature of Agreement .....	17
Agreement Is Binding .....	17
Representation and Warranty .....	17
Nisga'a Culture and Language .....	17
Constitution of Canada .....	17
Application of Federal and Provincial Laws .....	18
Other Rights, Benefits, and Programs .....	19
Judicial Determinations in Respect of Validity .....	19
Full and Final Settlement .....	20
Nisga'a Section 35 Rights .....	20
Modification .....	20
Release .....	21
Consultation .....	21
Provincial Law .....	21
Indemnities .....	21
Other Aboriginal People .....	22
Amendment Provisions .....	23
Freedom of Information and Privacy .....	24
Obligation to Negotiate .....	25
Conflict and Inconsistency .....	25
Entire Agreement .....	26
Interpretation .....	26
No Implied Waiver .....	27
Time of the Essence .....	27
Assignment .....	27
Enurement .....	27
Notice .....	27

<b>CHAPTER 3 - LANDS .....</b>	<b>31</b>
--------------------------------	-----------

Nisga'a Lands .....	31
Mineral Resources .....	34
Submerged Lands Within Nisga'a Lands .....	35
Interests on Nisga'a Lands .....	36
Site Remediation .....	39

---

Nisga'a Fee Simple Lands Outside Nisga'a Lands .....	39
Federal Acquisition of Interests in Nisga'a Lands and Nisga'a Fee Simple Lands .....	44
Initial Surveys .....	46
Commercial Recreation Tenure .....	46
Heritage Sites and Key Geographic Features .....	47
Parks and Ecological Reserve .....	47
Water Volumes .....	50
Schedule A - Boundary Resolution .....	55
Schedule B - List of Sites .....	56
Schedule C - Water Volumes .....	58
 <b>CHAPTER 4 - LAND TITLE .....</b> ..... 59	
Federal Title Legislation .....	59
Provincial Torrens System .....	59
Application for Indefeasible Title .....	60
Land Title Fees .....	60
Nisga'a Certificate .....	60
Registration of Indefeasible Title .....	61
Deprivation of Estate .....	61
Cancellation of Indefeasible Title .....	62
Application of Provincial Torrens System .....	63
 <b>CHAPTER 5 - FOREST RESOURCES .....</b> ..... 65	
Definitions .....	65
Ownership of Resources .....	66
Applicable Laws and Standards .....	66
Timber Harvesting .....	68
Forest Fires and Forest Health .....	74
Timber Processing .....	76
Economic Considerations .....	77
Forest Resources Outside Nisga'a Lands .....	77
 <b>CHAPTER 6 - ACCESS .....</b> ..... 79	
Nisga'a Public Lands .....	79
Navigable Waters .....	81
Crown Access to Nisga'a Lands .....	81
Nisga'a Access to Other Lands .....	82
Access to Fee Simple Properties .....	82

---

<b>CHAPTER 7 - ROADS AND RIGHTS OF WAY .....</b>	85
Rights of Way General .....	85
Nisga'a Highway .....	87
Secondary Provincial Roads .....	89
Crown Roads .....	92
Nisga'a Roads General .....	97
Private Roads .....	98
Utilities General .....	99
Schedule A - Nisga'a Highway Corridor .....	101
Schedule B - Gravel Materials Pits on Nisga'a Lands .....	102
<b>CHAPTER 8 - FISHERIES .....</b>	103
General .....	103
Salmon .....	104
Enhancement .....	107
Steelhead .....	108
Non-salmon Species and Aquatic Plants .....	110
Fisheries Management .....	112
Lisims Fisheries Conservation Trust .....	119
Participation in the General Commercial Fishery .....	121
Herring Roe-on-Kelp Study .....	122
International Arrangements .....	122
Processing Facilities .....	122
Schedule A - Nisga'a Fish Allocations for Salmon .....	123
Schedule B - Overages and Underages .....	125
Schedule C - System of Salmon Equivalencies .....	128
Schedule D - Determination of the Nisga'a Fish Allocation of Steelhead .....	129
Schedule E - Nisga'a Fish Allocations of Non-salmon Species or Aquatic Plants .....	130
Schedule F - Provisional Schedule of Lisims Fisheries Conservation Trust Settlement Amounts .....	131
Schedule G - Provisional Schedule of Funding under Paragraph 111 of the Fisheries Chapter .....	132
<b>CHAPTER 9 - WILDLIFE AND MIGRATORY BIRDS .....</b>	133
General .....	133
Nass Wildlife Area .....	135
Designated Species .....	135
Entitlements and Allocations .....	136
Wildlife Management .....	138
Trade, Barter, and Sale of Wildlife .....	145
Trapping .....	146
Guiding .....	147
Migratory Birds .....	148

---

Other .....	149
Schedule A - Nisga'a Wildlife Allocations of Designated Species .....	150
Schedule B - Unregistered Traplines Wholly or Partially on Nisga'a Lands on the Effective Date .....	151
Schedule C - Traplines Wholly Outside Nisga'a Lands Held by Nisga'a Citizens .....	152
Schedule D - Streams in Nisga'a Angling Guide Licence .....	153
 <b>CHAPTER 10 - ENVIRONMENTAL ASSESSMENT AND PROTECTION .....</b>	 155
Environmental Assessment .....	155
Environmental Protection .....	157
 <b>CHAPTER 11 - NISGA'A GOVERNMENT .....</b>	 159
Self-Government .....	159
Recognition of Nisga'a Lisims Government and Nisga'a Village Governments .....	159
Legal Status and Capacity .....	159
Nisga'a Constitution .....	160
Nisga'a Government Structure .....	162
Elections .....	162
Appeal and Review of Administrative Decisions .....	162
Register of Laws .....	163
Relations with Individuals Who Are Not Nisga'a Citizens .....	163
Transitional Provisions .....	164
Legislative Jurisdiction and Authority .....	165
Emergency Preparedness .....	180
Other Matters .....	180
Nisga'a Government Liability .....	181
Other Provinces and Territories .....	183
 <b>CHAPTER 12 - ADMINISTRATION OF JUSTICE .....</b>	 185
Police Services .....	185
Community Corrections Services .....	190
Nisga'a Court .....	191
Review .....	194
 <b>CHAPTER 13 - INDIAN ACT TRANSITION .....</b>	 195
General .....	195
Continuation of <i>Indian Act</i> By-laws .....	196
Status of Bands and Transfer of Band Assets .....	196
Nisga'a Tribal Council .....	197

---

---

<b>CHAPTER 14 - CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT</b>	199
Capital Transfer .....	199
Negotiation Loan Repayment .....	199
Schedule A - Provisional Schedule of Capital Transfer Amounts .....	200
Schedule B - Loan Repayment Amounts .....	204
Prepayments .....	204
<b>CHAPTER 15 - FISCAL RELATIONS</b> .....	209
Definitions .....	209
Interpretation .....	211
Fiscal Financing Agreements .....	212
Own Source Revenue Agreements .....	214
Own Source Revenue Administration .....	216
<b>CHAPTER 16 - TAXATION</b> .....	217
Direct Taxation .....	217
Other Taxation and Tax Administration Agreements .....	217
Section 87 Exemption .....	217
Remission Orders .....	218
Valuation Time .....	218
Nisga'a Lands .....	219
Nisga'a Capital .....	220
Taxation Agreement .....	221
<b>CHAPTER 17 - CULTURAL ARTIFACTS AND HERITAGE</b> .....	223
General .....	223
Return of Nisga'a Artifacts .....	224
Access to Other Collections .....	228
Protection of Heritage Sites .....	228
Other Nisga'a Artifacts .....	229
Human Remains .....	229
<b>CHAPTER 18 - LOCAL AND REGIONAL GOVERNMENT RELATIONSHIPS</b> .....	231
<b>CHAPTER 19 - DISPUTE RESOLUTION</b> .....	233
Definitions .....	233
General .....	233
Scope: When this Chapter Applies to a Disagreement .....	234
Disagreements to Go Through Stages .....	234
Stage One: Collaborative Negotiations .....	235

---

Stage Two: Facilitated Processes .....	236
Negotiating Conditions .....	236
Settlement Agreement .....	237
Stage Three: Adjudication - Arbitration .....	237
Effect of Arbitral Award .....	238
Application of Legislation .....	238
Stage Three: Adjudication - Judicial Proceedings .....	239
Notice to Parties .....	239
Costs .....	240
 <b>CHAPTER 20 - ELIGIBILITY AND ENROLMENT</b> .....	241
Eligibility Criteria .....	241
Other Land Claims Agreements .....	241
Applicants .....	242
Enrolment Committee .....	242
Application to Remove Applicants from Enrolment Register .....	244
Enrolment Appeal Board .....	244
Judicial Review .....	245
Funding .....	246
Dissolution of Enrolment Committee and Enrolment Appeal Committee .....	246
Nisga'a Nation Responsibilities for Enrolment .....	246
 <b>CHAPTER 21 - IMPLEMENTATION</b> .....	247
Implementation Committee .....	248
 <b>CHAPTER 22 - RATIFICATION</b> .....	249
General .....	249
Ratification by the Nisga'a Nation .....	249
Ratification by Canada .....	251
Ratification by British Columbia .....	252
Adoption of the Nisga'a Constitution .....	252

## PREAMBLE

**WHEREAS** the Nisga'a Nation has lived in the Nass Area since time immemorial;

**WHEREAS** the Nisga'a Nation is an aboriginal people of Canada;

**WHEREAS** section 35 of the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, which the Courts have stated include aboriginal title;

**WHEREAS** the Nisga'a Nation has never entered into a treaty with Canada or British Columbia;

**WHEREAS** the Nisga'a Nation has sought a just and equitable settlement of the land question since the arrival of the British Crown, including the preparation of the Nisga'a Petition to His Majesty's Privy Council, dated 21 May, 1913, and the conduct of the litigation that led to the decision of the Supreme Court of Canada in *Calder v. the Attorney-General of British Columbia* in 1973, and this Agreement is intended to be the just and equitable settlement of the land question;

**WHEREAS** Canadian courts have stated that the reconciliation between the prior presence of aboriginal peoples and the assertion of sovereignty by the Crown is best achieved through negotiation and agreement, rather than through litigation or conflict;

**WHEREAS** the Parties intend that this Agreement will result in this reconciliation and establish a new relationship among them;

**WHEREAS** this Agreement sets out Nisga'a section 35 rights inside and outside of the area that is identified in this Agreement as Nisga'a Lands;

**WHEREAS** the Parties acknowledge the ongoing importance to the Nisga'a Nation of the *Simgigat* and *Sigidimhaanak* (hereditary chiefs and matriarchs) continuing to tell their *Adaawak* (oral histories) relating to their *Ango'oskw* (family hunting, fishing, and gathering territories) in accordance with the *Ayuuk* (Nisga'a traditional laws and practices);

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**WHEREAS** the Parties intend their relationship to be based on a new approach to mutual recognition and sharing, and to achieve this mutual recognition and sharing by agreeing on rights, rather than by the extinguishment of rights; and

**WHEREAS** the Parties intend that this Agreement will provide certainty with respect to Nisga'a ownership and use of lands and resources, and the relationship of federal, provincial and Nisga'a laws, within the Nass Area;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

## CHAPTER 1 DEFINITIONS

In this Agreement:

**“adjusted total allowable catch”** means, for Nass sockeye or Nass pink salmon, the total return to Canadian waters less the Nisga'a fish allocation set out in Schedule A to the Fisheries Chapter, and less the escapement goal;

**“adopted child”** means an individual who, while a minor, was adopted by Nisga'a custom or under laws recognized in Canada;

**“aggregate right of way maximum”** means 2,800 hectares;

**“Agreement”** means this Agreement between the Nisga'a Nation, Canada, and British Columbia and all Schedules and Appendices to this Agreement;

**“annual management plan”** means a plan approved in accordance with the Wildlife and Migratory Birds Chapter;

**“aquatic plants”** means all marine and freshwater plants, including kelp, marine flowering plants, benthic and detached algae, brown algae, red algae, green algae, and phytoplankton;

**“associated records”** means records documenting Nisga'a culture including any correspondence, memorandum, book, plan, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, video tape, machine readable record, and any other documentary materials, regardless of the physical form or characteristics, and any copy of those records;

**“available flow”** means the volume of flow of water above that required:

- a. to ensure conservation of fish and stream habitats and to continue navigability as determined by the Minister in accordance with the provisions of this Agreement, and
- b. under water licences issued before March 22, 1996 and water licences issued under applications made before March 22, 1996;

**“*Ayuukh* Nisga'a”** and **“*Ayuuk*”** mean the traditional laws and practices of the Nisga'a Nation;

**“British Columbia”** means, unless the context otherwise requires, Her Majesty the Queen in right of British Columbia;

**“British Columbia right of way”** means:

- a. the Nisga'a Highway corridor, or

- b. any right of way on Nisga'a Lands granted by the Nisga'a Nation or a Nisga'a Village to:
- i. British Columbia, or
  - ii. a public utility

on the effective date under this Agreement, or after the effective date under paragraph 2 of the Roads and Rights of Way Chapter;

**"Canada"** means, unless the context otherwise requires, Her Majesty the Queen in right of Canada;

**"Category A Lands"** means the lands defined in paragraph 46 of the Lands Chapter;

**"Category B Lands"** means the lands defined in paragraph 61 of the Lands Chapter;

**"child"** means a person under the age of majority in British Columbia;

**"child and family service"** means a service that provides for:

- a. the protection of children, where the primary objective is the safety and well-being of children, having due regard for:
  - i. the protection from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention,
  - ii. the support of families and care givers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect, or harm, and
  - iii. the support of kinship ties and a child's attachment to the extended family, or
- b. the promotion of a well-functioning family and community life;

**"community correction service"** means:

- a. bail, probation, conditional sentences, conditional supervision, parole supervision, and other forms of conditional release of adult and young offenders,
- b. preparation of reports for courts, Crown counsel, and parole boards,
- c. supervision of diverted offenders and operation of diversion programs,
- d. monitoring under the Electronic Monitoring Program,
- e. development and supervision of alternative to custody programs for adult and young

- offenders,
- f. other similar services that may be delivered by British Columbia or Canada from time to time, or
  - g. Family Court counsellor functions described in an agreement under the Administration of Justice Chapter;

“consult” and “consultation” mean provision to a party of:

- a. notice of a matter to be decided, in sufficient detail to permit the party to prepare its views on the matter,
- b. in consultations between the Parties to this Agreement, if requested by a Party, sufficient information in respect of the matter to permit the Party to prepare its views on the matter,
- c. a reasonable period of time to permit the party to prepare its views on the matter,
- d. an opportunity for the party to present its views on the matter, and
- e. a full and fair consideration of any views on the matter so presented by the party;

“Crown” means Her Majesty the Queen in right of Canada, or Her Majesty the Queen in right of British Columbia, as the case may be;

“Crown roads” means the Nisga'a Highway and secondary provincial roads;

“descendant” includes a direct descendant notwithstanding any intervening adoption or any birth outside marriage;

“designated species” means:

- a. a species of wildlife for which the Minister has determined under the Wildlife and Migratory Birds Chapter that there should be a total allowable harvest in the Nass Wildlife Area, or
- b. an initial designated species

in the Nass Wildlife Area;

“directed harvest” means the catching and keeping of:

- a. a species of fish from a fishery in which a Nass Area stock of that species is a significant portion of the fish caught and kept, or

b. a Nass Area stock of a species of fish using live capture gear;

**“disagreement”** means any matter to which the Dispute Resolution Chapter applies as set out in paragraph 7 of that Chapter;

**“dispose”** means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and to agree to do any of those things;

**“domestic purposes”** means, in the Fisheries Chapter, and in the Wildlife and Migratory Birds Chapter, food, social, and ceremonial purposes;

**“effective date”** means the date upon which this Agreement takes effect;

**“eligible voter”** means an individual who:

- a. is eligible to vote under paragraph 6 of the Ratification Chapter, or
- b. who votes under paragraph 7 of the Ratification Chapter and whose vote is counted in accordance with paragraph 8 of that Chapter;

**“enhancement initiative”** means an initiative that is intended to result in an increase in fish stocks through:

- a. an artificial improvement to fish habitat, or
- b. the application of fish culture technology;

**“enrolled”** means entered in the enrolment register provided for in the Eligibility and Enrolment Chapter;

**“Enrolment Appeal Board”** means the board established under paragraph 19 of the Eligibility and Enrolment Chapter;

**“Enrolment Committee”** means the committee established under paragraph 8 of the Eligibility and Enrolment Chapter;

**“environmental assessment”** means the evaluation of impacts on the environment, and includes screening, study, and review;

**“escapement goal”** means the number of a species of Nass salmon that the Minister determines is necessary for spawning;

**“fair compensation”** means, in respect of land, compensation as that term is generally applied in respect of a taking by the Crown, and will be based on:

- a. fair market value of the land or interest that is expropriated or otherwise taken,
- b. the replacement value of any improvement on the land that is expropriated or otherwise taken,
- c. disturbance caused by the expropriation or taking, and
- d. in the case of Category A Lands, any particular cultural values;

“fish” means:

- a. fish, including anadromous fish,
- b. shellfish, crustaceans, and marine animals,
- c. the parts of fish, shellfish, crustaceans, and marine animals, and
- d. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals

but not “wildlife fish”;

“forest resources” means all timber and non-timber forest resources, including all biota, but does not include wildlife, migratory birds, water, or fish;

“geothermal resource” means the natural heat of the earth and all substances that derive an added value from it, including steam, water, and water vapour heated by the natural heat of the earth, and all substances dissolved in the steam, water, or water vapour obtained from a well, but does not include:

- a. water that has a temperature less than 80 degrees Centigrade at the point where it reaches the surface, or
- b. hydrocarbons;

“gravel management plan” means a written description of the development, use, and closure of a gravel materials pit, that contains information such as its location, size and extent, access roads, soil and gravel materials descriptions, topographical and geotechnical mapping, development plans, anticipated volumes of gravel materials extracted per time period, reporting, and reclamation;

“gravel materials” means gravel, rock, and random borrow materials used in highway construction;

“heritage sites” includes archaeological, burial, historical, and sacred sites;

“Hydro” means British Columbia Hydro and Power Authority and its successors and assigns;

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**"incidental harvest"** means the catching and keeping of a species of Nass Area fish, other than in a directed harvest;

**"initial designated species"** means a species designated under paragraph 15 of the Wildlife and Migratory Birds Chapter;

**"initial enrolment period"** means:

- a. for the purposes of the Enrolment Committee, from October 1, 1997 to September 30, 1999, and
- b. for the purposes of the Enrolment Appeal Board, from the effective date to the day before the second anniversary of the effective date;

**"intertidal bivalves"** means littleneck clams (*Protothaca staminea*), butter clams (*Saxidomus giganteas*), horse clams (*Tresus spp.*), cockles (*Clinocardium nuttallii*), mussels (*Mytilus edulis*), and manila clams (*Tapes philippinarum*);

**"intoxicants"** includes liquor;

**"Joint Fisheries Management Committee"** means the committee established under paragraph 77 of the Fisheries Chapter;

**"Joint Park Management Committee"** means the committee referred to in paragraph 106 of the Lands Chapter;

**"land claims agreement"** means:

- a. a land claims agreement in Canada within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, or
- b. a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982* that comes into effect in Canada after the effective date;

**"law"** includes federal, British Columbia, and Nisga'a legislation, acts, ordinances, regulations, orders in council, bylaws, and the common law, but, for greater certainty, does not include *Ayuukhl Nisga'a* or *Ayuuk*;

**"laws of general application"** includes federal and provincial laws that apply generally in British Columbia, but does not include federal laws in respect of Indians or lands reserved for the Indians;

**"liquor"** means:

- a. fermented, spirituous and malt liquors,

- b. combinations of liquors, and
- c. drinks and drinkable liquids that are intoxicating

and liquor that contains more than 1% alcohol by volume will be conclusively deemed to be intoxicating, and "liquor" includes beer, or a substance which, by being dissolved or diluted, is capable of being made a drinkable liquid that is intoxicating and which substance is declared by order of the Lieutenant Governor in Council to be liquor;

"*Lisims*" means the Nass River;

"migratory birds" has the meaning set out in any federal legislation that is enacted further to international conventions and that is binding on British Columbia, and includes the eggs of migratory birds;

"mineral resources" includes minerals and geothermal resources;

"minerals" means ores of metal and all natural substances that can be mined, and includes:

- a. rock or other materials from mine tailings, dumps, and previously mined deposits of minerals,
- b. coal, petroleum, gas, earth, soil, peat, marl, sand, gravel, rock, stone, limestone, dolomite, marble, shale, clay, volcanic ash, and diatomaceous earth, and
- c. all precious and base minerals;

"Minister" means, in relation to any matter, the Minister or Ministers of Her Majesty the Queen in right of Canada or in right of British Columbia, as the case may be, having the responsibility, from time to time, for the exercise of powers in relation to the matter in question;

"minor" means an individual under the age of majority in that person's place of residence;

"Nass Area" means:

- a. the entire Nass watershed,
- b. all Canadian watersheds and water bodies that drain into portions of Portland Inlet, Observatory Inlet, or Portland Canal, as defined in subparagraph (c), and
- c. all marine waters in Pearse Canal, Portland Inlet, Observatory Inlet, and Portland Canal northeast of a line commencing at the Canadian border, midway between Pearse Island and Wales Island, and proceeding along Wales Passage southeasterly to Portland Inlet, then northeasterly to the midpoint between Start Point and Trefusis Point, then south to Gadu Point

as set out approximately in Appendix I;

**"Nass salmon"** means chinook, chum, coho, sockeye, and pink salmon originating in the Nass Area;

**"Nass steelhead"** means summer-run Nass steelhead and winter-run Nass steelhead originating in the Nass Area;

**"Nass Wildlife Area"** means the area described in Appendix J;

**"natural boundary"** means the visible high water mark of any lake, river, stream, or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

**"neutral"** means a person appointed to assist the Parties to resolve a disagreement and, except in paragraph 24 of the Dispute Resolution Chapter and Appendix M-4, includes an arbitrator;

**"neutral appointing authority"** means the British Columbia International Commercial Arbitration Centre or, if the Centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties;

**"Nisga'a annual fishing plan"** means a plan, or an in-season adjustment to a plan, approved in accordance with the Fisheries Chapter;

**"Nisga'a artifact"** means any object created by, traded to, commissioned by, or given as a gift to a Nisga'a person or Nisga'a community, or that originated from a Nisga'a community or Nisga'a heritage site and that has past and ongoing importance to Nisga'a culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to another aboriginal people;

**"Nisga'a Certificate"** means a certificate of Nisga'a Lisims Government described in subparagraph 7(b) of the Land Title Chapter;

**"Nisga'a child"** means a minor who is or is eligible to become a Nisga'a citizen;

**"Nisga'a citizen"** means a citizen of the Nisga'a Nation as determined by Nisga'a law;

**"Nisga'a Constitution"** means the constitution of the Nisga'a Nation adopted in accordance with the Nisga'a Government Chapter;

**"Nisga'a Corporation"** means a corporation that is incorporated under federal or provincial law, all of the shares of which are owned legally and beneficially by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, a Nisga'a Corporation Intermediary, or any combination of those entities;

**"Nisga'a Corporation Intermediary"** means a corporation that is incorporated under federal or provincial law, all of the shares of which are owned legally and beneficially by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, another Nisga'a Corporation Intermediary, or any combination of those entities;

**"Nisga'a Court"** means a court established under the Administration of Justice Chapter;

**"Nisga'a Fee Simple Lands"** means Category A Lands and Category B Lands;

**"Nisga'a fish allocation"** means a Nisga'a fish entitlement under this Agreement, or a right to harvest fish under the Harvest Agreement referred to in the Fisheries Chapter, for which there is:

- a. a defined harvest quantity or quota,
- b. a formula defining a harvest quantity or quota, or
- c. a defined harvest area other than the entire Nass Area;

**"Nisga'a fish entitlement"** means a right to harvest fish or aquatic plants under this Agreement, but does not include the right to harvest fish under the Harvest Agreement referred to in the Fisheries Chapter, or under federal or provincial laws of general application;

**"Nisga'a fisheries"** means:

- a. fisheries to harvest fish under Nisga'a fish entitlements under this Agreement,
- b. fisheries to harvest Nass salmon under Nisga'a fish allocations under the Harvest Agreement, and
- c. harvests of aquatic plants under Nisga'a fish entitlements under this Agreement;

**"Nisga'a Government"** means Nisga'a Lisims Government and Nisga'a Village Governments;

**"Nisga'a Highway"** means the following:

- a. the British Columbia highway existing on the effective date connecting Highway 16, New Aiyansh, Nass Camp, Gitwinksihlkw, and Laxgalt'sap, and
- b. the portion of the route for the proposed highway from Nass Camp to Highway 37 that is within Nisga'a Lands, and the route for the proposed highway from Laxgalt'sap to Gingolx;

**"Nisga'a Highway corridor"** means the area of land on which the Nisga'a Highway is located, as determined under paragraphs 9 and 10 of the Roads and Rights of Way Chapter and as described in Schedule A of the Roads and Rights of Way Chapter;

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**"Nisga'a Institution"** means:

- a. Nisga'a Lisims Government,
- b. a Nisga'a Village Government, or
- c. a Nisga'a Public Institution;

**"Nisga'a Lands"** means those lands identified in paragraphs 1 and 2 of the Lands Chapter and includes additions under paragraphs 9 or 11 of the Lands Chapter;

**"Nisga'a laws"** includes the Nisga'a Constitution;

**"Nisga'a Lisims Government"** means the government of the Nisga'a Nation described in the Nisga'a Constitution;

**"Nisga'a Nation"** means the collectivity of those aboriginal people who share the language, culture, and laws of the Nisga'a Indians of the Nass Area, and their descendants;

**"Nisga'a participant"** means an individual who is enrolled;

**"Nisga'a Police Board"** means a board established under the Administration of Justice Chapter;

**"Nisga'a Police Service"** means a police service established under the Administration of Justice Chapter;

**"Nisga'a Private Lands"** means Nisga'a Lands that are designated as Nisga'a Private Lands by Nisga'a Lisims Government;

**"Nisga'a Public Institution"** means a Nisga'a Government body, board, commission, or tribunal established under Nisga'a law, such as a school board, health board, or police board, but does not include the Nisga'a Court referred to in the Administration of Justice Chapter;

**"Nisga'a Public Lands"** means Nisga'a Lands other than Nisga'a Village Lands or Nisga'a Private Lands;

**"Nisga'a public officer"** means:

- a. a member, commissioner, director, or trustee of a Nisga'a Public Institution,
- b. a director of a Nisga'a Corporation, the documents of incorporation of which have been approved by the Inspector of Municipalities for British Columbia,
- c. an officer or employee of the Nisga'a Nation, a Nisga'a Village, a Nisga'a Institution, or a Nisga'a Corporation, the documents of incorporation of which have been approved by the Inspector of Municipalities for British Columbia,

- d. an election official within the meaning of a Nisga'a law, or
- e. a volunteer who participates in the delivery of services by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Institution, or a body referred to in subparagraph (b) or (c), under the supervision of an officer or employee of the Nisga'a Nation, a Nisga'a Village, a Nisga'a Institution, or a body referred to in subparagraph (b) or (c);

"Nisga'a road" means a road on Nisga'a Lands that is not a provincial secondary road or a private road;

"Nisga'a section 35 rights" means the rights, anywhere in Canada, of the Nisga'a Nation, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"Nisga'a tribe" means the *Laxsgiik* (Eagle), *Laxgibuu* (Wolf), the *Gisk'aast* (Killerwhale), or the *Ganada* (Raven) tribe of the Nisga'a Nation;

"Nisga'a Urban Locals" means the entities established for the purpose of participation in Nisga'a Lisims Government by Nisga'a citizens residing outside of the Nass Area;

"Nisga'a Village" means:

- a. the village of New Aiyansh, Gitwinksihlkw, Laxgalt'sap, or Gingolx, or
- b. any additional village on Nisga'a Lands, established in accordance with the Nisga'a Constitution and this Agreement;

"Nisga'a Village Government" means the government of a Nisga'a Village;

"Nisga'a Village Lands" means Nisga'a Lands that are designated as Nisga'a Village Lands of a particular Nisga'a Village by Nisga'a Lisims Government;

"Nisga'a wildlife allocation" means a Nisga'a wildlife entitlement to a defined share of the total allowable harvest of a designated species;

"Nisga'a wildlife entitlement" means a right to harvest wildlife or migratory birds under this Agreement, but does not include a right to harvest wildlife or migratory birds under federal or provincial laws of general application;

"non-salmon species" means a species of fish in the Nass Area other than Nass salmon and Nass steelhead;

"overage" means the amount calculated in accordance with Schedule B of the Fisheries Chapter in any year in which the Nisga'a harvest of a species exceeds the amount of that species that the Nisga'a Nation is entitled to harvest in Nisga'a fisheries in that year;

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**"overharvest"** means the amount in any year by which, as a result of harvesting in Canadian fisheries, the escapement goal exceeds the actual escapement for a species of Nass salmon;

**"participating Party"** means a Party that:

- a. is required or agrees to participate in, or
- b. initiates

a process described in the Dispute Resolution Chapter to resolve a disagreement;

**"Party"** means a party to this Agreement;

**"private road"** means a road on a private right of way area on Nisga'a Lands;

**"project"** means any undertaking or proposed undertaking in relation to a physical work or activity;

**"provincial Torrens system"** means the *Land Title Act* and all other laws of British Columbia in respect of the registration of title to, rights in, claims against, and estates and interests in, land, whether legal or equitable;

**"public utility"** has the meaning as set out in the *Utilities Commission Act*, and includes Hydro, BC TEL, and a water, sewage, or petroleum distribution utility;

**"Ratification Committee"** means the committee established under the Ratification Chapter;

**"Regional District of Kitimat-Stikine"** means the Regional District of Kitimat-Stikine as it exists on the effective date, and any successor regional government;

**"Registrar"** means "Registrar" as defined in the *Land Title Act*;

**"right of way area"** means a defined portion of Nisga'a Lands on which a grant is given by the Nisga'a Nation or a Nisga'a Village for a specified use, including use for a public or private road, or a public utility;

**"road"** means the surface area of lands constructed and used for vehicular passage, and includes surfacing, bridges, drainage and support works, traffic control structures, and other works required to maintain the integrity of the travelled surface;

**"secondary provincial road"** means a road existing on the effective date located on a right of way area granted by the Nisga'a Nation or a Nisga'a Village to British Columbia as described in Appendix C-1, subject to changes permitted under this Agreement;

**"settlement legislation"** means the Acts of Parliament and the Acts of the Legislature of British Columbia that give effect to this Agreement;

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**"Simgigat and Sigidimhaanak"** means individuals who are Nisga'a chiefs, and Nisga'a matriarchs, respectively, in accordance with *Ayuukhl Nisga'a*;

**"stream"** includes a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, spring, ravine, swamp, and gulch;

**"submerged lands"** means lands below the natural boundary;

**"summer-run Nass steelhead"** means:

- a. those Nass steelhead within the Nass River that migrate from marine environments to fresh water environments between June 1 and October 31 in any year, and
- b. all Nass steelhead within watersheds draining into the Nass River upstream of the confluence of the Tseax River and the Nass River;

**"surplus"** means the amount, in any year, of a species of Nass salmon that exceeds the physical incubation and rearing capacity of a natural area, or an enhancement facility, for that species, and that has not been harvested in Nisga'a fisheries or other aboriginal, commercial, or recreational fisheries;

**"survey plan"** means a plan based on a survey, made by a British Columbia Land Surveyor, that complies with the regulations in respect of surveys and plans made by the Surveyor General of British Columbia;

**"total allowable harvest"** means the maximum number of a designated species, as determined by the Minister, that may be harvested in the Nass Wildlife Area in each year, commencing on April 1 and ending on March 31;

**"underage"** means the amount calculated in accordance with Schedule B of the Fisheries Chapter in any year in which the amount of a species that the Nisga'a Nation is entitled to harvest in that year in Nisga'a fisheries exceeds the Nisga'a harvest of that species;

**"voting officer"** means an individual who has been authorized by the Ratification Committee to issue ballots for the referendum at a place of voting;

**"wildlife"** means:

- a. all vertebrate and invertebrate animals, including mammals, birds, wildlife fish, reptiles, and amphibians, and
- b. the eggs, juvenile stages, and adult stages of all vertebrate and invertebrate animals but does not include "fish" or "migratory birds";

**"Wildlife Committee"** means the committee established under paragraph 45 of the Wildlife and Migratory Birds Chapter;

**"wildlife fish"** means:

- a. lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters,
- b. the parts of lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters, and
- c. the eggs, sperm, spawn, larvae, spat, juvenile stages, and adult stages of lampreys, crustaceans, mollusks, and non-anadromous fish, from or in non-tidal waters;

**"winter-run Nass steelhead"** means:

- a. those Nass steelhead within the Nass River that migrate from marine environments to fresh water environments between November 1 in any year, and May 31 in the next year,
- b. all Nass steelhead within watersheds draining into the Nass River downstream of the confluence of the Tseax River and the Nass River, including the Tseax River watershed, and
- c. all Nass steelhead within watersheds draining into the Nass Area, other than the Nass River watershed and watersheds draining into the Nass River; and

**"year"** means a calendar year unless otherwise provided, or unless the Parties otherwise agree.

## CHAPTER 2 GENERAL PROVISIONS

### NATURE OF AGREEMENT

1. This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

### AGREEMENT IS BINDING

2. This Agreement is binding on the Parties.
3. The Parties are entitled to rely on this Agreement.
4. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that settlement legislation provide that this Agreement is binding on, and can be relied on by, all persons.

### REPRESENTATION AND WARRANTY

5. The Nisga'a Nation represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, it has the authority to enter, and it enters, into this Agreement on behalf of all persons who have any aboriginal rights, including aboriginal title, in Canada, or any claims to those rights, based on their identity as Nisga'a.
6. Canada and British Columbia represent and warrant to the Nisga'a Nation that, in respect of the matters dealt with in this Agreement, they have the authority to enter into this Agreement within their respective authorities.

### NISGA'A CULTURE AND LANGUAGE

7. Nisga'a citizens have the right to practice the Nisga'a culture, and to use the Nisga'a language, in a manner consistent with this Agreement.

### CONSTITUTION OF CANADA

8. This Agreement does not alter the Constitution of Canada, including:
  - a. the distribution of powers between Canada and British Columbia;

- b. the identity of the Nisga'a Nation as an aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.
9. The *Canadian Charter of Rights and Freedoms* applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in this Agreement.
10. There are no "lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for the Nisga'a Nation, and there are no "reserves" as defined in the *Indian Act* for the use and benefit of a Nisga'a Village, or an Indian band referred to in the *Indian Act* Transition Chapter, and, for greater certainty, Nisga'a Lands and Nisga'a Fee Simple Lands are not "lands reserved for the Indians" within the meaning of the *Constitution Act, 1867*, and are not "reserves" as defined in the *Indian Act*.

#### **APPLICATION OF FEDERAL AND PROVINCIAL LAWS**

11. If an authority of British Columbia referred to in this Agreement is delegated from Canada and:
- a. the delegation of that authority is revoked; or
  - b. if a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that the delegation of that authority is invalid
- the reference to British Columbia will be deemed to be a reference to Canada.
12. If an authority of Canada referred to in this Agreement is delegated from British Columbia and:
- a. the delegation of that authority is revoked; or
  - b. if a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that the delegation of that authority is invalid
- the reference to Canada will be deemed to be a reference to British Columbia.
13. Federal and provincial laws apply to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, Nisga'a citizens, Nisga'a Lands, and Nisga'a Fee Simple Lands, but:
- a. in the event of an inconsistency or conflict between this Agreement and the provisions of any federal or provincial law, this Agreement will prevail to the extent of

- the inconsistency or conflict; and
- b. in the event of an inconsistency or conflict between settlement legislation and the provisions of any other federal or provincial law, the settlement legislation will prevail to the extent of the inconsistency or conflict.
14. Any licence, permit, or other authorization, including the Commercial Recreation Tenure required to be issued by Canada or British Columbia as a result of this Agreement, will be issued under federal or provincial law, as the case may be, and is not part of this Agreement, but in the event of an inconsistency or conflict between this Agreement and:
- a. that federal or provincial law; or
- b. any term or condition of the licence, permit, or other authorization
- this Agreement will prevail to the extent of the inconsistency or conflict.

#### **OTHER RIGHTS, BENEFITS, AND PROGRAMS**

15. Nisga'a citizens who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits of other Canadian citizens or permanent residents of Canada, applicable to them from time to time.
16. Subject to paragraph 6 of the Fiscal Relations Chapter, nothing in this Agreement affects the ability of the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations or Nisga'a citizens to participate in, or benefit from, federal or provincial programs for aboriginal people, registered Indians or other Indians, in accordance with general criteria established for those programs from time to time.
17. Nothing in this Agreement affects the ability of the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
18. Subject to the *Indian Act* Transition Chapter and paragraphs 5 and 6 of the Taxation Chapter, the *Indian Act* has no application to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, or Nisga'a citizens as of the effective date, except for the purpose of determining whether an individual is an "Indian".

#### **JUDICIAL DETERMINATIONS IN RESPECT OF VALIDITY**

19. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines any provision of this Agreement to be invalid or unenforceable:

- a. the Parties will make best efforts to amend this Agreement to remedy or replace the provision; and
  - b. the provision will be severable from this Agreement to the extent of the invalidity or unenforceability, and the remainder of this Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.
20. No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.
21. A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

### **FULL AND FINAL SETTLEMENT**

22. This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

### **NISGA'A SECTION 35 RIGHTS**

23. This Agreement exhaustively sets out Nisga'a section 35 rights, the geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed, and those rights are:
- a. the aboriginal rights, including aboriginal title, as modified by this Agreement, in Canada of the Nisga'a Nation and its people in and to Nisga'a Lands and other lands and resources in Canada;
  - b. the jurisdictions, authorities, and rights of Nisga'a Government; and
  - c. the other Nisga'a section 35 rights.

### **MODIFICATION**

24. Notwithstanding the common law, as a result of this Agreement and the settlement legislation, the aboriginal rights, including the aboriginal title, of the Nisga'a Nation, as they existed anywhere in Canada before the effective date, including their attributes and geographic extent, are modified, and continue as modified, as set out in this Agreement.
25. For greater certainty, the aboriginal title of the Nisga'a Nation anywhere that it existed in Canada before the effective date is modified and continues as the estates in fee simple to those areas identified in this Agreement as Nisga'a Lands or Nisga'a Fee Simple Lands.
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**RELEASE**

26. If, despite this Agreement and the settlement legislation, the Nisga'a Nation has an aboriginal right, including aboriginal title, in Canada, that is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement, the Nisga'a Nation releases that aboriginal right to Canada to the extent that the aboriginal right is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement.
27. The Nisga'a Nation releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, and whether known or unknown, that the Nisga'a Nation ever had, now has or may have in the future, relating to or arising from any act, or omission, before the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

**CONSULTATION**

28. When Canada and British Columbia have consulted with or provided information to the Nisga'a Nation in respect of any activity, including a resource development or extraction activity, in accordance with their obligations under this Agreement and federal and provincial legislation, Canada and British Columbia will not have any additional obligations under this Agreement to consult with or provide information to the Nisga'a Nation in respect of that activity.

**PROVINCIAL LAW**

29. Canada will recommend to Parliament that federal settlement legislation include a provision that, to the extent that a law of British Columbia does not apply of its own force to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens, that law of British Columbia will, subject to the federal settlement legislation and any other Act of Parliament, apply in accordance with this Agreement to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens, as the case may be.

**INDEMNITIES**

30. The Nisga'a Nation will indemnify and save harmless Canada or British Columbia, as the case may be, from any:
  - a. costs, excluding fees and disbursements of solicitors and other professional advisors;
  - b. damages;

- c. losses; or
- d. liabilities

that Canada or British Columbia, respectively, may suffer or incur in connection with, or as a result of, any claims, demands, actions, or proceedings relating to, or arising out of, any act, or omission, before the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

31. The Nisga'a Nation will indemnify and save harmless Canada or British Columbia, as the case may be, from any:

- a. costs, excluding fees and disbursements of solicitors and other professional advisors;
- b. damages;
- c. losses; or
- d. liabilities

that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any claims, demands, actions, or proceedings relating to, or arising out of, the existence of an aboriginal right, including aboriginal title, in Canada of the Nisga'a Nation, that is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement.

32. A Party who is the subject of a claim, demand, action, or proceeding that may give rise to a requirement to provide payment to that Party pursuant to an indemnity under this Agreement:

- a. will vigorously defend the claim, demand, action, or proceeding; and
- b. will not settle or compromise the claim, demand, action, or proceeding except with the consent of the Party who has granted that indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

## OTHER ABORIGINAL PEOPLE

- 33. Nothing in this Agreement affects, recognizes, or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than the Nisga'a Nation.
- 34. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that any aboriginal people, other than the Nisga'a Nation, has rights under section 35 of the *Constitution Act, 1982* that are adversely affected by a provision

of this Agreement:

- a. the provision will operate and have effect to the extent that it does not adversely affect those rights; and
  - b. if the provision cannot operate and have effect in a way that it does not adversely affect those rights, the Parties will make best efforts to amend this Agreement to remedy or replace the provision.
35. If Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with another aboriginal people, and that treaty or land claims agreement adversely affects Nisga'a section 35 rights as set out in this Agreement:
- a. Canada or British Columbia, or both, as the case may be, will provide the Nisga'a Nation with additional or replacement rights or other appropriate remedies;
  - b. at the request of the Nisga'a Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies; and
  - c. if the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies, the provision of those additional or replacement rights or remedies will be determined in accordance with Stage Three of the Dispute Resolution Chapter.

## AMENDMENT PROVISIONS

36. Except for any provision of this Agreement that provides that an amendment requires the consent of only the Nisga'a Nation and either Canada or British Columbia, all amendments to this Agreement require the consent of all three Parties.
  37. Canada will give consent to an amendment to this Agreement by order of the Governor in Council.
  38. British Columbia will give consent to an amendment to this Agreement by resolution of the Legislature of British Columbia.
  39. If federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.
  40. The Nisga'a Nation will give consent to an amendment to this Agreement by a resolution adopted by at least two thirds of the elected members of Nisga'a Lisims Government.
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41. An amendment to this Agreement takes effect on a date agreed to by the parties to the amendment, but if no date is agreed to, on the date that the last Party required to consent to the amendment gives its consent.
42. Notwithstanding paragraphs 37 to 41, if the Nisga'a Nation adds land to Nisga'a Lands in accordance with paragraph 9 or 11 of the Lands Chapter, Appendix A will be deemed to be amended upon receipt by Canada and British Columbia of the written notice referred to in paragraph 9 or 11 of the Lands Chapter.
43. Notwithstanding paragraphs 37 to 41, whenever:
  - a. this Agreement provides:
    - i. that the Nisga'a Nation and Canada or British Columbia will negotiate and attempt to reach agreement in respect of a matter that will result in an amendment to this Agreement, including a change to an Appendix, and
    - ii. that if agreement is not reached, the matter will be finally determined by arbitration under the Dispute Resolution Chapter; and
  - b. those Parties have negotiated an agreement or the matter is determined by arbitration this Agreement will be deemed to be amended on the date the agreement or arbitrator's decision takes effect, as the case may be.

## FREEDOM OF INFORMATION AND PRIVACY

44. For the purposes of federal and provincial access to information and privacy legislation, information that Nisga'a Government provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
45. If Nisga'a Government requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province for disclosure of that information, but Canada and British Columbia are not required to disclose to Nisga'a Government information that is only available to a particular province or particular provinces.
46. The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure, and confidentiality of personal, general, or other information.
47. Canada or British Columbia may provide information to Nisga'a Government in confidence if Nisga'a Lisims Government has made a law or has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information

will be protected.

48. Notwithstanding any other provision of this Agreement:

- a. Canada and British Columbia are not required to disclose any information that they are required to withhold under any federal or provincial law;
- b. if federal or provincial legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied; and
- c. the Parties are not required to disclose any information that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act*.

## OBLIGATION TO NEGOTIATE

49. Whenever the Parties are obliged under any provision of this Agreement to negotiate and attempt to reach agreement, unless the Parties otherwise agree, all Parties will participate in the negotiations.

50. Whenever this Agreement provides that the Parties, or any of them, "will negotiate and attempt to reach agreement", those negotiations will be conducted as set out in the Dispute Resolution Chapter, but, the Parties or any of them, are not obliged to proceed to Stage Three of the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28 of the Dispute Resolution Chapter.

51. Except as set out in this Agreement, an agreement that is reached as a result of negotiations that are required or permitted under any paragraph of this Agreement is not part of this Agreement.

## CONFLICT AND INCONSISTENCY

52. In this Agreement:

- a. there is a conflict between laws if compliance with one law would be a breach of the other law; and
- b. laws are not inconsistent merely because they make provision for the same subject matter.

53. If a Nisga'a law has an incidental impact on a subject matter in respect of which Nisga'a Government does not have jurisdiction to make laws, and there is an inconsistency or conflict between that incidental impact and a federal or provincial law in respect of that subject

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matter, the federal or provincial law prevails to the extent of the inconsistency or conflict.

## ENTIRE AGREEMENT

54. This Agreement is the entire agreement among the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right, or obligation affecting this Agreement.
55. The Schedules and Appendices to this Agreement form part of this Agreement.

## INTERPRETATION

56. Except as set out in this Agreement, in the event of an inconsistency or conflict between a provision of this Chapter and any other provision of this Agreement, the provision of this Chapter prevails to the extent of the inconsistency or conflict.
57. There is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.
58. In this Agreement:
  - a. the use of the word "will" denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the effective date or the event that gives rise to the obligation;
  - b. unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
  - c. unless it is otherwise clear from the context, a reference to a "Chapter", "paragraph", " subparagraph", "Schedule", or "Appendix" means a chapter, paragraph, subparagraph, schedule, or appendix, respectively, of this Agreement;
  - d. unless it is otherwise clear from the context, a reference in a chapter of this Agreement to a "paragraph", "subparagraph", or "Schedule" means a paragraph, subparagraph, or schedule of that chapter;
  - e. headings and subheadings are for convenience only, do not form a part of this Agreement, and in no way define, limit, alter, or enlarge the scope or meaning of any provision of this Agreement;
  - f. a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for, or in replacement of, it;

- g. unless it is otherwise clear from the context, "provincial" refers to the province of British Columbia; and
- h. unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

### NO IMPLIED WAIVER

- 59. A provision of this Agreement, or the performance by a Party of an obligation under this Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
- 60. No written waiver of a provision of this Agreement, of performance by a Party of an obligation under this Agreement, or of default by a Party of an obligation under this Agreement, will be a waiver of any other provision, obligation, or subsequent default.

### TIME OF THE ESSENCE

- 61. Time is of the essence in this Agreement.

### ASSIGNMENT

- 62. Unless otherwise agreed to by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party.

### ENUREMENT

- 63. This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

### NOTICE

- 64. In paragraphs 65 to 68, "communication" includes a notice, document, request, approval, authorization, or consent.
- 65. Unless otherwise set out in this Agreement, a communication between or among the Parties under this Agreement must be:
  - a. delivered personally or by courier;
  - b. transmitted by fax; or

- c. mailed by prepaid registered post in Canada.
66. A communication will be considered to have been given, made, or delivered, and received:
- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
  - b. if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
  - c. if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
67. In addition to the provisions of paragraphs 65 and 66, the Parties may agree to give, make, or deliver a communication by means other than those provided in paragraph 65.
68. The Parties will provide to each other addresses for delivery of communications under this Agreement, and subject to paragraph 69, will deliver a communication to the address provided by each other Party.
69. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address, or transmitted to the fax number, of the intended recipient as set out below:

**For:** **Canada**  
**Attention:** Minister of Indian Affairs and Northern Development  
House of Commons  
Room 583, Confederation Building  
Ottawa, Ottawa  
K1A 0A6  
**Fax Number:** (819) 953-4941

**For:** **British Columbia**  
**Attention:** Minister of Aboriginal Affairs  
Room 325, Parliament Buildings  
Victoria, British Columbia  
V8V 1X4  
**Fax Number:** (250) 356-1124

For: **Nisga'a Nation**  
Attention: President  
P.O. Box 231  
New Aiyansh, British Columbia  
V0J 1A0  
Fax Number: (250) 633-2367

70. A Party may change its address or fax number by giving a notice of the change to the other Parties.

## CHAPTER 3 LANDS

### NISGA'A LANDS

#### General

1. On the effective date, Nisga'a Lands consist of all lands, including islands, within the boundaries set out in Appendix A except submerged lands, the Gingietl Creek Ecological Reserve, the Nisga'a Highway corridor, and the lands within the boundaries set out in Appendix B:
  - a. Appendix B-1 - land in the vicinity of Red Bluff that has been set apart as Indian Reserve No. 88;
  - b. Appendix B-2 - land in respect of which British Columbia has granted an estate in fee simple;
  - c. Appendix B-3 - land in respect of which British Columbia has granted an agriculture lease or woodlot licence; and
  - d. Appendix B-4 - roads associated with the land referred to in Appendix B-2.
2. On the effective date, Nisga'a Lands comprise 1,992 square kilometres, more or less, of land in the lower Nass Valley, consisting of:
  - a. 1,930 square kilometres, more or less; and
  - b. 62 square kilometres, more or less, of lands identified as former Nisga'a Indian reserves in Appendix A-4, and which cease to be Indian reserves on the effective date.

#### Ownership of Nisga'a Lands

3. On the effective date, the Nisga'a Nation owns Nisga'a Lands in fee simple, being the largest estate known in law. This estate is not subject to any condition, proviso, restriction, exception, or reservation set out in the *Land Act*, or any comparable limitation under any federal or provincial law. No estate or interest in Nisga'a Lands can be expropriated except as permitted by, and in accordance with, this Agreement.
4. In accordance with this Agreement, the Nisga'a Constitution, and Nisga'a law, the Nisga'a Nation may:

- a. dispose of the whole of its estate in fee simple in any parcel of Nisga'a Lands to any person; and
  - b. from the whole of its estate in fee simple, or its interest, in any parcel of Nisga'a Lands, create, or dispose of any lesser estate or interest to any person, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act* without the consent of Canada or British Columbia.
5. A parcel of Nisga'a Lands does not cease to be Nisga'a Lands as a result of any change in ownership of an estate or interest in that parcel.
6. All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in respect of Nisga'a Lands.
7. If, at any time, any parcel of Nisga'a Lands, or any estate or interest in a parcel of Nisga'a Lands, finally escheats to the Crown, the Crown will transfer, at no charge, that parcel, estate or interest to the Nisga'a Nation.
8. Neither:

- a. any estate or interest of the Nisga'a Nation or a Nisga'a Village in any parcel of Nisga'a Lands to which the provincial Torrens system does not apply; nor
- b. any interest, right, privilege or title of the Nisga'a Nation or a Nisga'a Village reserved or excepted by the Nisga'a Nation or Nisga'a Village from any creation or disposition of an estate or interest in a parcel of Nisga'a Lands

is subject to attachment, charge other than charges that are liens in favour of Canada or British Columbia, seizure, distress, execution, or sale, except under an instrument, including a mortgage or other security instrument, in favour of a person and granted by the Nisga'a Nation or the Nisga'a Village, or if allowed under a law made by Nisga'a Lisims Government under paragraph 44 of the Nisga'a Government Chapter.

#### Additions to Nisga'a Lands

9. If, at any time, the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen owns the estate in fee simple to any parcel of land within the boundaries set out in Appendix B-1, B-2, or B-3, the Nisga'a Nation may, with the consent of the owner, add that parcel of land to Nisga'a Lands. That parcel of land, together with any roads identified in Appendix B-4 associated with it, will become Nisga'a Lands upon receipt by Canada and British Columbia of written notice from the Nisga'a Nation identifying that parcel of land and attaching the written consent of the owner of that parcel of land.
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10. If, at any time:

- a. British Columbia owns the estate in fee simple to any land within the boundaries set out in Appendix B-2; or
- b. any land within the boundaries set out in Appendix B-3 ceases to be subject to an agriculture lease or a woodlot licence existing on the effective date

British Columbia will offer to sell the estate in fee simple to that land to the Nisga'a Nation for a price not to exceed fair market value.

11. If, at any time, the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen owns the estate in fee simple to a parcel of land that is contiguous with Nisga'a Lands, other than land referred to in Appendix B-1, B-2, or B-3, the Nisga'a Nation may, with the consent of the owner and the agreement of Canada and British Columbia, add the land to Nisga'a Lands. If the owner consents and Canada, British Columbia, and the Nisga'a Nation agree that the land may be added to Nisga'a Lands, the land will become Nisga'a Lands upon receipt by Canada and British Columbia of written notice in accordance with that agreement.
12. If the Nisga'a Nation adds a parcel of land to Nisga'a Lands under paragraph 9 or 11, that land will be subject to:
  - a. any existing charge, encumbrance, licence, or permit;
  - b. any subsisting condition, proviso, restriction, exception, or reservation, contained in:
    - i. the original grant or disposition from the Crown,
    - ii. any other grant or disposition from the Crown, or
    - iii. the *Land Act*
  - c. any limitation under federal or provincial law comparable to those set out in subparagraph 12(b), other than those in favour of the Crown at the time of the addition of the parcel of land to Nisga'a Lands.
13. When a parcel of land becomes Nisga'a Lands under paragraph 9 or 11, any subsisting condition, proviso, restriction, exception, or reservation referred to in subparagraph 12(b) or (c) that is in favour of the Crown at the time of the addition of the parcel of land to Nisga'a Lands, will terminate.

14. If the Nisga'a Nation adds a parcel of land to Nisga'a Lands under paragraph 9 or 11, Appendix A-1, A-2, and A-3, and Appendix B-1, B-2, B-3, or B-4, as the case may be, will be amended to reflect the change to the boundaries of Nisga'a Lands.

### **Boundary Resolution**

15. If a Party provides the other Parties with a proposal to clarify the location of any part of a boundary of Nisga'a Lands, the Parties will follow the procedure set out in Schedule A.

### **Designations of Nisga'a Lands**

16. Nisga'a Lands comprise Nisga'a Public Lands, Nisga'a Private Lands, and Nisga'a Village Lands.
17. Nisga'a Public Lands are Nisga'a Lands other than those designated by Nisga'a Lisims Government as Nisga'a Village Lands or Nisga'a Private Lands.
18. Nisga'a Private Lands include:
  - a. lands in which Nisga'a Lisims Government creates an exclusive interest; and
  - b. lands that are otherwise required for uses that are incompatible with public access, including commercial, cultural, or resource development uses.

### **MINERAL RESOURCES**

19. For greater certainty, in accordance with paragraph 3, on the effective date the Nisga'a Nation owns all mineral resources on or under Nisga'a Lands.
20. Nisga'a Lisims Government has the exclusive authority to determine, collect, and administer any fees, rents, royalties, or other charges in respect of mineral resources on or under Nisga'a Lands.
21. Nisga'a Lisims Government and British Columbia may enter into agreements in respect of the application on Nisga'a Lands of provincial administrative systems relating to:
  - a. claim staking;
  - b. recording and inspecting of subsurface exploration and development;
  - c. the collection of fees, rents, royalties, and other charges by British Columbia on behalf of Nisga'a Lisims Government; and

- d. other similar matters.

#### **SUBMERGED LANDS WITHIN NISGA'A LANDS**

- 22. British Columbia owns the submerged lands within Nisga'a Lands.
- 23. British Columbia will provide written notice to the Nisga'a Nation of any proposed disposition of an estate or interest in, or use or occupation of, submerged lands within Nisga'a Lands.
- 24. British Columbia will not, in respect of submerged lands within Nisga'a Lands:
  - a. grant an estate in fee simple;
  - b. grant a lease that, with any rights of renewal, may exceed 25 years;
  - c. transfer administration and control for a period that may exceed 25 years; or
  - d. otherwise dispose of an estate or interest in, or authorize the use or occupation of, submerged lands within Nisga'a Lands if that disposition, use, or occupation would adversely affect Nisga'a Lands or Nisga'a interests set out in this Agreement without the consent of the Nisga'a Nation, which consent will not be unreasonably withheld.
- 25. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen applies to British Columbia to acquire an estate or interest in, or for authorization to use or occupy, submerged lands within Nisga'a Lands, British Columbia will not unreasonably refuse to grant the estate or interest or to issue the authorization if:
  - a. the Nisga'a Nation has consented to the acquisition, use, or occupation; and
  - b. the proposed acquisition or authorization conforms to provincial law respecting the disposition, use, or occupation of submerged lands within British Columbia.
- 26. A dispute as to whether:
  - a. the Nisga'a Nation is unreasonably withholding consent under paragraph 24; or
  - b. British Columbia is unreasonably refusing to grant an estate or interest, or to issue an authorization, under paragraph 25will be finally determined by arbitration under the Dispute Resolution Chapter.
- 27. For greater certainty, paragraphs 22 to 26 do not affect any property rights of upland owners

of Nisga'a Lands adjacent to submerged lands.

## INTERESTS ON NISGA'A LANDS

### Definition of "Interests"

28. In paragraphs 29 to 41, "interests" includes estates, interests, charges, mineral claims, encumbrances, licences, and permits.

### Former Interests Cease to Exist

29. On the effective date:
- a. the Nisga'a Nation's title to Nisga'a Lands is free and clear of all interests, except:
    - i. those granted or issued under paragraphs 30 to 40,
    - ii. those referred to in paragraph 41,
    - iii. those continued or issued under the transition provisions of the Forest Resources Chapter, and
    - iv. those granted under the Roads and Rights of Way Chapter; and
  - b. subject to paragraph 41, and the transition provisions of the Forest Resources Chapter, every interest that, before the effective date, encumbered or applied to the lands that are Nisga'a Lands, ceases to exist.

### Replacement Interests

30. The Nisga'a Nation, in accordance with paragraphs 31 to 40, and the Roads and Rights of Way Chapter, will grant or issue interests to those persons who are named in Appendix C-1 as persons who, immediately before the effective date, had interests in the lands that comprise Nisga'a Lands on the effective date.
31. On the effective date, the Nisga'a Nation will execute documents granting or issuing to each person named in Appendix C-1 that person's interest, as set out in that Appendix.
32. A document executed under paragraph 31 for an interest set out in Part I of Appendix C-1 will be in the applicable form set out in Appendix C-2 and will include any modifications agreed upon in writing before the effective date by the Nisga'a Tribal Council and the person entitled to the interest.
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33. On the effective date, the Nisga'a Nation will issue to each person named in Appendix C-5 a certificate of possession for the parcel of Nisga'a Lands ascribed to that person and described in Appendix C-5.
34. On the effective date, the Nisga'a Nation will issue to each person named in Appendix C-6 a certificate of possession for the parcel of Nisga'a Lands ascribed to that person and described in Appendix C-6.
35. A person to whom the Nisga'a Nation issues a certificate of possession under paragraph 33 or 34 will have substantially the same right to possess the described parcel of Nisga'a Lands as the person would have had as the holder of a certificate of possession under the *Indian Act* immediately before the effective date, modified to reflect Nisga'a Government jurisdiction over, and Nisga'a Nation ownership of, Nisga'a Lands.
36. After the effective date, the Nisga'a Nation or a Nisga'a Village may, in accordance with Nisga'a law, replace the certificates of possession issued under paragraphs 33 or 34 with estates or interests in, or licences to use or possess, the described parcels of Nisga'a Lands. If the certificates of possession are replaced with licences, the licences will include rights to use and possess the land comparable to, or greater than, those set out in those certificates of possession.
37. A document referred to in paragraph 31, 33 or 34, or in paragraph 7 of the Roads and Rights of Way Chapter, will be deemed to be:
  - a. delivered by the Nisga'a Nation on the effective date; and
  - b. executed and delivered by each person referred to in those paragraphs on the effective date, whether or not the document is actually executed or delivered by that person.
38. The Nisga'a Nation will, as soon as practicable after the effective date, physically deliver the applicable document:
  - a. to each person named in Appendix C-1, C-5, or C-6; or
  - b. to any other person who, before the effective date:
    - i. was identified in writing to the Nisga'a Tribal Council by Canada or British Columbia as the person who, instead of a person named in Appendix C-1 or C-5, should receive an interest referred to in Appendix C-1 or C-5 by reason of death, any form of transfer, error or operation of law, or
    - ii. was identified in writing to Canada and British Columbia by the Nisga'a Tribal Council as the person who, instead of a person named in Appendix C-6, should receive an interest referred to in Appendix C-6 by reason of death, any form of transfer, error or operation of law

and the Appendix will be amended to reflect the change.

39. If Canada or British Columbia notifies the Nisga'a Nation that an interest granted under paragraph 30, 31, 33, or 34:
  - a. is in the name of a person who was not actually entitled to the interest on the effective date; or
  - b. contains a clerical error or a wrong description of a material factthe appropriate Parties will take reasonable measures to rectify the error.
40. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by the Nisga'a Nation under this Agreement is legally binding and enforceable notwithstanding that the Nisga'a Lands to which the right of way relates are not subject to the *Land Title Act*.

### Licences and Traplines

41. The traplines, guide outfitter licence and certificate, and angling guide licences set out in Appendix C-7 are retained by the persons who hold those interests on the effective date in accordance with provincial laws of general application and the Wildlife and Migratory Birds Chapter. If an interest referred to in this paragraph is not renewed or replaced, that interest will cease to exist.

### Indemnities

42. British Columbia will indemnify and save harmless the Nisga'a Nation from any damages, losses, liabilities, or costs, excluding fees and disbursements of solicitors and other professional advisors, that the Nisga'a Nation may suffer or incur in connection with or as a result of any claims, demands, actions, or proceedings relating to or arising out of:
  - a. the omission from Appendix C-1 of the name of a person who, immediately before the effective date, had an interest in Nisga'a Lands that had been granted by British Columbia; or
  - b. the incorrect naming of a person in Appendix C-1 as a person entitled to an interest, where another person was actually entitled, immediately before the effective date, to the interest in Nisga'a Lands that had been granted by British Columbia.
43. Canada will indemnify and save harmless the Nisga'a Nation from any damages, losses, liabilities, or costs, excluding fees and disbursements of solicitors and other professional advisors, that the Nisga'a Nation may suffer or incur in connection with or as a result of any claims, demands, actions, or proceedings relating to or arising out of:

- a. the omission from Appendix C-1 or C-5 of the name of a person who, immediately before the effective date, had an interest in or a certificate of possession in respect of Nisga'a Lands that had been granted by Canada; or
- b. the incorrect naming of a person in Appendix C-1 or C-5 as a person entitled to an interest or certificate of possession, where another person was actually entitled, immediately before the effective date, to the interest or the certificate of possession in respect of Nisga'a Lands that had been granted by Canada.

## SITE REMEDIATION

44. British Columbia will inspect the sites set out in Schedule B and will undertake, or cause to be undertaken, appropriate remediation of any contamination at each site as follows:
- a. British Columbia, or the person undertaking the remediation, will give notice to the Nisga'a Nation no more than 60 days before commencing the remediation; and
  - b. whether a site is contaminated, and the nature and extent of the appropriate remediation, will be determined under British Columbia law and, for the purposes of those determinations, the use of the site will be deemed to be either:
    - i. the actual use of the site on the date of the notice under subparagraph (a); or
    - ii. if the site is not in use on the date of the notice under subparagraph (a), the use identified in Schedule B.

## NISGA'A FEE SIMPLE LANDS OUTSIDE NISGA'A LANDS

45. Nisga'a Fee Simple Lands consist of Category A Lands and Category B Lands as described in Appendix D.

### Category A Lands

46. Category A Lands are the parcels of land set out in Appendix D-2 and D-3, and consist of:
- a. the lands identified as former Nisga'a Indian reserves in Appendix D-2 and D-3; and
  - b. certain lands adjacent to some of those former Nisga'a Indian reserves.
47. On the effective date, the lands outside Nisga'a Lands that are identified as former Nisga'a Indian reserves in Appendix D-2 and D-3 cease to be Indian reserves.
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48. On the effective date, the Nisga'a Nation owns the estate in fee simple to Category A Lands.
49. The estate in fee simple to Category A Lands is subject to the rights referred to in subparagraph 50(1)(a)(iii) of the *Land Act* but is not subject to any other conditions, provisos, restrictions, exceptions, or reservations set out in section 50 of the *Land Act*, and no estate or interest in Category A Lands can be expropriated from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen except as permitted by, and in accordance with, this Agreement.
50. On the effective date, subject to paragraph 51, the estate in fee simple to Category A Lands is free and clear of all estates, interests, charges, mineral claims, encumbrances, licences, and permits, except those set out in Appendix D-4.
51. On the effective date, the Nisga'a Nation owns all mineral resources on or under Category A Lands, free and clear of all estates, interests, charges, mineral claims, encumbrances, licences, and permits, except for the mineral claims set out in Appendix D-4.
52. On the effective date, British Columbia owns the submerged lands within the Category A Lands other than the submerged lands within the Category A Lands described in Appendix D-2 as former I.R. Nos. 24, 27, and 27A, and extensions, and those submerged lands are owned by the Nisga'a Nation.
53. A parcel of Category A Lands ceases to be Category A Lands if no estate or interest in that parcel is owned by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen.
54. If the Nisga'a Nation disposes of the estate in fee simple in the Category A Lands described in Appendix D-2 as former I.R. No. 15 and extension, it will reserve to itself a blanket right of way for the purpose of providing road access across that parcel to adjacent lands. The Nisga'a Nation will, on request of British Columbia, assign the benefit of the right of way over that portion of that parcel upon which the forest service road existing on the effective date is located, in accordance with the following:
  - a. any assignment will be on reasonable terms, including the location of the requested right of way area, its width considering the intended use, its effect on neighbouring lands and payment of fair compensation, but, notwithstanding subparagraph (d) of the definition of "fair compensation", particular cultural values will not be included in the determination of fair compensation; and
  - b. if British Columbia and the Nisga'a Nation are unable to agree on the terms of the assignment, including the reasonableness of the proposed terms or location of the requested right of way area, the terms of the assignment will be finally determined by arbitration under the Dispute Resolution Chapter, but the arbitrator will not have authority to require British Columbia to accept an assignment of the right of way.

**Provincial Expropriation of Category A Lands**

55. A provincial expropriating authority may expropriate an estate or interest in Category A Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen under provincial legislation only if the expropriation is:
- a. justifiable and necessary for a provincial public purpose;
  - b. of the smallest estate or interest necessary, and for the shortest time required, for that provincial public purpose;
  - c. by and for the use of a provincial ministry or agent of the provincial Crown; and
  - d. with the consent of the Lieutenant Governor in Council.
56. If a provincial expropriating authority expropriates less than the estate in fee simple in Category A Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, British Columbia will provide the owner of the interest expropriated with fair compensation.
57. If a provincial expropriating authority expropriates the estate in fee simple, including the mineral resources, in Category A Lands from the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, British Columbia will provide the owner of the estate in fee simple with:
- a. equivalent Crown land if:
    - i. the owner and the Nisga'a Nation request compensation in the form of equivalent Crown land, and
    - ii. equivalent Crown land is available; or
  - b. fair compensation if:
    - i. the owner and the Nisga'a Nation do not request equivalent Crown land,
    - ii. equivalent Crown land is not available, or
    - iii. the owner, the Nisga'a Nation, and British Columbia otherwise agree.
58. If a provincial expropriating authority expropriates the estate in fee simple, including the mineral resources, in Category A Lands from a Nisga'a citizen, British Columbia will provide the owner of the estate in fee simple with fair compensation.
59. If a provincial expropriating authority expropriates the estate in fee simple, excluding any
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mineral resources, in Category A Lands under paragraph 55, the owner of the estate in fee simple and the Nisga'a Nation may require British Columbia to include the mineral resources in the expropriation. If the owner and the Nisga'a Nation require British Columbia to include the mineral resources in the expropriation, paragraph 57 applies to the expropriation.

60. Unless British Columbia and the Nisga'a Nation otherwise agree, any lands provided by British Columbia to the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen as compensation for an expropriation of an estate or interest in Category A Lands will become Category A Lands.

#### Category B Lands

61. Category B Lands are the parcels of land outside Nisga'a Lands set out in Appendix D-6 and D-7.
62. On the effective date, the Nisga'a Nation owns the estate in fee simple to Category B Lands.
63. The estate in fee simple to Category B Lands is subject to the conditions, provisos, restrictions, exceptions, and reservations set out in paragraph 50(1)(a) of the *Land Act*, except that set out in subparagraph 50(1)(a)(i) of the *Land Act*, but no estate or interest in Category B Lands can be expropriated from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen except as permitted by, and in accordance with, this Agreement.
64. On the effective date, subject to paragraph 65, the estate in fee simple to Category B Lands is free and clear of all estates, interests, charges, mineral claims, encumbrances, licences, and permits, except those set out in Appendix D-8.
65. On the effective date, British Columbia owns the submerged lands within the Category B Lands.
66. On the effective date, British Columbia owns the mineral resources on or under the Category B Lands that are reserved to the Crown under subparagraph 50(1)(a)(ii) of the *Land Act*.
67. A parcel of Category B Land ceases to be Category B Lands if no estate or interest in that parcel is owned by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen.

**Provincial Expropriation of Category B Lands**

68. A provincial expropriating authority may expropriate the estate in fee simple or any interest in Category B Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen under provincial legislation only if compensation is provided in accordance with paragraphs 69 to 72.
69. If a provincial expropriating authority expropriates less than the estate in fee simple in Category B Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, British Columbia will provide the owner of the interest expropriated with fair compensation.
70. If a provincial expropriating authority expropriates the estate in fee simple in Category B Lands from the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, British Columbia will provide the owner of the estate in fee simple with:
  - a. equivalent Crown land if:
    - i. the owner and the Nisga'a Nation request compensation in the form of equivalent Crown land, and
    - ii. equivalent Crown land is available; or
  - b. fair compensation if:
    - i. the owner and the Nisga'a Nation do not request equivalent Crown Land,
    - ii. equivalent Crown land is not available, or
    - iii. the owner, the Nisga'a Nation and British Columbia otherwise agree.
71. If British Columbia expropriates the estate in fee simple in Category B Lands from a Nisga'a citizen, British Columbia will provide the owner with fair compensation.
72. Unless British Columbia and the Nisga'a Nation otherwise agree, any lands provided by British Columbia to the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen as compensation for an expropriation of an estate or interest in Category B Lands will become Category B Lands.

**FEDERAL ACQUISITION OF INTERESTS IN NISGA'A LANDS AND NISGA'A FEE SIMPLE LANDS****General**

73. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of Nisga'a Lands and Nisga'a Fee Simple Lands, and therefore, as a general principle, estates or interests in Nisga'a Lands, or Nisga'a Fee Simple Lands, will not be expropriated under federal legislation.

**Governor in Council Consent**

74. Notwithstanding paragraph 73, an estate or interest in a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, may be expropriated under federal legislation if the Governor in Council consents to the expropriation.
75. The Governor in Council will consent to an expropriation of an estate or interest in a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, only if the expropriation:
- a. is justifiable and necessary for a federal public purpose; and
  - b. is of the smallest estate or interest necessary, and for the shortest time required, for that federal public purpose.
76. The Governor in Council will not consent to an expropriation of a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, if other lands suitable for the federal public purpose are reasonably available.
77. Before the Governor in Council considers an expropriation of an estate or interest in a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, it will ensure that Canada has:
- a. consulted the Nisga'a Nation;
  - b. ensured that reasonable efforts have been made to acquire the estate or interest through agreement with the owner of the estate or interest; and
  - c. provided the Nisga'a Nation with all information relevant to the expropriation other than federal Cabinet documents.
78. If the Governor in Council consents to an expropriation, Canada will provide the Nisga'a Nation with the reasons for the expropriation.

### Effect of Expropriation

79. If an estate or interest in a parcel of Nisga'a Lands is expropriated under paragraph 74, Nisga'a laws continue to apply to that parcel of land except to the extent that those laws are inconsistent with the ability to use and occupy that land for the purpose for which that estate or interest was expropriated.
80. If less than the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands is expropriated under paragraph 74, the owner of the estate in fee simple in that parcel of land may continue to use and occupy that land, except to the extent that the use or occupation is inconsistent with the purpose for which that estate or interest was expropriated.
81. If there is an expropriation under paragraph 74 of the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands, or of the estate in fee simple in a parcel of Nisga'a Fee Simple Lands, Canada will, at the request of Nisga'a Lisims Government, ensure that reasonable efforts are made to acquire alternative land of equivalent significance and value to offer as part or all of the compensation for the expropriation. Any alternative land that is contiguous with Nisga'a Lands may become Nisga'a Lands in accordance with paragraph 9.
82. Canada will ensure that the owner of the estate or interest that is expropriated under paragraph 74 receives compensation, taking into account:
  - a. the cost of acquiring alternative land of equivalent significance and value;
  - b. the market value of the estate or interest that is expropriated;
  - c. the replacement value of any improvements on the land that is expropriated;
  - d. disturbance caused by the expropriation; and
  - e. if the owner of the estate or interest that is expropriated is the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, any adverse effect on any cultural or other special value of the land to the Nisga'a Nation or a Nisga'a Village.
83. If less than the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands, or less than the estate in fee simple in a parcel of Nisga'a Fee Simple Lands, has been expropriated under paragraph 74 but is no longer required for the purpose for which it was expropriated, Canada will ensure that the interest in those lands is transferred at no charge to the owner of the estate in fee simple. The terms of that transfer will be negotiated by the Nisga'a Nation and Canada at the time of the expropriation.
84. If the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands, or a parcel of Nisga'a Fee Simple Lands, has been expropriated under paragraph 74 but is no longer required for the purpose for which it was expropriated, Canada will ensure that the estate in fee simple is transferred at no charge to the Nisga'a Nation or the Nisga'a Village, as the case

may be. The terms of that transfer will be negotiated by the Nisga'a Nation and Canada at the time of the expropriation.

85. The consent of the Governor in Council is not required to determine whether the estate or interest is no longer required for the purpose for which it was expropriated.
86. The Nisga'a Nation or Canada may refer a dispute in respect of the value and nature of the compensation, or the terms of transfer, to be finally determined by arbitration under the Dispute Resolution Chapter.

## INITIAL SURVEYS

87. Before the effective date, or as soon as practicable after the effective date, surveys will be conducted of the boundaries of Nisga'a Lands and Nisga'a Fee Simple Lands in accordance with instructions to be issued by the Surveyor General of British Columbia and approved by the Parties (the "Initial Surveys").
88. British Columbia and Canada will, as agreed between them, pay the full cost of the Initial Surveys.
89. The Parties may, before or after the effective date, amend Appendices A and D to reflect minor adjustments that may be agreed upon by the Parties as a result of the Initial Surveys.

## COMMERCIAL RECREATION TENURE

90. After the effective date, at the request of the Nisga'a Nation, British Columbia will issue a commercial recreation tenure (the "Nisga'a commercial recreation tenure") to the Nisga'a Nation, or to a Nisga'a Corporation designated by the Nisga'a Nation, for the areas set out in Appendix E based on the "Nisga'a Commercial Recreation Tenure Management Plan" developed by the Nisga'a Tribal Council and British Columbia and approved on July 6, 1998.
91. The term of the Nisga'a commercial recreation tenure will be 27 years.
92. If no request is made under paragraph 90 within 90 days after the effective date, British Columbia will issue the Nisga'a commercial recreation tenure to the Nisga'a Nation no later than 100 days after the effective date.
93. The first seven years of the term of the Nisga'a commercial recreation tenure will be a phase-in period, and during that period:
  - a. the Nisga'a commercial recreation tenure will permit, but not require, the Nisga'a Nation or the designated Nisga'a Corporation to carry out activities in accordance with the Nisga'a Commercial Recreation Tenure Management Plan; and

- b. British Columbia will not issue another commercial recreation tenure within the areas set out in Appendix E that conflicts with the Nisga'a Commercial Recreation Tenure Management Plan.
94. The Nisga'a Nation may, with the consent of British Columbia, which consent will not be unreasonably withheld, assign the Nisga'a commercial recreation tenure to a Nisga'a Corporation, and upon that assignment British Columbia will release the Nisga'a Nation from any obligations under the tenure that are assumed by the assignee.

## HERITAGE SITES AND KEY GEOGRAPHIC FEATURES

95. On the effective date, British Columbia will designate as provincial heritage sites the sites of cultural and historic significance outside Nisga'a Lands that are set out in Appendix F-1. The Parties acknowledge that those sites may have cultural or historic significance to persons or groups other than the Nisga'a Nation.
96. On the effective date, British Columbia will:
- a. record the Nisga'a names and historic background information for the geographic features that are set out in Appendix F-2 in the British Columbia Geographic Names data base (BCGNIS); and
  - b. name or rename in the Nisga'a language the geographic features that are set out in Appendix F-3.
97. After the effective date, the Nisga'a Nation may propose that British Columbia name or rename other geographic features with Nisga'a names, and British Columbia will consider those proposals in accordance with applicable provincial laws.

## PARKS AND ECOLOGICAL RESERVE

### Definitions

98. In paragraphs 99 to 118:
- a. "Park" means *Anhluut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a*, the Nisga'a Memorial Lava Bed Park; and
  - b. "Ecological Reserve" means the Gingietl Creek Ecological Reserve, # 115.

**General**

99. Subject to this Agreement, British Columbia's authority and responsibilities in respect of the Park and the Ecological Reserve will continue.
100. Subject to paragraph 101, Nisga'a citizens have the right to traditional uses of the lands and resources within the Park and the Ecological Reserve, including domestic resource harvesting, in accordance with this Agreement and in a manner consistent with any management plan agreed to by the Nisga'a Nation and British Columbia.
101. Unless the Nisga'a Nation and British Columbia otherwise agree, British Columbia will not permit commercial resource extraction or other commercial activity within the Park or the Ecological Reserve.
102. The Nisga'a Nation has the right to participate in the planning, management, and development of the Park and the Ecological Reserve in accordance with this Agreement.

***Anhluut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a, Nisga'a Memorial Lava Bed Park***

103. Unless the Nisga'a Nation and British Columbia otherwise agree, British Columbia will continue the Park as a Class "A" provincial park or a provincial park with an equivalent classification.
104. On the effective date, the boundaries of the Park are as set out in Appendix G-1.
105. Nisga'a history and culture are, and will be promoted as, the primary cultural features of the Park.
106. In order to facilitate the planning, management, and development of the Park, British Columbia and the Nisga'a Nation will continue the Joint Park Management Committee that was established under the Memorandum of Understanding between the Nisga'a Tribal Council and British Columbia dated April 30, 1992.
107. The Joint Park Management Committee will review and make recommendations to the Minister and Nisga'a Lisims Government in respect of:
  - a. the development and periodic revision of the master plan, and all other plans, applicable to or proposed for the Park;
  - b. encumbrances, park use permits, and other interests and authorizations, applicable to or proposed for the Park;
  - c. any business plans, operations budgets, and capital budgets proposed for the Park;

- d. archaeological and other research projects, cultural and interpretive programs, publications, and communications strategies proposed for the Park or the Ecological Reserve;
  - e. planning and management of activities, including development, on Crown land and Nisga'a Lands that could affect the Park;
  - f. issues relating to the management of the Ecological Reserve; and
  - g. issues relating to traditional uses of resources, including cedar trees.
108. The Joint Park Management Committee has no more than six members. The Nisga'a Nation and British Columbia will each appoint no more than three members as their representatives.
109. The Joint Park Management Committee will meet as often as is necessary to carry out its responsibilities, and will establish its procedures.
110. Whenever possible, the Joint Park Management Committee will carry out its responsibilities by consensus. If there is no consensus, the Joint Park Management Committee will submit the recommendations of each Party's representatives.
111. After considering the recommendations of the Joint Park Management Committee made under paragraph 107, the Minister, on a timely basis, will approve or reject in whole or in part the recommendations, other than those in respect of Nisga'a Lands, made by the Joint Park Management Committee or its members, and will provide written reasons for rejecting in whole or in part those recommendations. Any approval or rejection of a recommendation will be consistent with this Agreement.
112. If special circumstances make it impracticable to receive recommendations from the Joint Park Management Committee, the Minister:
- a. may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Joint Park Management Committee;
  - b. will advise Nisga'a Lisims Government and the Joint Park Management Committee as soon as practicable of that decision or action; and
  - c. will provide Nisga'a Lisims Government and the Joint Park Management Committee with written reasons for that decision or action.
113. British Columbia has the responsibility to fund the Park in accordance with appropriations for parks in British Columbia. British Columbia will provide similar treatment over time to the Park as it generally provides to comparable parks in British Columbia.
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**Gingietl Creek Ecological Reserve**

114. Unless the Nisga'a Nation and British Columbia otherwise agree, British Columbia will continue the Ecological Reserve as an ecological reserve or another equivalent designation.
115. On the effective date, the boundaries of the Ecological Reserve are as set out in Appendix G-2.
116. At the request of the Nisga'a Nation, the Nisga'a Nation and British Columbia will jointly determine whether, and the terms and conditions under which, a road across the Ecological Reserve can be located, constructed, and controlled, in a manner that will have minimal adverse impact on the unique ecological values for which the Ecological Reserve was established.
117. If it is determined under paragraph 116 or 118 that a road across the Ecological Reserve can be constructed, the Nisga'a Nation may construct, operate, and maintain the road as if it were a Nisga'a road that is not within Nisga'a Village Lands, and British Columbia will issue to the Nisga'a Nation an exclusive and perpetual right of way for those purposes, in accordance with the terms and conditions determined under paragraph 116 or 118.
118. The Nisga'a Nation or British Columbia may refer a dispute under paragraph 116 or 117 to be finally determined by arbitration under the Dispute Resolution Chapter.

**Other Parks**

119. British Columbia will consult with the Nisga'a Nation in respect of planning and management of other provincial parks in the Nass Area.
120. On the effective date, British Columbia will establish, and thereafter continue, Bear Glacier Park as a Class "A" provincial park, or a provincial park with an equivalent classification, with the boundaries set out in Appendix G-3.
121. At the request of any of the Parties, the Parties will negotiate and attempt to reach agreement on the establishment of a marine park in the Nass Area, but, for greater certainty, Canada is not obliged to establish a national park, national park reserve, or a national marine park, or to reach agreement on the establishment of a national park, national park reserve, or a national marine park.

**WATER VOLUMES****Nisga'a Water Reservation**

122. On the effective date, British Columbia will establish a Nisga'a water reservation, in favour of

the Nisga'a Nation, of 300,000 cubic decametres of water per year from:

- a. the Nass River; and
- b. other streams wholly or partially within Nisga'a Lands

for domestic, industrial, and agricultural purposes.

123. The Nisga'a water reservation will have priority over all water licences other than:
  - a. water licences issued before March 22, 1996; and
  - b. water licences issued pursuant to an application made before March 22, 1996.
124. The Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen may, with the consent of the Nisga'a Nation, apply to British Columbia for water licences for volumes of flow to be applied against the Nisga'a water reservation.
125. The total volume of flow under water licences to be applied against the Nisga'a water reservation of each stream may not exceed:
  - a. the percentage of the available flow, specified in Schedule C, of each stream set out in that Schedule; or
  - b. 50% of the available flow of any stream not set out in Schedule C.
126. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen applies to British Columbia for a water licence for a volume of flow to be applied against the Nisga'a water reservation and:
  - a. the Nisga'a Nation has consented to the application;
  - b. the application conforms to provincial regulatory requirements;
  - c. the application is for a volume of flow that, together with the total volume of flow licenced for that stream under this paragraph, does not exceed the percentage of available flow for that stream referred to in paragraph 125; and
  - d. there is a sufficient unlicensed volume of flow in the Nisga'a water reservationBritish Columbia will approve the application and issue the water licence. The volume of flow approved in a water licence issued under this paragraph will be deducted from the unlicensed volume of flow in the Nisga'a water reservation.
127. If a water licence issued under paragraph 126 is cancelled, expires, or otherwise terminates,

the volume of flow in that licence will be added to the unlicensed volume of flow in the Nisga'a water reservation.

128. A water licence issued under paragraph 126 will not be subject to any rentals, fees, or other charges by British Columbia.
129. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen applies to British Columbia for a water licence for a volume of flow from a stream wholly or partially within Nisga'a Lands and:
  - a. all of the available flow for that stream referred to in paragraph 125 is licensed under paragraph 126;
  - b. the Nisga'a Nation has consented to the application;
  - c. the application conforms to provincial regulatory requirements; and
  - d. the stream contains a sufficient volume of:
    - i. unrecorded water, and
    - ii. flow to ensure conservation of fish and stream habitats, and to continue navigability, as determined by the Minister in accordance with the provisions of this Agreementto meet the volume of flow requested in the application

British Columbia will approve the application and issue the water licence. The volume of flow approved in a water licence issued under this paragraph will not be deducted from the unlicensed volume of flow in the Nisga'a water reservation.

130. British Columbia will consult with the Nisga'a Nation about all applications for water licences in respect of streams wholly or partially within Nisga'a Lands.
131. If a person other than the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen has a water licence and reasonably requires access across, or an interest in, Nisga'a Lands for the construction, maintenance, improvement, or operation of works authorized under the licence, Nisga'a Government may not unreasonably withhold consent to, and will take reasonable steps to ensure, that access or the granting of that interest, if:
  - a. the licence holder offers fair compensation to the owner of the estate or interest affected; and
  - b. the licence holder and the owner of the estate or interest affected agree on the terms of the access or the interest, including the location, size, duration, and nature of the

interest.

132. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen has a water licence approved under paragraph 126 or 129 and reasonably requires access across, or an interest in, Crown land for the construction, maintenance, improvement, or operation of works authorized under the licence, British Columbia will grant the access or interest on reasonable terms.
133. British Columbia or the Nisga'a Nation may refer a dispute arising under paragraph 131 or 132 to be finally determined by arbitration under the Dispute Resolution Chapter.
134. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen has a water licence approved under paragraph 126 or 129 and reasonably requires access across, or an interest in, lands set out in Appendix B-2 for the construction, maintenance, improvement, or operation of works authorized under the licence, the Nisga'a Nation, Nisga'a Village, Nisga'a Corporation, or Nisga'a citizen may acquire the access or interest in accordance with provincial laws of general application.
135. The Nisga'a Nation may nominate a water bailiff under the *Water Act* for:
  - a. that portion of the Nass River within Nisga'a Lands; and
  - b. other streams wholly or partially within Nisga'a Landsand British Columbia will not unreasonably withhold appointment of that nominee.
136. Notwithstanding paragraph 128, if British Columbia appoints a water bailiff nominated by the Nisga'a Nation under paragraph 135, the water bailiff will be compensated in accordance with provincial laws of general application.
137. This Agreement is not intended to grant the Nisga'a Nation any property in water.
138. This Agreement does not preclude the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen from selling water in accordance with federal and provincial laws.
139. The Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen may apply in accordance with provincial laws of general application for a water licence in respect of a stream wholly outside Nisga'a Lands.

#### Nisga'a Hydro Power Reservation

140. In addition to the Nisga'a water reservation established under paragraph 122, British Columbia will establish a water reservation in favour of the Nisga'a Nation, for 20 years after

the effective date, of all of the unrecorded waters of all streams, other than the Nass River, that are wholly or partially within Nisga'a Lands (the "Nisga'a Hydro Power Reservation"), to enable the Nisga'a Nation to investigate the suitability of those streams for hydro power purposes, including related storage purposes.

141. If the Nisga'a Nation applies for a water reservation for hydro power purposes on a stream subject to the Nisga'a Hydro Power Reservation, British Columbia will, after considering the results of any investigations referred to in paragraph 140, establish a water reservation for hydro power purposes and any related storage purposes on the unrecorded waters of that stream if it considers that stream to be suitable for hydro power purposes.
142. If British Columbia establishes a water reservation for a stream under paragraph 141, the Nisga'a Hydro Power Reservation will terminate in respect of that stream.
143. If, after British Columbia establishes a water reservation under paragraph 141, the Nisga'a Nation applies for a water licence for hydro power purposes and any related storage purposes for a volume of flow from the stream subject to that water reservation, British Columbia will grant the water licence if the proposed hydro power project conforms to federal and provincial regulatory requirements.
144. If British Columbia issues a water licence under paragraph 143 for a stream, the water reservation established under paragraph 141 will terminate in respect of that stream.

**SCHEDULE A -- BOUNDARY RESOLUTION**

1. Within a reasonable time after a Party provides the other Parties with a written proposal to clarify the location of a part of a boundary of Nisga'a Lands, the Parties will negotiate and attempt to reach agreement on whether, how, and at whose cost to undertake the proposed clarification of boundary location.
2. Unless the Parties otherwise agree, the cost as between the Parties of any field survey undertaken to clarify the location of a part of a boundary of Nisga'a Lands will be borne by:
  - a. the Party authorizing an activity causing the need for clarification of the boundary location; or
  - b. the Party proposing clarification of the boundary location, if no Party has authorized an activity causing the need for clarification of the boundary location.
3. If the Parties do not agree on whether, how, or at whose cost to undertake the proposed boundary clarification, any Party may refer the matter to be finally determined by arbitration under the Dispute Resolution Chapter.
4. If the Parties agree to undertake the field survey of a part of a boundary of Nisga'a Lands, or if an arbitrator orders the field survey of a part of a boundary of Nisga'a Lands, the Parties will provide notice to the Surveyor General of British Columbia of the agreement of the Parties or the order of the arbitrator.
5. Upon receiving notice under paragraph 4, the Surveyor General will prepare and submit to the Parties for approval provisional survey instructions, based on prevailing provincial survey standards, for the part of the boundary of Nisga'a Lands.
6. After the Parties have approved the survey instructions for the part of the boundary of Nisga'a Lands, the Surveyor General will issue the approved survey instructions to the British Columbia Land Surveyor designated by the Party responsible for the costs of the survey or, where more than one Party is responsible, to the British Columbia Land Surveyor designated by those Parties. The Party or Parties responsible for the costs of the survey will be determined in accordance with paragraphs 2 and 3.
7. After the designated British Columbia Land Surveyor has, in accordance with the approved survey instructions, completed the field survey and submitted the required survey plans to the Surveyor General and the Parties, Appendix A will be amended to reflect the survey.

**SCHEDULE B -- LIST OF SITES****Sites On Nisga'a Lands That Are Not On Former Nisga'a Indian Reserves**

<u>Site Name and Use</u>	<u>General Location</u>
<u>Forestry Activities</u>	
Lavender Logging Camp	Located in general vicinity of Taylor Creek on Nass Kwinatahl FSR 7876-04 103P.046
Ksedin Logging Camp SUP 16189	Northern side of Nisga'a Highway at 10km from Ginlulak 103P.013
Ginlulak Log Sort and Dump SUP 9764	On Ishkheenickh Road at 2.5km from Nisga'a Highway turnoff 103P.003
Kwinatahl Camp Sim Gan Logging Camp and Dryland Sort SUP 19897 and 22417	Near Kwinatahl River on Ksadon to Alice Arm Road 103P.035
Tower Logging Camp	In vicinity of bridge crossing of Ishkheenickh River 103I.093
Monkley Log Dump	In vicinity of northwestern corner of former IR12, Lacktesk 103I.092
Upper and Lower Clark Log Sort and Dump	In vicinity of eastern boundary of former IR9 and Ishkheenickh Road RO7816 103P.003
Kinskuch Log Sort and Dump	In vicinity of former IR53, southern shore of Nass River opposite mouth of Kinskuch River 103P.056
Log Sort and Dump	On eastern side of Nass River where road comes down to river west of Cassiar DL3061 103P.025

Omar Island Log Sort	Nass River in vicinity of former IR29A 103P.014
River Shack Fuelling Area	In vicinity of southwestern corner of former IR29 Zaulzap, near Nisga'a Highway 103P.014
Water Gauge and Stoney Point General Work Area	On northern side of Nisga'a Highway at 18km from Ginlulak 103P.014
14k General Work Area	In vicinity of Nisga'a Highway at 14km from Ginlulak 103P.014
Dragon Lake Forestry Camp	In area of campground 103P.036
Sort Yard	On both sides of Nass - Kinskuch FSR near junction with Nass - Kwinatahl Road 103P.046

Landfills

New Aiyansh Landfill	At end of Dump Road 103P.025
Ksedin Landfill	Southern side of Nisga'a Highway, 12km from Ginlulak 103P.014

Highway Activities

MOTH Gravel Pits	Listed in Schedule A, Roads and Rights of Way Chapter
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**Sites On Nisga'a Fee Simple Lands That Are Not On Former Nisga'a Indian Reserves**

<u>Site Name and Use</u>	<u>General Location</u>
Echo Cove Logging Camp	Iceberg Bay 103I.091

**SCHEDULE C -- WATER VOLUMES**

**Streams Partially Within Nisga'a Lands for Which a Percentage of Available Water Flow Has Been Specified**

Stream Name	Percentage of Available Flow	B.C.G.S. Map References
Scowban Creek (unofficial name)	50%	103P.001
Ishkheenickh River	26%	103I.062, 103I.063, 103I.072, 103I.073, 103I.074, 103I.082, 103I.083, 103I.084, 103I.092, 103I.093 and 103I.094
Ksemamaith Creek	29%	103P.003, 103P.004, 103P.013 and 103P.014
Kshadin Creek	10%	103P.044, 103P.045, 103P.046, 103P.054 and 103P.055
Tseax River	10%	103I.094, 103I.095, 103I.096, 103P.004, 103P.005, 103P.006, 103P.014, 103P.015, 103P.016, 103P.017, 103P.025 and 103P.026
Kwinatahl River	10%	103P.033, 103P.034, 103P.035, 103P.043, 103P.044 and 103P.045
Tchitin River	10%	103P.044, 103P.045, 103P.046, 103P.054, 103P.055, 103P.056, 103P.064 and 103P.065
Ksedin Creek	12%	103I.084, 103I.085, 103I.093, 103I.094, 103I.095, 103P.003 and 103P.004

## CHAPTER 4 LAND TITLE

### FEDERAL TITLE LEGISLATION

1. Federal land title or land registry laws do not apply to any parcel of Nisga'a Lands, other than laws in respect of the survey and recording of estates or interests that are owned by Canada and are in Nisga'a Lands.

### PROVINCIAL TORRENS SYSTEM

2. The provincial Torrens system does not apply to a parcel of Nisga'a Lands for which:
  - a. no application has been made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title;
  - b. an application has been made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title and, that application has been withdrawn or rejected; or
  - c. the indefeasible title under the *Land Title Act* has been cancelled under that Act in accordance with this Agreement.
3. If the Nisga'a Nation applies under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title to a parcel of Nisga'a Lands, effective from the time of application and until:
  - a. the application has been withdrawn or rejected; or
  - b. the indefeasible title for that parcel is cancelledthe provincial Torrens system, but not any Nisga'a law in respect of land title or land registration made under paragraph 50(a) of the Nisga'a Government Chapter, applies to the parcel, subject to paragraph 4.
4. Notwithstanding the application of the provincial Torrens system to a parcel of Nisga'a Lands as set out in paragraph 3, a Nisga'a land title or land registration law that relates only to *in personam* rights of a person deprived of an estate, interest, condition, proviso, restriction, exception, reservation, or certificate of possession as a result of the application of the provincial Torrens system in accordance with this Agreement applies to the parcel, to the extent that the law does not conflict with paragraph 11 of this Chapter.

**APPLICATION FOR INDEFEASIBLE TITLE**

5. The Nisga'a Nation, and no other person, in its own name or on behalf of another person may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of Nisga'a Lands for which no indefeasible title is registered at the time of application.

**LAND TITLE FEES**

6. If the Nisga'a Nation applies for the registration of an indefeasible title to a parcel of Nisga'a Lands for which no indefeasible title has been registered after the effective date, and the proposed registered owner in fee simple is the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, no land title fees are payable in respect of the application by which the proposed owner becomes the registered owner.

**NISGA'A CERTIFICATE**

7. The Nisga'a Nation, when applying for the registration of an indefeasible title to a parcel of Nisga'a Lands under paragraph 5, will provide to the Registrar:
  - a. a description of the boundaries of the parcel;
  - b. a certificate of Nisga'a Lisims Government certifying that, on the date of the Nisga'a Certificate, the person named as the owner in fee simple in the Nisga'a Certificate is the owner of the estate in fee simple of the parcel, and certifying that the Nisga'a Certificate sets out the only:
    - i. subsisting conditions, provisos, restrictions, exceptions, and reservations contained in the original or any other conveyance or disposition from the Nisga'a Nation that are in favour of the Nisga'a Nation, or that are in favour of another person,
    - ii. estates or interests, and
    - iii. charges in respect of a debt owed to the Nisga'a Nation or a Nisga'a Village to which the estate in fee simple of the parcel is subject; and
  - c. registrable copies of all charges referred to in subparagraphs (b)(ii) and (b)(iii).
8. A Nisga'a Certificate will expire unless:
  - a. within seven days of the date of the Nisga'a Certificate, the Nisga'a Nation applies for registration of an indefeasible title to the parcel referred to in the Nisga'a

Certificate; and

- b. the Registrar issues an indefeasible title to the parcel.

## REGISTRATION OF INDEFEASIBLE TITLE

9. If the Nisga'a Nation makes an application for the registration of indefeasible title to a parcel of Nisga'a Lands under paragraph 5, the Registrar, on being satisfied that:
- a. a good safe holding and marketable title in fee simple for the parcel has been established by the Nisga'a Nation;
  - b. the boundaries of the parcel are sufficiently defined by the description provided by the Nisga'a Nation;
  - c. all of the estates, interests, and other charges set out in the Nisga'a Certificate are registrable as charges under the *Land Title Act*; and
  - d. the Nisga'a Certificate is dated not more than seven days before the date of application for registration of an indefeasible title to the parcel
- will:
- e. register the indefeasible title to the parcel;
  - f. make a note on the indefeasible title that the parcel is Nisga'a Lands and may be subject to conditions, provisos, restrictions, exceptions, and reservations in favour of Nisga'a Nation;
  - g. register as charges the estates and interests set out in subparagraph 7(b)(ii) and the other charges set out in subparagraph 7(b)(iii); and
  - h. provide a copy of the indefeasible title to Nisga'a Lisims Government.
10. The Registrar is entitled to rely on, and is not required to make any inquiries in respect of, the matters certified in the Nisga'a Certificate.

## DEPRIVATION OF ESTATE

11. A person deprived of an estate, interest, condition, proviso, restriction, exception, or reservation, or a certificate of possession referred to in paragraph 33 or 34 of the Lands Chapter, in or to a parcel of Nisga'a Lands as a result of the reliance by the Registrar on a Nisga'a Certificate, and the issuance by the Registrar of an indefeasible title based on the
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Nisga'a Certificate, will have no recourse, at law or in equity, including no action for possession or recovery of land, against the Registrar, the Assurance Fund, or any person named in the Nisga'a Certificate, and the indefeasible title issued by the Registrar in reliance on the Nisga'a Certificate as the owner of the estate in fee simple or as the owner of an estate, interest, condition, proviso, restriction, exception, or reservation, subject to the right of a person to show:

- a. fraud, including forgery, in which the owner of the estate in fee simple or the owner of the estate, interest, condition, proviso, restriction, exception, or reservation as set out in the Nisga'a Certificate and the indefeasible title issued by the Registrar in reliance on the Nisga'a Certificate has participated in any degree; or
  - b. that the owner of the estate in fee simple or the owner of the estate, interest, condition, proviso, restriction, exception, or reservation as set out in the Nisga'a Certificate and the indefeasible title issued by the Registrar in reliance on the Nisga'a Certificate has derived their right or title otherwise than in good faith and for value.
12. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Nisga'a Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply in respect of Nisga'a Lands.

#### CANCELLATION OF INDEFEASIBLE TITLE

13. The Nisga'a Nation, and no other person, may apply under the *Land Title Act* in accordance with this Chapter for cancellation of the registration of an indefeasible title to a parcel of Nisga'a Lands.
14. The Nisga'a Nation, when applying under the *Land Title Act* in accordance with this Chapter for the cancellation of the registration of an indefeasible title to a parcel of Nisga'a Lands, will provide to the Registrar an application for cancellation of registration and will deliver to the Registrar any duplicate indefeasible title that may have been issued in respect of that parcel.
15. Upon receiving an application from the Nisga'a Nation for cancellation of the registration of an indefeasible title to a parcel of Nisga'a Lands in accordance with the provisions of paragraphs 13 and 14, and if:
  - a. the registered owner of the estate in fee simple to the parcel is the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, and consents; and
  - b. the indefeasible title to the parcel is free and clear of all charges, except those in favour of the Nisga'a Nation or a Nisga'a Village

the Registrar will cancel the registration of the indefeasible title.

**APPLICATION OF PROVINCIAL TORRENS SYSTEM**

16. When the provincial Torrens system applies to a parcel of Nisga'a Lands:
- a. the jurisdiction of Nisga'a Lisims Government or a Nisga'a Village Government is not diminished, except to the extent set out in this Agreement;
  - b. with respect to the *Land Title Act*, the powers, rights, privileges, capacities, duties, and obligations, set out in or pursuant to this Agreement, of:
    - i. the Nisga'a Nation or a Nisga'a Village under the *Land Title Act* will be analogous to those of the Crown, a municipality, or regional district, as the case may be, under that Act, and
    - ii. Nisga'a Lisims Government or a Nisga'a Village Government under the *Land Title Act* will be analogous to those of the provincial government or a municipal council, regional district board, or improvement district trustee, as the case may be, under that Act, and
  - c. the status and treatment of Nisga'a Village Lands, or Nisga'a Lands other than Nisga'a Village Lands, under the *Land Title Act* will be analogous to that of municipal lands or rural areas, as the case may be, under that Act.
17. The following are a limited number of examples of proposed amendments to the *Land Title Act*, as that Act was on August 1, 1998, required to give effect to paragraph 16:
- a. the following paragraphs will be added to subsection 23(2):
    - "(k) the subsisting conditions, provisos, restrictions, exceptions, and reservations, including royalties, contained in the original disposition or any other disposition from the Nisga'a Nation or a Nisga'a Village;"
    - "(l) a Nisga'a Nation tax, rate, or assessment at the date of the application for registration imposed or made a lien or that may after that date be imposed or made a lien on the land;"
  - b. in paragraph 23(2)(f) the word "Act" will, with reference to a right of expropriation but not with reference to an escheat, include any Nisga'a law;
  - c. Division 3 of Part 7 will be modified to provide for the appointment of an approving officer by Nisga'a Lisims Government for Nisga'a Lands;
  - d. in paragraph 83(1)(a) the word "municipality" will include a Nisga'a Village, and in paragraph 83(1)(b) the words "rural area" will include Nisga'a Lands other than Nisga'a Village Lands;

- e. in paragraphs 99(1)(f) and 218(1)(a) the word "Crown" will include Nisga'a Nation or Nisga'a Village;
- f. in paragraphs 99(1)(h) and 218(1)(b) the word "municipality" will include Nisga'a Village;
- g. in paragraph 107(1)(d) the word "enactment" will include any Nisga'a law, and the words "Crown in right of the Province" in respect of a highway, park or public square within Nisga'a Lands will include Nisga'a Nation or a Nisga'a Village but in respect of land covered by water will not include Nisga'a Nation or Nisga'a Village; and
- h. in subsection 262(1) the word "Act" will include Nisga'a laws, and the word "Crown" will include Nisga'a Nation, and the words "Crown in right of the Province" will include Nisga'a Nation.

## CHAPTER 5 FOREST RESOURCES

### DEFINITIONS

1. In this Chapter and in Appendix H:

**“agreement under the *Forest Act*”** means a major licence or timber sale licence that, before the effective date, provided for the harvesting of timber on Nisga'a Lands;

**“former Nisga'a Indian reserves”** means those lands within Nisga'a Lands that were Nisga'a Indian reserves on the day before the effective date as identified in Appendix A-4, and all Category A lands;

**“forest practices legislation”** means the *Forest Practices Code of British Columbia Act*, the *Forest Act*, or any regulation under those Acts;

**“forest practices”** means timber harvesting and related activities, including silviculture, and road construction, modification, maintenance, and deactivation;

**“forest standards”** means the performance requirements or constraints associated with a forest practice;

**“Forestry Transition Committee”** means the committee established under paragraph 32 of this Chapter;

**“licence”** means an agreement issued by British Columbia, in the nature of a forest licence or a timber sale licence, that provides for the harvesting of timber on Nisga'a Lands during the transition period;

**“Nisga'a Contractor”** means a full phase logging contractor whose operations and direction are effectively controlled by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen;

**“non-timber forest resources”** means all forest resources other than timber or timber resources;

**“timber”** or **“timber resources”** means trees, whether living, standing, dead, fallen, limbed, bucked, or peeled;

**“transition period”** means the five year period commencing on the effective date; and

**“transition year”** means a one year period commencing on the effective date, or any

anniversary of the effective date, within the transition period.

### **Interpretation**

2. Unless the context indicates otherwise, words and expressions used in this Chapter and in Appendix H that are not defined in this Agreement have the meaning given to them in forest practices legislation.

## **OWNERSHIP OF RESOURCES**

3. On the effective date, the Nisga'a Nation owns all forest resources on Nisga'a Lands.
4. Nisga'a Lisims Government has the exclusive authority to determine, collect, and administer any fees, rents, royalties, or other charges in respect of:
  - a. non-timber forest resources on Nisga'a Lands;
  - b. timber resources referred to in paragraphs 20 and 21; and
  - c. after the transition period, all timber resources on Nisga'a Lands.

## **APPLICABLE LAWS AND STANDARDS**

### **Forest Practices and Standards**

5. During the transition period, forest practices legislation applies to activities and obligations of:
  - a. the holder of an agreement under the *Forest Act* on Nisga'a Lands as if Nisga'a Lands were Crown land; and
  - b. the holder of a licence within the area covered by its forest development plan on Nisga'a Lands as if Nisga'a Lands were Crown land.
6. Nisga'a Lisims Government will make laws in respect of the management of timber resources on Nisga'a Lands, that will take effect on the effective date.
7. Laws made under paragraph 6 do not apply to:
  - a. activities and obligations referred to in paragraph 5; and
  - b. fire control and suppression activities for which British Columbia is responsible

under paragraphs 57 and 59.

8. Laws made under paragraph 6 will include forest standards that meet or exceed forest standards established under forest practices legislation applicable to Crown land, and will include forest standards in respect of the following subject areas if these subject areas are addressed in forest practices legislation:
  - a. riparian management;
  - b. cut block design and distribution;
  - c. road construction, maintenance and deactivation;
  - d. reforestation;
  - e. soil conservation;
  - f. biodiversity;
  - g. hazard abatement, fire preparedness and initial fire suppression;
  - h. silvicultural systems and logging methods; and
  - i. forest health.
9. In a determination of whether forest standards established under paragraph 6 meet or exceed forest standards established under forest practices legislation applicable to Crown land, the subject areas referred to in paragraph 8 will be compared collectively.
10. Forest standards established under paragraph 6 will be deemed to meet or exceed forest standards established under forest practices legislation applicable to Crown land, if they are no more intrusive to the environment than the forest standards applicable to Crown land established under forest practices legislation.
11. Nisga'a Lisims Government may make laws in respect of non-timber forest resources on Nisga'a Lands, including establishing standards to regulate harvesting and conservation of non-timber forest resources, provided that the standards meet or exceed any federal or provincial standards established under legislation to regulate, on private land, the harvesting and conservation of non-timber forest resources.
12. The Parties may negotiate arrangements to achieve coordination and administrative efficiencies in respect of matters such as timber harvesting plans, road building, forest health concerns, forest fire detection and suppression, non-timber forest resources, and the protection of fisheries habitat.

**Timber Marking and Timber Scaling**

13. Subject to paragraph 14, provincial laws in respect of timber scaling apply to timber harvested on Nisga'a Lands.
14. After the transition period, Nisga'a Lisims Government may make laws compatible with provincial laws in respect of timber scaling.
15. If Nisga'a Lisims Government makes laws under paragraph 14, Nisga'a Lisims Government will, on or before March 31 of each year, provide to British Columbia a report on the volume of timber harvested during the preceding year from Nisga'a Lands, by species, grade, and timber mark.
16. Provincial laws in respect of timber marks apply to timber harvested on Nisga'a Lands.

**TIMBER HARVESTING****Timber Harvesting Rates**

17. Subject to the cut control provisions in Appendix H, the volume of timber that may be harvested on Nisga'a Lands, other than former Nisga'a Indian reserves, during the nine year period commencing on the effective date, is:
  - a. year 1      165,000 m<sup>3</sup>;
  - b. year 2      165,000 m<sup>3</sup>;
  - c. year 3      165,000 m<sup>3</sup>;
  - d. year 4      165,000 m<sup>3</sup>;
  - e. year 5      165,000 m<sup>3</sup>;
  - f. year 6      135,000 m<sup>3</sup>;
  - g. year 7      135,000 m<sup>3</sup>;
  - h. year 8      135,000 m<sup>3</sup>; and
  - i. year 9      130,000 m<sup>3</sup>.
18. On the effective date, or as soon as is practicable, British Columbia will apportion among the holders of licences the volume of timber to be harvested on Nisga'a Lands, other than former Nisga'a Indian reserves, by the holders of licences during the transition period as follows:

- a. year 1 155,000 m<sup>3</sup>;
  - b. year 2 155,000 m<sup>3</sup>;
  - c. year 3 155,000 m<sup>3</sup>;
  - d. year 4 135,000 m<sup>3</sup>; and
  - e. year 5 125,000 m<sup>3</sup>.
19. During the transition period, the aggregate volume of timber to be harvested by holders of licences from that portion of the *Ksi Hlginx (Ishkheenickh)* watershed that is within Nisga'a Lands will not exceed 210,000 m<sup>3</sup>.
20. During the transition period, the Nisga'a Nation, subject to this Agreement, may authorize the harvest of the volumes of timber from Nisga'a Lands, other than former Nisga'a Indian reserves as follows:
- a. year 1 10,000 m<sup>3</sup>;
  - b. year 2 10,000 m<sup>3</sup>;
  - c. year 3 10,000 m<sup>3</sup>;
  - d. year 4 30,000 m<sup>3</sup>; and
  - e. year 5 40,000 m<sup>3</sup>.
21. In addition to the volumes specified in paragraph 20, the Nisga'a Nation may authorize the harvest of:
- a. any overcut or accumulated undercut volumes of timber determined under and in accordance with Appendix H; and
  - b. timber from former Nisga'a Indian reserves.
22. Nisga'a Lisims Government, in accordance with Nisga'a laws, including any cut control provisions, will authorize the harvest of volumes of timber from Nisga'a Lands for years six through nine after the effective date as follows:
- a. year 6 135,000 m<sup>3</sup>;
  - b. year 7 135,000 m<sup>3</sup>;
  - c. year 8 135,000 m<sup>3</sup>; and

- d. year 9 130,000 m<sup>3</sup>.
23. The Nisga'a Nation and British Columbia may negotiate agreements in respect of matters such as the rate of harvest of timber resources on Nisga'a Lands.
24. The Nisga'a Nation will make timber harvested under paragraph 20 and subparagraph 21(a) reasonably available to local mills.

#### **Timber Harvesting Rights Existing Before the Effective Date**

25. Except as provided in Appendix H, British Columbia will ensure that on the effective date any portion of:
- any agreement under the *Forest Act*; and
  - any plan, permit or authorization associated with any agreement under the *Forest Act* that applies to Nisga'a Lands, ceases to be valid.
26. Timber harvesting rights under a licence or permit granted under the Indian Timber Regulations in respect of former Nisga'a Indian reserves expire on the effective date.

#### **Timber Harvesting Rights During the Transition Period**

27. British Columbia may enter into a licence with a person who was the holder of an agreement under the *Forest Act* to allow for the harvesting of some or all of that volume of timber on Nisga'a Lands referred to in paragraph 18.
28. A licence referred to in paragraph 27 that replaces a major licence will:
- have similar terms and conditions as a non-replaceable forest licence, except that the new licence will expire on the earliest of:
    - the date that was specified in the agreement under the *Forest Act*,
    - the end of the transition period, or
    - the cancellation of the licence;
  - if the licence replaces a portion of a tree farm licence, provide that the holder of the licence may not harvest timber outside of that portion of Nisga'a Lands that was included in the area of the tree farm licence unless requested to do so by the Forestry Transition Committee; and

- c. require the holder of the licence to use Nisga'a Contractors under full phase logging contracts in accordance with Appendix H.
29. A licence referred to in paragraph 27 that replaces a timber sale licence will have similar terms and conditions as the licence it replaces, except that the new licence will expire on the earliest of:
- a. the date that was specified in the agreement under the *Forest Act*;
  - b. the end of the transition period; or
  - c. the cancellation of the licence.

#### **Operational Plans and Permits During the Transition Period**

30. During the transition period, the operational planning and performance requirements contained in Appendix H apply to timber harvesting and related activities on Nisga'a Lands.
31. Except as set out in this Agreement, British Columbia will not:
- a. approve plans or issue permits under forest practices legislation in respect of Nisga'a Lands; or
  - b. allow the holders of licences to carry out timber harvesting or related activities on Nisga'a Lands.
32. On the effective date, the Nisga'a Nation and British Columbia will establish the Forestry Transition Committee and will each appoint one member to that committee.
33. The Forestry Transition Committee has, in respect of Nisga'a Lands, sole authority to approve, extend or issue, or to exempt the requirement for:
- a. forest development plans and amendments in respect of timber harvesting and related activities to be carried out during the transition period;
  - b. silviculture prescriptions and amendments submitted by the holder of a licence for harvesting proposed for the fourth and fifth years of the transition period;
  - c. all cutting permits and road permits required by the holder of a licence to carry out timber harvesting and related activities during the fifth year of the transition period; and
  - d. all road use permits required during the transition period.

34. The Forestry Transition Committee may exempt a person from any requirement to comply with operational planning constraints specified in Appendix H.
35. The Forestry Transition Committee may impose conditions on any exemption referred to in paragraph 33 or 34.
36. British Columbia has the authority to approve, extend or issue, or to exempt the requirement for, prescriptions and permits referred to in this Agreement that are:
  - a. required by the holder of a licence; and
  - b. not referred to in paragraph 33.
37. British Columbia may impose conditions on any exemption referred to in paragraph 36.
38. The Forestry Transition Committee will make its decisions by consensus, and any dispute between the members of the Forestry Transition Committee arising out of the performance of its duties will be finally determined by arbitration in accordance with Appendix H.
39. The member of the Forestry Transition Committee who acts on behalf of the Nisga'a Nation, or an arbitrator in an arbitration referred to in paragraph 38, will have the same immunities from liability as a district manager under forest practices legislation.

### **Performance Obligations**

40. Notwithstanding paragraph 25, British Columbia will ensure that all obligations in respect of harvested areas and roads constructed on Nisga'a Lands imposed under agreements under the *Forest Act* or the forest practices legislation are fulfilled.
41. Notwithstanding the expiry, surrender, suspension, or cancellation of a licence, British Columbia will ensure that all obligations imposed under the licence and the forest practices legislation are fulfilled.
42. British Columbia will fulfill on Nisga'a Lands all obligations imposed under forest practices legislation for the small business forest enterprise program.
43. The Nisga'a Nation will:
  - a. determine which roads that require deactivation under forest practices legislation will not require deactivation; and
  - b. notify in writing the person responsible for the road that deactivation of the road is not required.

44. Notice under paragraph 43 will be given as soon as practicable after the person responsible for the road advises the Nisga'a Nation that they intend to deactivate the road.
45. All roads that are required to be deactivated will be deactivated:
  - a. as soon as practicable after the end of the transition period; or
  - b. if they are required for carrying out silviculture obligations, as soon as practicable after the completion of those obligations.
46. The Nisga'a Nation will provide access to Nisga'a Lands to holders of agreements under the *Forest Act*, to holders of licences and to British Columbia so that they may fulfill the obligations referred to in paragraphs 40 to 42 and 45.

### **Compliance and Enforcement**

47. During the transition period, British Columbia is responsible for enforcing compliance with forest practices legislation on Nisga'a Lands by holders of agreements under the *Forest Act* and by holders of licences.
48. British Columbia will ensure that the holders of agreements under the *Forest Act* and the holders of licences comply with the requirements of their agreements and licences.
49. After the transition period, British Columbia is responsible for enforcing compliance with forest practices legislation on Nisga'a Lands by holders of agreements under the *Forest Act* and by holders of licences for obligations referred to in paragraphs 40 to 42 and 45.
50. If British Columbia determines that a holder of an agreement or a holder of a licence has contravened forest practices legislation by harvesting timber without proper authority, British Columbia will levy a penalty against the holder equal to:
  - a. British Columbia's determination of the stumpage and bonus bid that would have been payable had the volume of timber been sold under section 20 of the *Forest Act*; and
  - b. twice British Columbia's determination of the market value of logs and special forest products that were, or could have been, produced from the timber.
51. During the transition period, if a penalty other than a performance penalty is imposed on a person for a contravention of forest practices legislation on or affecting Nisga'a Lands, British Columbia will pay to the Nisga'a Nation an amount equivalent to the portion of that penalty that is imposed in respect of the contravention on or affecting Nisga'a Lands.
52. During the transition period, if a performance penalty is imposed on a person for a

contravention of forest practices legislation on Nisga'a Lands, British Columbia will pay to the Nisga'a Nation an amount equivalent to the portion of that penalty that is imposed and collected in respect of the contravention on Nisga'a Lands, less the reasonable costs associated with imposing that penalty.

53. During the transition period, the Nisga'a Nation may commence, or intervene in, an appeal to the Forest Appeals Commission in respect of:
  - a. a determination of whether a person has contravened forest practices legislation on or affecting Nisga'a Lands; or
  - b. the determination of whether to impose a penalty referred to in paragraphs 51 and 52 and the amount of that penalty.
54. During the transition period, the powers of the Forest Practices Board set out in forest practices legislation in respect of complaints, audits and special reports apply on Nisga'a Lands to holders of agreements under the *Forest Act* and to holders of licences.
55. During the transition period, the Forest Practices Board will perform an annual audit of compliance with and enforcement of forest practices legislation on Nisga'a Lands.
56. The Nisga'a Nation is responsible for enforcing compliance with laws made under paragraphs 6 and 11.

## FOREST FIRES AND FOREST HEALTH

### Forest Fire Control and Suppression on Nisga'a Lands

57. During the transition period, British Columbia is responsible for the control and suppression of forest fires on Nisga'a Lands:
  - a. to the same extent and in the same manner as it is responsible for the control and suppression of forest fires on Crown land elsewhere in British Columbia; and
  - b. by using the same priority assessment that it uses to assign priority to the control and suppression of forest fires on Crown land elsewhere in British Columbia.
58. During the transition period, Canada will pay the costs incurred by British Columbia in controlling and suppressing forest fires that originate on former Nisga'a Indian reserves on the same basis as would have applied if the former Nisga'a Indian reserves had remained Indian reserves under the *Indian Act*.
59. After the transition period, British Columbia is responsible for control and suppression of forest fires on Nisga'a Public Lands:

- a. to the same extent and in the same manner as it is responsible for the control and suppression of forest fires on Crown land elsewhere in British Columbia; and
  - b. by using the same priority assessment that it uses to assign priority to the control and suppression of forest fires on Crown land elsewhere in British Columbia.
60. After the transition period, the Nisga'a Nation will be responsible for the control and suppression of forest fires on Nisga'a Village Lands and on Nisga'a Private Lands.
61. After the transition period, the Nisga'a Nation will pay the costs incurred by British Columbia in controlling and suppressing forest fires on Nisga'a Public Lands if the forest fire:
- a. originates on Nisga'a Public Lands and is caused by an act of God or an industrial user authorized by the Nisga'a Nation;
  - b. originates on Crown land and is caused by an act of God;
  - c. originates on private land and is caused by an act of God; or
  - d. originates on Nisga'a Village Lands or on Nisga'a Private Lands.

### Forest Health

62. Except for the responsibilities of the holders of licences set out in Appendix H, the Nisga'a Nation is responsible for forest health on Nisga'a Lands.
63. If a forest health problem on Nisga'a Lands threatens forest resources on adjacent Crown land:
- a. British Columbia may notify the Nisga'a Nation of the nature, extent and location of the forest health problem;
  - b. if the Nisga'a Nation receives notice under subparagraph (a), it will, within a reasonable time, take all reasonable measures to mitigate the forest health problem;
  - c. if the Nisga'a Nation does not meet its obligation under subparagraph (b), British Columbia, after providing reasonable notice to the Nisga'a Nation, may enter onto Nisga'a Lands and carry out reasonable measures, consistent with Nisga'a laws made under paragraphs 6 and 11, to mitigate the forest health problem;
  - d. British Columbia will use, to the extent that they are available and qualified, Nisga'a citizens to carry out measures under subparagraph (c); and

- e. the Nisga'a Nation will reimburse British Columbia for all reasonable costs incurred by British Columbia in carrying out measures under subparagraph (c).
64. If British Columbia becomes aware of forest health problems on Crown land that threaten forest resources on Nisga'a Lands, British Columbia will:
- a. within a reasonable time, take all reasonable measures to mitigate the identified forest health problem; and
  - b. compensate the Nisga'a Nation for any damage to forest resources on Nisga'a Lands that result from its failure to meet its obligation under subparagraph (a).

## TIMBER PROCESSING

65. Provincial laws in respect of manufacture in British Columbia of timber harvested from Crown land apply to timber harvested from Nisga'a Lands.
66. The Nisga'a Nation may apply to British Columbia to export timber harvested from Nisga'a Lands.
67. During the transition period, British Columbia will approve an application referred to in paragraph 66 if the application is in accordance with provincial laws and policies.
68. Paragraph 65 does not apply in respect of timber harvested from former Nisga'a Indian reserves during the transition period.
69. Timber harvested from former Nisga'a Indian reserves during the transition period may be exported in accordance with federal laws as if the timber had been harvested from a "reserve" as defined in the *Indian Act*.
70. The Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation will not establish a primary timber processing facility for 10 years after the effective date.
71. Paragraph 70 does not preclude the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation from:
- a. establishing a timber processing facility to provide lumber for use by the Nisga'a Nation, a Nisga'a Village, Nisga'a Institutions, a Nisga'a Corporation, or Nisga'a citizens for residential or public purposes;
  - b. conducting value-added timber processing; or
  - c. entering into any partnership or joint venture with the owner of an existing timber processing facility.

## ECONOMIC CONSIDERATIONS

### Same Economic Position

72. British Columbia, in accordance with Appendix H, will make payments to the Nisga'a Nation in respect of timber harvested by holders of licences during the transition period.

### Restoration

73. British Columbia and Canada recognize that the present and anticipated efforts of the Nisga'a Nation to restore watersheds within the Nass Area are consistent with the objectives of Forest Renewal British Columbia.
74. The Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen may apply for funding for restoration of Nisga'a Lands under federal, provincial, or Crown corporation programs, in accordance with requirements and guidelines of those programs.

## FOREST RESOURCES OUTSIDE NISGA'A LANDS

### Forest Management

75. Canada or British Columbia will provide the Nisga'a Nation, through the Joint Fisheries Management Committee and the Wildlife Committee, the information concerning forest development plans applicable to all or part of the Nass Area that is provided to the ministries or departments of Canada and British Columbia participating on those committees.

### Forest Tenures

76. British Columbia agrees in principle to an acquisition by the Nisga'a Nation of a forest tenure or tenures having an aggregate allowable annual cut of up to 150,000 m<sup>3</sup>.
77. An acquisition referred to in paragraph 76 will require approval by the Minister of Forests in accordance with the *Forest Act*.
78. The Minister of Forests supports, and will approve, an acquisition referred to in paragraph 76 if the Minister is satisfied that:
- a. there has been a public process, in accordance with Ministry policy on tenure transfers and corporate concentration, that identifies public interests in relation to those matters; and
  - b. the tenure or tenures contain terms and conditions that address local employment

and economic opportunities, including those in the Nass Area, and regional fibre supply needs.

79. In addition to the requirements set out in paragraphs 77 and 78, if the tenure to be acquired by the Nisga'a Nation is a Tree Farm Licence, the approval of the Minister of Forests will be conditional upon the agreement by the Nisga'a Nation to the inclusion of a portion of Nisga'a Lands as Schedule A Lands within the Tree Farm Licence.
80. The portion of Nisga'a Lands to be included as Schedule A Lands within a Tree Farm Licence will be:
  - a. negotiated at the time of the Tree Farm Licence acquisition; and
  - b. based on appropriate management considerations.
81. Nothing in this Agreement limits the ability of the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen to acquire a forest tenure under the *Forest Act*.
82. A forest tenure referred to in paragraph 76 or 81 that is acquired by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, is subject to federal and provincial laws of general application.

## CHAPTER 6

### ACCESS

#### NISGA'A PUBLIC LANDS

##### Nisga'a Rights and Obligations

1. Except as modified by this Agreement, the Nisga'a Nation, as owner of Nisga'a Lands, has the same rights and obligations in respect of public access to Nisga'a Lands as other owners of estates in fee simple have in respect of public access to their land, and in respect of Nisga'a Public Lands, the Nisga'a Nation has liabilities similar to those of the Crown in respect of unoccupied Crown land.

##### Reasonable Public Access

2. Nisga'a Lisims Government will allow reasonable public access to and onto Nisga'a Public Lands for temporary non-commercial and recreational uses, but public access does not include:
  - a. harvesting or extracting resources unless authorized by Nisga'a Lisims Government or as set out in this Chapter;
  - b. causing damage to Nisga'a Lands or resources;
  - c. causing mischief or nuisance; or
  - d. interfering with other uses authorized by Nisga'a Lisims Government, or interfering with the ability of Nisga'a Lisims Government to authorize uses of or dispose of Nisga'a Public Lands, or to designate Nisga'a Public Lands as Nisga'a Private Lands or Nisga'a Village Lands.
3. Nisga'a Lisims Government may make laws in accordance with the Nisga'a Government Chapter regulating public access to and onto Nisga'a Public Lands, for purposes such as:
  - a. public safety;
  - b. the prevention of nuisance or damage, including fires;
  - c. the protection of sensitive habitat areas or heritage sites; and
  - d. the prevention of harvesting or extracting of resources.

**Public Access for Hunting and Fishing on Nisga'a Public Lands**

4. Nisga'a Lisims Government will provide reasonable opportunities for the public to hunt and fish on Nisga'a Public Lands but, as the Nisga'a Nation is the owner of the land on the effective date, only Nisga'a citizens have the right to hunt and fish on Nisga'a Lands.
5. Hunting and fishing by the public under paragraph 4 will be in accordance with paragraphs 6 and 7, federal and provincial laws of general application, annual management plans, and any laws enacted by Nisga'a Lisims Government regulating public access.
6. An annual management plan will specify the level of harvest of each designated species, and any other species that the Minister and Nisga'a Lisims Government agree should be included in the annual management plan, that may be harvested on Nisga'a Public Lands by persons other than Nisga'a citizens, having regard to Nisga'a preferences for harvesting wildlife under Nisga'a wildlife entitlements on Nisga'a Lands, and the availability of that species in the rest of the Nass Wildlife Area.
7. Nisga'a Lisims Government may, for the purpose of monitoring and regulating public access for hunting and fishing under paragraph 4, require persons other than Nisga'a citizens to obtain a permit or licence. Those permits or licences will be reasonably available at a reasonable fee taking into account the administrative and other costs of the monitoring and regulating.

**Notice of Terms and Conditions in Respect of Public Access**

8. Nisga'a Lisims Government and British Columbia will take reasonable measures to notify the public of terms and conditions in respect of public access to and onto Nisga'a Public Lands.
9. Nisga'a Lisims Government will consult with Canada and British Columbia in respect of any proposed Nisga'a laws that would significantly affect the regulation of public access to and onto Nisga'a Public Lands.
10. Nisga'a Lisims Government will notify Canada and British Columbia of the location and boundaries of Nisga'a Village Lands and Nisga'a Private Lands.
11. If Nisga'a Lisims Government intends to change the locations or boundaries of Nisga'a Village Lands or Nisga'a Private Lands, it will provide reasonable notice to British Columbia and Canada of the proposed changes.
12. If Nisga'a Lisims Government intends to change the locations or boundaries of Nisga'a Village Lands or Nisga'a Private Lands, it will take reasonable steps to notify the public, and it will consider any views advanced in respect of the proposed changes by any individual who would be adversely affected, but the changes may not be set aside on the ground of

insufficient notice.

#### Alternative Access

13. If the designation of Nisga'a Public Lands as Nisga'a Village Lands or Nisga'a Private Lands has the effect of preventing public access to an area or location to which there is a public right of access under federal or provincial laws of general application such as navigable waters or Crown roads, Nisga'a Lisims Government will provide reasonable alternative means of public access to that area or location.

#### NAVIGABLE WATERS

14. This Agreement does not affect public rights of access on navigable waters within Nisga'a Lands.

#### CROWN ACCESS TO NISGA'A LANDS

15. Agents, employees, and contractors of Canada or British Columbia, police officers appointed under federal or provincial legislation, and members of the Canadian Armed Forces, in accordance with federal and provincial laws of general application, may enter, cross, and stay temporarily on Nisga'a Lands to deliver and manage programs and services, to carry out inspections under law, to enforce laws, to carry out the terms of this Agreement, and to respond to emergencies.
16. Canada or British Columbia will give reasonable notice of entry onto Nisga'a Lands under paragraphs 15 or 17 to the Nisga'a Nation:
  - a. before the entry if it is practicable to do so; or
  - b. in any event, as soon as practicable after the entry.
17. This Agreement does not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security, in accordance with federal laws of general application.
18. Canada will give reasonable notice of entry onto the Nass Area under paragraph 17 to the Nisga'a Nation:
  - a. before the entry if it is practicable to do so; or
  - b. in any event, as soon as practicable after the entry.

19. Persons who enter, cross, and stay temporarily on Nisga'a Lands under paragraphs 15 or 17 are subject to Nisga'a laws except to the extent that those laws unduly interfere with the carrying out of their duties, and they are not subject to payment of fees or compensation except as required by federal or provincial law in respect of the payment of fees or compensation for access on land owned in fee simple.

### **NISGA'A ACCESS TO OTHER LANDS**

20. Agents, employees, and contractors of the Nisga'a Nation, Nisga'a Villages, and Nisga'a Corporations, and members of the Nisga'a Police Service, in accordance with laws of general application, may enter, cross, and stay temporarily on lands off of Nisga'a Lands to deliver and manage government programs and services, to carry out inspections under law, to enforce laws, to carry out the terms of this Agreement, and to respond to emergencies.
21. Persons who enter, cross, and stay temporarily on lands under paragraph 20 are not subject to payment of fees or compensation except to the extent that federal or provincial law requires the payment of fees or compensation by or on behalf of agents, employees, or contractors of federal or provincial governments.
22. The Nisga'a Nation, Nisga'a Villages, or Nisga'a Corporations will give reasonable notice of entry onto lands under paragraph 20 to Canada or British Columbia as the case may be:
  - a. before the entry if it is practicable to do so; or
  - b. in any event, as soon as practicable after the entry.
23. Nisga'a citizens will have reasonable access to and onto Crown lands that are outside of Nisga'a Lands, including streams and highways, to allow for the exercise of Nisga'a rights set out in this Agreement and for the normal use and enjoyment of Nisga'a interests set out in this Agreement, including the use of resources for purposes incidental to the normal use and enjoyment of those rights or interests, provided that this access does not interfere with other authorized uses or the ability of the Crown to authorize uses or dispose of Crown land.
24. If an authorized use or disposition of Crown land would deny Nisga'a citizens reasonable access or use of resources, as contemplated by paragraph 23, the Crown will ensure that alternative reasonable access is provided.

### **ACCESS TO FEE SIMPLE PROPERTIES**

25. If the owner of a parcel of land identified in Schedule 1 of Appendix B-2 reasonably requires a right of access to that parcel, Nisga'a Government may not unreasonably withhold consent to that right of access if:

- a. the owner of the parcel offers fair compensation; and
  - b. the owner of the parcel and Nisga'a Government agree on the terms of access.
26. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen reasonably requires a right of access to a parcel of Nisga'a Fee Simple Lands, British Columbia may not unreasonably withhold consent to that access if:
- a. the Nisga'a Nation, Nisga'a Village, Nisga'a Corporation or Nisga'a citizen offers fair compensation; and
  - b. the Nisga'a Nation, Nisga'a Village, Nisga'a Corporation or Nisga'a citizen and British Columbia agree on the terms of access.
27. British Columbia or Nisga'a Lisims Government may refer a dispute respecting consent to a right of access, terms of access, or fairness of compensation under paragraph 25 or 26 to be finally determined by binding arbitration under the Dispute Resolution Chapter.

## CHAPTER 7

### ROADS AND RIGHTS OF WAY

#### RIGHTS OF WAY GENERAL

##### British Columbia Rights of Way Area on Effective Date

1. On the effective date, the total rights of way area of the British Columbia rights of way is deemed to equal 800 hectares, and this total is the basis of calculations under paragraph 2.

##### Additional Public Rights of Way

2. After the effective date, the Nisga'a Nation or a Nisga'a Village, on request by British Columbia, will grant to British Columbia, or to a public utility, rights of way on Nisga'a Lands for public purposes, including provincial secondary roads or public utilities, in order to provide access or service to Nisga'a Lands or other lands, subject to the following:
  - a. any grant must be on reasonable terms including the location of the requested right of way, its width considering the intended use, its effect on neighbouring lands, and payment of fair compensation;
  - b. British Columbia is not entitled to a grant under this paragraph if, on the date of the request, the total of the rights of way areas of all British Columbia rights of way plus the area of the requested grant would exceed the aggregate right of way maximum;
  - c. if any British Columbia right of way, or a portion of a British Columbia right of way, terminates, the right of way area of the terminated right of way will be excluded from the calculation of the total of the rights of way areas of all the British Columbia rights of way for the purposes of calculating British Columbia's entitlement in respect of the aggregate right of way maximum; and
  - d. if any dispute arises between British Columbia and the Nisga'a Nation or a Nisga'a Village in respect of the rights or obligations of either British Columbia, the Nisga'a Nation or a Nisga'a Village under this paragraph, including a dispute in respect of British Columbia's entitlement to the grant of a right of way for itself or for a public utility, or a dispute in respect of the terms of the grant, then any party to that dispute may refer the dispute to be finally determined by arbitration under Stage Three of the Dispute Resolution Chapter without having to proceed through Stage Two. The arbitrator's decision will be final on all matters in dispute, but the arbitrator will not have the authority to require British Columbia or a public utility to accept a grant of a right of way.

**Preservation of Right to Grant Rights of Way and Approve Survey Plans**

3. The Nisga'a Nation, and each Nisga'a Village, will preserve their respective rights to grant rights of way to British Columbia or a public utility on all Nisga'a Lands, and to approve all survey plans as set out in paragraph 5.

**Ownership of Works and Plant**

4. Subject to any express provision, in respect of ownership, in a grant of a right of way, all works, including road surfacing, bridges, drainage works, public utility poles, wiring and related plant, underground piping, conduits and related plant, that are located on that right of way area:
  - a. are the property of the grantee of that grant from the Nisga'a Nation or a Nisga'a Village, for the duration of the grant; and
  - b. become the property of the Nisga'a Nation or Nisga'a Village upon the termination of the grant.

**Approval of Survey Plans**

5. For each grant of a right of way given on the effective date, the detailed location and dimensions of the right of way area will be deemed to be described conclusively in survey plans approved by the Nisga'a Nation and the grantee, as follows:
  - a. a survey plan attached to a grant given on the effective date will be deemed to be approved by the Nisga'a Nation and the grantee; and
  - b. for any portion of a right of way area that is not described in any survey plan attached to the grant given on the effective date, either the Nisga'a Nation or the grantee may deliver to the other, at any time, a survey plan for approval in writing. If approval is not given within 30 days, then the Nisga'a Nation or the grantee may refer the matter in dispute to dispute resolution for final determination, as set out in the grant.

**Application of Nisga'a Law**

6. Nisga'a laws apply to secondary provincial road rights of way areas, public utility rights of way areas, and works under licence to British Columbia or a public utility from the Nisga'a Nation or a Nisga'a Village, to the extent that the Nisga'a laws do not:
  - a. impair the ability to use and occupy a right of way area for the purposes for which the right of way was granted;

- b. specify a more stringent standard of design or operation for road or utility works that are on a right of way area, or under licence, than is set out in federal or provincial laws of general application in British Columbia; or
  - c. impair the ability to use any works under licence for the purposes for which the licence was granted.
7. Any right of way, other interest, or licence, granted under this Chapter on the effective date, will be in the applicable form set out in Appendix C-3 or C-4 and will include any modification agreed upon in writing before the effective date by the Nisga'a Tribal Council and the person entitled to the right of way, other interest, or licence.

## **NISGA'A HIGHWAY**

### **Ownership of the Nisga'a Highway Corridor**

8. As of the effective date, British Columbia owns the Nisga'a Highway corridor to use as a public highway, and the Parties will execute documents and take reasonable steps to the extent necessary to provide British Columbia administration, control, and ownership of the Nisga'a Highway corridor.

### **Description of Nisga'a Highway Corridor**

9. As of the effective date, the Nisga'a Highway corridor consists of the lands set out in Schedule A. The detailed location and dimensions of the Nisga'a Highway corridor are deemed to be described conclusively in survey plans approved by the Nisga'a Nation and British Columbia, as follows:
  - a. on or after the effective date, either the Nisga'a Nation or British Columbia may deliver to the other a survey plan of all or any portion of the Nisga'a Highway corridor for approval by the other in writing; and
  - b. if approval is not given within 30 days, then either the Nisga'a Nation or British Columbia may refer the matter to be finally determined by arbitration under Stage Three of the Dispute Resolution Chapter.

### **Nisga'a Highway Corridor Dimensions**

10. Unless otherwise described in a survey plan approved under paragraph 9, the width of the Nisga'a Highway corridor is 30 metres, except that the width is greater than 30 metres where required to include those:

- a. bridges, drainage, and support works, and other road works; and
  - b. cuts and fills, plus an additional three metres on both sides, measured from the toe of the fill, and from the top of the cut
- that are part of the Nisga'a Highway existing on the effective date.

#### **Closure of Nisga'a Highway**

11. If British Columbia discontinues and closes any portion of the Nisga'a Highway corridor:
  - a. it will transfer to the Nisga'a Nation the estate in fee simple, as described in paragraph 3 of the Lands Chapter, for that portion of the Nisga'a Highway corridor;
  - b. that portion of the Nisga'a Highway corridor will cease to be a part of the Nisga'a Highway corridor; and
  - c. the Nisga'a Nation may make that portion of the Nisga'a Highway corridor Nisga'a Lands, in accordance with the process referred to in paragraph 9 of the Lands Chapter.

#### **Relocation of Nisga'a Highway**

12. If the Nisga'a Nation or a Nisga'a Village requires a portion of the Nisga'a Highway corridor for another purpose, the Nisga'a Nation or that Nisga'a Village may request British Columbia to relocate that portion of the Nisga'a Highway corridor and, if:
  - a. the new location is reasonably suitable for use as a highway of a comparable standard considering construction, maintenance, operation, and costs; and
  - b. the Nisga'a Nation or that Nisga'a Village pays all reasonable costs, including costs of design, planning, supervision, land, and construction

British Columbia will not unreasonably refuse to undertake the relocation.

13. If a portion of the Nisga'a Highway corridor is relocated:
  - a. British Columbia will transfer to the Nisga'a Nation or Nisga'a Village, as the case may be, the estate in fee simple, as described in paragraph 3 of the Lands Chapter, to that portion of the Nisga'a Highway corridor that is abandoned;
  - b. that portion of the Nisga'a Highway corridor will cease to be a part of the Nisga'a Highway corridor;

- c. the Nisga'a Nation may make that portion of the Nisga'a Highway corridor Nisga'a Lands, in accordance with the process referred to in paragraph 9 of the Lands Chapter; and
  - d. the Nisga'a Nation or that Nisga'a Village, as the case may be, will transfer to British Columbia the estate in fee simple, as described in paragraph 3 of the Lands Chapter, to the area of land in the relocated portion of the Nisga'a Highway corridor and that area of land will no longer be Nisga'a Lands.
14. A relocation under paragraph 12 does not affect the calculation of the total area of all British Columbia rights of way.

### **Highway Alignment**

15. British Columbia will exercise its expropriation powers in respect of fee simple lands, on the alignment of the Nisga'a Highway, that are not Nisga'a Lands in the same manner as it exercises those powers in respect of comparable highways elsewhere in British Columbia.

### **Nisga'a Highway Extension to Highway 37**

16. British Columbia will consider the extension of the Nisga'a Highway from Nass Camp to connect with Highway 37, in accordance with provincial priorities and having regard to British Columbia's long term goal of completing that extension.

## **SECONDARY PROVINCIAL ROADS**

### **Secondary Provincial Roads Rights of Way Grants**

17. On the effective date, the Nisga'a Nation will grant to British Columbia, in accordance with this Agreement, the rights of way for secondary provincial roads as set out in Appendix C-1, Part 3.

### **Form of Grant**

18. Grants for secondary provincial road rights of way on the effective date will be substantially in the form of Appendix C-4, Document 1 and will include by reference all of the provisions of this Agreement that apply to secondary provincial road rights of way, which provisions will be subject to any express provisions in the grant.
19. Unless the Nisga'a Nation and British Columbia otherwise agree, grants for secondary provincial road rights of way granted after the effective date will be in the form and on the
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terms referred to in paragraph 18.

### Rights and Privileges

20. A grant of a right of way for a secondary provincial road right of way area will provide British Columbia with the full, free and uninterrupted right, liberty and right of way, in perpetuity, for the purposes of using, constructing, re-constructing, repairing, improving, upgrading, and maintaining, as provided in this Agreement:
  - a. a secondary provincial road on the right of way area as a road open to the public;
  - b. a secondary provincial road on the right of way area as a road open to industrial or resource users and, as safety permits, to the public; or
  - c. works for public utility purposes.
21. The grant in paragraph 20 will provide British Columbia, its employees, representatives, agents, contractors, and permittees the right to enter onto the secondary provincial road rights of way areas for the purposes referred to in paragraph 20.

### Secondary Provincial Road Rights of Way Area Dimensions

22. Unless otherwise described in a survey plan approved under paragraph 5, the width of a secondary provincial road right of way area is 20 metres, except that the width is greater than 20 metres where required to include those:
  - a. bridges, drainage, and support works, and other road works; and
  - b. cuts and fills, plus an additional three metres on both sides, measured from the toe of the fill, and from the top of the cut

that are part of the secondary provincial road existing on the effective date.

### Nisga'a Assignment of Secondary Provincial Road

23. The Nisga'a Nation may not, without the written consent of British Columbia, assign or transfer any of its interest in any Nisga'a Lands that are subject to a secondary provincial road right of way except to a Nisga'a Village.
24. Upon an assignment or transfer to a Nisga'a Village:
  - a. the Nisga'a Nation will, subject to a re-transfer or re-assignment of the interest to the

- Nisga'a Nation, be deemed to be released of its obligations under the secondary provincial road right of way; and
- b. the Nisga'a Village will not assign or transfer the interest to any third party without the written consent of British Columbia.

#### **British Columbia Assignment of Secondary Provincial Road**

25. British Columbia may not without the written consent of the Nisga'a Nation assign or transfer any of its interest in any secondary provincial road right of way area except for an assignment to:
  - a. a British Columbia Crown corporation or other British Columbia entity; or
  - b. to a lender as security for a borrowing by British Columbiaand no assignment or transfer will act as a release of any of British Columbia's obligations as set out in this Agreement, or delegate, alter, or affect any of the regulatory powers of British Columbia.

#### **Indemnity For Secondary Provincial Roads**

26. British Columbia will indemnify and save harmless the Nisga'a Nation and each Nisga'a Village, as the case may be, from any:
  - a. costs, excluding fees and disbursements of solicitors and other professional advisors;
  - b. damages;
  - c. losses; or
  - d. liabilities

that the Nisga'a Nation or a Nisga'a Village, respectively, may suffer or incur in connection with, or as a result of, any claims, demands, actions, or proceedings arising out of or relating to a secondary provincial road right of way area, except to the extent that those costs, damages, losses, and liabilities were caused by the Nisga'a Nation or that Nisga'a Village.

#### **Abandonment of Secondary Provincial Roads**

27. British Columbia may abandon any secondary provincial road by giving written notice to the Nisga'a Nation.

28. Subject to:

- a. the express provisions in the grant of a right of way of a secondary provincial road referred to in paragraph 27; and
- b. agreement by the Nisga'a Nation or a Nisga'a Village to assume responsibility for that secondary provincial road

British Columbia will be responsible to decommission that road, remove any structures from it, or take the steps required under federal and provincial laws of general application that apply to comparable roads adjacent to private lands.

29. If, under paragraph 28, there are no applicable federal or provincial laws of general application, British Columbia will take the steps reasonably required to protect adjacent Nisga'a Lands and the public from damage or injury that might result from the continued existence of the secondary provincial road.
30. The grant of a right of way will be terminated on the date set out in the termination notice given under paragraph 27, except that British Columbia's liability obligations, and obligations under paragraphs 28 and 29 existing at the date of termination, will survive the termination.

#### **Rights of Way for Secondary Provincial Road Extensions**

31. On request of British Columbia and subject to the aggregate right of way maximum, the Nisga'a Nation or a Nisga'a Village will give a grant substantially in the form of Appendix C-4, Document 1 granting:
  - a. rights of way for secondary provincial roads for the three roads connecting the North Hoodoo Road with the easterly boundary of Nisga'a Lands as shown generally in Appendix C-1, Part 3; and
  - b. rights of way to extend or add to the provincial secondary roads in accordance with paragraph 2.

#### **CROWN ROADS**

##### **Public Utilities on Crown Road Rights of Way Areas**

32. British Columbia will permit public utilities to use the Nisga'a Highway corridor and the secondary provincial road rights of way areas to install, operate, and maintain utility transmission and distribution works to the extent that, in the reasonable judgement of British Columbia, those works will not interfere with the safe and prudent use of the existing road or existing public utility works.

**Other Uses within Crown Road Rights of Way Areas**

33. British Columbia will authorize the use of the Nisga'a Highway corridor and the secondary provincial road rights of way areas for uses other than road and public utility uses as follows:
- a. British Columbia will issue a permit for a use if:
    - i. the Nisga'a Nation or a Nisga'a Village has issued a permit for that use, and
    - ii. in the reasonable judgment of British Columbia, the use will be safe and will not interfere with the existing road or existing public utility works; and
  - b. British Columbia may:
    - i. attach to a permit issued under subparagraph (a) conditions in respect of safety or interference,
    - ii. terminate a permit issued under subparagraph (a) without compensation if the use is unsafe or interferes with the existing or proposed road or existing or proposed public utility works, or
    - iii. charge fees for a permit issued under subparagraph (a), which do not exceed British Columbia's actual reasonable costs of issuing the permit.

**Entry on Nisga'a Lands Outside Crown Road Rights of Way**

34. In addition to the provisions of paragraph 15 of the Access Chapter, and subject to the provisions of a grant of a secondary provincial road right of way, British Columbia, its employees, agents, contractors, or representatives may enter onto Nisga'a Lands outside the Nisga'a Highway corridor, or outside a provincial secondary road right of way area, for the purpose of undertaking works, including:
- a. constructing drainage works;
  - b. maintaining slope stability; or
  - c. removing danger trees or other hazards
- as required for the protection, care, maintenance, or construction of road or public utility works.
35. Before commencing any work referred to in paragraph 34, British Columbia will deliver a written work plan describing the effect and extent of the proposed work on Nisga'a Lands to the Nisga'a Nation or a Nisga'a Village, as the case may be, for approval.
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36. The Nisga'a Nation or a Nisga'a Village, as the case may be, will not unreasonably withhold approval of the work plan delivered by British Columbia, considering the effect of the proposed work, including the cost of the proposed work compared to the cost of alternate solutions, the extent of the risk of not undertaking the proposed work, and the impact of the proposed work on Nisga'a Lands.
37. If British Columbia and the Nisga'a Nation or a Nisga'a Village, as the case may be, do not agree on a work plan requested by British Columbia within 30 days of receipt by the Nisga'a Nation or that Nisga'a Village of the proposed work plan, either party may refer the disagreement to be finally determined by arbitration under Stage Three of the Dispute Resolution Chapter, without having to proceed through Stage Two.
38. In undertaking works referred to in paragraph 34, British Columbia will minimize the damage to, and time spent on, Nisga'a Lands.
39. British Columbia will pay fair compensation for any interference with, or damage to, Nisga'a Lands adjacent to the work referred to in paragraph 34. Either party may refer a disagreement in respect of compensation to be finally determined by arbitration under Stage Three of the Dispute Resolution Chapter.
40. Notwithstanding any other provision of this Agreement, in an emergency, British Columbia may undertake works and take steps, on Nisga'a Lands, that are reasonably required to be taken immediately in order to protect works constructed on the Nisga'a Highway corridor or a secondary provincial road right of way area, or to protect persons or vehicles using the Nisga'a Highway or a secondary provincial road.
41. In the event of an emergency referred to under paragraph 40, British Columbia will, as soon as practicable, notify the Nisga'a Nation or the relevant Nisga'a Village, as the case may be, in writing that it has undertaken emergency work on Nisga'a Lands.

#### **Consultation Regarding Traffic Regulation**

42. Upon request of the Nisga'a Nation or a Nisga'a Village, British Columbia will consult with the Nisga'a Nation or that Nisga'a Village with respect to regulation of traffic and transportation on the Nisga'a Highway or a secondary provincial road that is adjacent to a settled area on Nisga'a Lands.

#### **Access and Safety Regulation**

43. British Columbia has the right to regulate all matters relating to:
  - a. the location and design of intersecting roads giving access to the Nisga'a Highway or secondary provincial roads, including:

- i. regulating or requiring signs, signals, and other traffic control devices on Nisga'a Highway corridor and the secondary provincial road rights of way areas,
  - ii. regulating or requiring merging lanes, on ramps and off ramps, or
  - iii. requiring contributions to the cost of (i) and (ii) above; and
- b. the height and location of structures on Nisga'a Lands immediately adjacent to the Nisga'a Highway corridor, or to a secondary provincial road right of way area, only to the extent reasonably required to protect the safety of the users of the Nisga'a Highway and secondary provincial roads.
44. Subject to other provisions of this Agreement, British Columbia has no authority to zone or otherwise regulate land use on Nisga'a Lands adjacent to the Nisga'a Highway corridor or secondary provincial road rights of way areas.
45. The Nisga'a Nation or a Nisga'a Village, as the case may be, will consult with British Columbia on land use decisions relating to the development of Nisga'a Lands adjacent to the Nisga'a Highway corridor.

#### **Temporary Closure of Crown Roads**

46. Subject to paragraph 47, British Columbia may temporarily close a portion of the Nisga'a Highway or a secondary provincial road for reasons of safety, or for reasons of care and maintenance of the Nisga'a Highway or a secondary provincial road.

#### **Administration of the Nisga'a Highway and Secondary Provincial Roads**

47. British Columbia will administer the Nisga'a Highway and secondary provincial roads, including closing, abandoning, and maintaining them, in the same manner as it administers comparable roads elsewhere in British Columbia.

#### **Relocation of Secondary Provincial Roads**

48. If the Nisga'a Nation or a Nisga'a Village requires a portion of a secondary provincial road right of way area for another purpose, the Nisga'a Nation or that Nisga'a Village may request British Columbia to relocate that portion of the right of way area, and if:
- a. the new location is reasonably suitable for use as a road of a comparable standard considering construction, maintenance, operation, and costs; and

- b. the Nisga'a Nation or that Nisga'a Village pays all reasonable costs, including costs of design, planning, supervision, land, and construction

British Columbia will not unreasonably refuse to undertake the relocation.

49. If a portion of a right of way is relocated under paragraph 48, the right of way will be terminated for the portion of the road right of way area that is abandoned, and the Nisga'a Nation or Nisga'a Village will grant a new right of way for the relocated secondary provincial road.
50. A relocation under paragraph 48 does not have any impact on the calculation of the total rights of way area of British Columbia rights of way.

#### Maintenance

51. Subject to any agreement between British Columbia and the Nisga'a Nation or a Nisga'a Village in respect of a secondary provincial road, the Nisga'a Nation and each Nisga'a Village has no responsibility or liability for maintenance or repair of the Nisga'a Highway or a secondary provincial road.

#### Use of Existing Gravel Pits on Nisga'a Lands

52. British Columbia may enter, without charge, onto Nisga'a Lands to extract gravel materials from pits existing on the effective date to construct and maintain the Nisga'a Highway or secondary provincial roads.
53. As soon as practicable after the effective date, British Columbia will prepare gravel management plans for the gravel materials pits existing on the effective date as set out in Schedule B, and submit them to the Nisga'a Nation or a Nisga'a Village, as the case may be, for approval, which approval will not be unreasonably withheld.
54. British Columbia, the Nisga'a Nation and each Nisga'a Village will comply with the provisions of an approved gravel management plan.
55. Without preparing a gravel management plan, British Columbia may continue to use a gravel materials pit that is not listed in Schedule B and that, as of the effective date, British Columbia has been using intermittently as a source of gravel materials for local road maintenance, but if the rate of extraction from that pit increases materially, British Columbia will prepare a gravel management plan for that pit in accordance with paragraph 53.

**Development of New Gravel Materials Pits on Nisga'a Lands**

56. Subject to paragraph 57, British Columbia may enter, without charge, onto Nisga'a Lands to locate and extract sufficient quantities of unprocessed gravel materials from natural deposits as may exist on Nisga'a Lands for use by British Columbia to construct and maintain the Nisga'a Highway or secondary provincial roads.
57. Before undertaking any excavation for gravel material samples or other exploration work on Nisga'a Lands under paragraph 56, British Columbia will prepare a written exploration plan, indicating generally the proposed location of exploration and the method and extent of proposed work, for approval by the Nisga'a Nation or the Nisga'a Village, as the case may be, which approval will not be unreasonably withheld.
58. In respect of a written exploration plan under paragraph 57:
  - a. British Columbia will select a proposed location to explore for a gravel materials pit, taking into account the effect of a development at that proposed location on:
    - i. the lands adjacent to the proposed location, and
    - ii. any unique attributes of the lands at the proposed location and adjacent lands; and
  - b. in considering whether to approve that plan, the Nisga'a Nation or a Nisga'a Village, as the case may be, will take account of the cost efficiencies of the proposed location in relation to alternate locations.
59. After approval is obtained under paragraph 57 for an exploration plan, British Columbia will prepare and obtain approval for a gravel management plan in accordance with paragraph 53 before commencing the development of any gravel materials pit.

**NISGA'A ROADS GENERAL****Public Use and Right to Close Nisga'a Roads to Public**

60. Nisga'a roads will be administered as follows:
  - a. the Nisga'a Nation may close to the public any portion of a Nisga'a road that is not within Nisga'a Village Lands; and
  - b. a Nisga'a Village will permit public use of those Nisga'a roads on its Nisga'a Village lands that would be open to the public in comparable communities elsewhere in British Columbia, and accordingly may close a Nisga'a road in a Nisga'a Village for safety reasons.

**Maintenance**

61. British Columbia is not responsible or liable for maintenance or repair of a Nisga'a road.

**Development of Gravel Materials Deposits on Crown Lands for Nisga'a Use**

62. Subject to paragraph 63, the Nisga'a Nation may enter onto Crown lands to locate and extract, without charge, sufficient quantities of unprocessed gravel materials from natural deposits as may exist on Crown lands for use by the Nisga'a Nation for public purposes.
63. The rights and obligations of British Columbia set out in paragraphs 52 to 59 and, as appropriate, British Columbia's normal application procedures, will apply to the Nisga'a Nation, in respect of the location, development, and extraction of gravel materials on Crown lands, under paragraph 62.
64. British Columbia will not unreasonably withhold approval for any exploration plan or gravel management plan prepared and submitted by the Nisga'a Nation under paragraph 63.

**PRIVATE ROADS****Grant of Private Road Rights of Way as of the Effective Date**

65. On the effective date, the Nisga'a Nation will grant private road rights of way for the private roads listed in Appendix C-1, Part 3.

**Form of Grant for Private Road Rights of Way**

66. Grants for private road rights of way given on the effective date will be substantially in the form of Appendix C-4, Document 2.

**Termination of Private Rights of Way**

67. Subject to the express provisions of a grant of a private road right of way, upon the termination of the interest or right to which that private road right of way provides access, the private road right of way will terminate.

**UTILITIES GENERAL****Public Utility Rights of Way as of the Effective Date**

68. On the effective date:
- a. for public utility works located on a Crown road right of way area on Nisga'a lands, British Columbia will be deemed to have granted the public utility the right to use the Crown road right of way area for the installation, operation, and maintenance of the existing utility transmission and distribution works, subject to regulation by British Columbia in the same manner as British Columbia regulates public utilities on road rights of way elsewhere in British Columbia;
  - b. for Hydro works not located on a Crown road right of way area, the Nisga'a Nation will give the grants to Hydro, as set out in Appendix C-1, Part 2, substantially in the form set out in Appendix C-3, Document 1;
  - c. for BC TEL works not located on a Crown road right of way area, the Nisga'a Nation will give the grants to BC TEL as set out in Appendix C-1, Part 2, substantially in the form set out in Appendix C-3, Document 2; and
  - d. to provide access across Nisga'a Lands to Hydro rights of way areas and works, the Nisga'a Nation will grant to Hydro rights of way as set out in Appendix C-1, Part 3, substantially in the form contained in Appendix C-4, Document 3.

**Public Utilities on Crown Roads**

69. Subject to this Chapter, public utilities may, with the prior written approval of British Columbia, locate utility transmission and distribution works on Crown roads rights of way areas.

**Public Utilities on Nisga'a Lands**

70. Subject to this Chapter, Hydro and BC TEL may, with the prior written approval of the Nisga'a Nation or a Nisga'a Village, locate distribution works on Nisga'a Lands to meet demands for service.
71. Hydro or BC TEL may, with the prior written approval of the Nisga'a Nation or a Nisga'a Village, install new works on Nisga'a Lands and provide new service connections after the effective date on terms substantially as set out in:
- a. Appendix C-3, Document 1 for Hydro; and

- b. Appendix C-3, Document 2 for BC TEL

so that Hydro and BC TEL have the opportunity to extend their distribution systems according to their policies in other comparable communities in British Columbia.

72. The Nisga'a Nation and each Nisga'a Village will not unreasonably withhold approval for Hydro or BC TEL works referred to in paragraph 71.
73. Nothing in paragraph 71 or 72 requires Hydro or BC TEL to obtain approval from the Nisga'a Nation or a Nisga'a Village for usual service extensions or connections to works on a Crown road right of way area or a public utility right of way area.

#### **Alterations to Hydro Rights of Way Areas**

74. If under the terms of a grant of a Hydro right of way the Nisga'a Nation or a Nisga'a Village requires Hydro to:
  - a. relocate a portion of the Hydro right of way area for Hydro transmission or distribution works existing on the effective date; or
  - b. include within a Hydro right of way area Hydro transmission or distribution works that:
    - i. are located on Nisga'a Lands outside of a Crown road right of way area or Hydro right of way area; and
    - ii. exist on the effective date

the relocation or inclusion will not have any impact on the calculation of the total rights of way area of British Columbia rights of way.

**SCHEDULE A -- NISGA'A HIGHWAY CORRIDOR**

- Section A - Kincolith to that part of the southerly boundary of former Lachkaltsap Indian Reserve No. 9, shown as being the southerly boundary of Block A of District Lot 7051, Cassiar District, on Plan 12431, excluding the portion within District Lot 2 and District Lot 3965, being Red Bluff Indian Reserve No. 88, both in Range 5 Coast District  
Maps 103I.091, 103I.092, 103P.001, 103P.002, and 103P.003
- Section B - From the southerly boundary of former Lachkaltsap Indian Reserve No. 9 shown as being Block A of District Lot 7051, Cassiar District, on Plan 12431, to the southerly boundary of former Zaulzap Indian Reserve No. 29, being the southerly boundary of *Anhluut'uksim Laxmihl Angwinga'Asanskwhl Nisga'a* (a.k.a Nisga'a Memorial Lava Bed Park)  
Maps 103P.003, 103P.004, and 103P.014
- Section C - Anlaw Road (Gitwinksihlkw Access Road) between the easterly boundary of former Gitwinksihlkw Indian Reserve No. 7 and the left natural boundary of Nass River, which is also a portion of the boundary of *Anhluut'uksim Laxmihl Angwinga'Asanskwhl Nisga'a* (a.k.a Nisga'a Memorial Lava Bed Park) as shown on Land Act Survey Plan 11 Tube 1711  
Map 103P.014
- Section D - Section running between the right natural boundary of Tseax River and the northerly boundary of the BC Hydro right of way lying within District Lot 1726, as shown on Plan 7237 on deposit in the Land Title Office in Prince George  
Maps 103P.025 and 103P.026
- Section E - Aiyansh Road No. 180 between the Nisga'a Highway running through the Southeast 1/4 of District Lot 4011, Cassiar District, and the northerly boundary of the Northeast 1/4 of District Lot 4012, being part of the boundary of former New Aiyansh Indian Reserve No. 1 as shown on RS5608 (52-09-14)  
Map 103P.025
- Section F - Nass Forest Service Road (FSR 7876.01 - Section 01) running from junction of Nisga'a Highway with Road No. 325 northeasterly to its intersection with the boundary of Nisga'a Lands within District Lot 1751, Cassiar District  
Maps 103P.026 and 103P.036

**SCHEDULE B -- GRAVEL MATERIALS PITS ON NISGA'A LANDS**

Aiyansh Pit (Sandhill)	Pit No. 5221 103P.025
Anudol Pit	Pit No. 5223 103P.003
Ansedagan Pit	Pit No. 5233 103P.014
Ginlulak Quarry	Pit No. 5224A 103P.003
Ksedin Pit	Pit No. 5222 103P.004
Kwinhak Pit	Pit No. 5256 103P.003
Zaulzap Quarry	Pit No. 5206 103P.014

## CHAPTER 8

### FISHERIES

#### GENERAL

##### Nisga'a Fish Entitlements

1. Nisga'a citizens have the right to harvest fish and aquatic plants in accordance with this Agreement, subject to:
  - a. measures that are necessary for conservation; and
  - b. legislation enacted for the purposes of public health or public safety.
2. Notwithstanding that Nisga'a fish entitlements are treaty rights, a Nisga'a fish allocation that is set out as a percentage of the total allowable catch has the same priority in fisheries management decisions as the remainder of the total allowable catch of that species harvested in recreational and commercial fisheries.
3. This Agreement is not intended to alter federal and provincial laws of general application in respect of property in fish or aquatic plants.
4. Nisga'a fish entitlements are held by the Nisga'a Nation.
5. The Nisga'a Nation may not dispose of Nisga'a fish entitlements.
6. Nisga'a Lisims Government may authorize persons other than Nisga'a citizens to harvest fish or aquatic plants in Nisga'a fisheries, in accordance with this Agreement, the Harvest Agreement and Nisga'a annual fishing plans. This authority is not intended to alter the application of federal and provincial laws of general application in respect of foreign fishing vessels in Canadian waters.

##### Licences, Fees, Charges, and Royalties

7. Canada and British Columbia will not require the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, Nisga'a citizens, or other persons authorized by Nisga'a Lisims Government to harvest fish or aquatic plants under this Agreement:
  - a. to have federal or provincial licences; or
  - b. to pay fees, charges, or royalties

in respect of the harvest for domestic purposes of fish or aquatic plants under this Agreement.

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This paragraph does not restrict Canada's ability to require licences for the use and possession of firearms under federal laws on the same basis as applies to other aboriginal people of Canada.

8. Persons who sell fish harvested under this Agreement are subject to fees and charges applied to commercial harvesters in respect of the sale of fish or aquatic plants except to the extent that Nisga'a Lisims Government, a Nisga'a Institution, or a Nisga'a Corporation funds or performs the activities for which those fees and charges are levied.

### **Trade and Barter**

9. Subject to Nisga'a laws, Nisga'a citizens have the right to trade or barter among themselves or with other aboriginal people any fish and aquatic plants harvested in Nisga'a fisheries.

### **Harvesting Under Other Laws and Agreements**

10. This Agreement does not preclude Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens from harvesting fish and aquatic plants throughout Canada in accordance with:
  - a. federal and provincial laws;
  - b. any agreements that are in accordance with laws of general application between the Nisga'a Nation, a Nisga'a Village, a Nisga'a Institution, or a Nisga'a Corporation, on the one hand, and other aboriginal people on the other; or
  - c. any arrangements between other aboriginal people and Canada or British Columbia.

## **SALMON**

### **Nisga'a Salmon Allocations**

11. In every year in which it is necessary for conservation, the Minister will determine a minimum escapement level for one or more species of Nass salmon.
12. The Minister will not permit any directed harvests of a species of Nass salmon in any year if:
  - a. there is a minimum escapement level for that species of Nass salmon; and
  - b. the number of that species of Nass salmon returning to Canadian waters, less incidental harvests, is less than or equal to the minimum escapement level for that species.

13. In any year:
  - a. if the Minister has not determined a minimum escapement level for a species of Nass salmon; or
  - b. if the number of a species of Nass salmon returning to Canadian waters, less incidental harvests, is greater than the minimum escapement level determined by the Minister for that species

the amount of that species that the Nisga'a Nation is entitled to harvest will be determined in accordance with Schedule A and paragraph 16.

14. The amount of each species of Nass salmon in the Nisga'a fish allocations set out in Schedule A varies with the size of the total run of that species returning to Canadian waters in each year, as set out in Schedule A.

#### **Overages and Underages**

15. Following the fishing season in each year, the Minister and Nisga'a Lisims Government will conduct an accounting of that year's harvest of Nass salmon, in accordance with Schedule B.
16. If there is an overage or underage of a species of Nass salmon in any year, the amount of that species of Nass salmon to be harvested in Nisga'a fisheries will be adjusted in subsequent years, in accordance with Schedule B.
17. In every year the Minister will manage all Canadian fisheries that harvest Nass salmon in order to minimize overharvests of each species of Nass salmon.
18. The Minister and Nisga'a Lisims Government will endeavour to minimize any overages or underages in each year and to minimize the accumulation of overages and underages in successive years.

#### **Adjustment of Species Composition**

19. In any year the Minister and Nisga'a Lisims Government may agree to adjust the species composition of the Nisga'a harvest for that year in accordance with the system of equivalencies set out in Schedule C.
  20. If a proposed Nisga'a annual fishing plan includes an adjustment under paragraph 19 that will affect a species or fishery under the management authority of the other Party, the Minister and Nisga'a Lisims Government will consult with the other Party's representatives on the Joint Fisheries Management Committee, and will notify those representatives of any in-season adjustments.
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**Harvest Agreement**

21. On the effective date, the Parties will enter into a Harvest Agreement pursuant to paragraph 22. The Harvest Agreement does not form part of this Agreement.
22. The Harvest Agreement will:
  - a. include Nisga'a fish allocations equivalent to:
    - i. 13% of each year's adjusted total allowable catch for Nass sockeye salmon, and
    - ii. 15% of each year's adjusted total allowable catch for Nass pink salmon;
  - b. be for a term of 25 years and be replaceable at the discretion of the Nisga'a Nation every 15 years for a further 25 years;
  - c. include provisions for the harvest and disposition of fish, determination of overages and underages, harvest monitoring, and fisheries management that are consistent with the similar provisions set out in this Agreement; and
  - d. include a dispute resolution process and a requirement for fair compensation if the Harvest Agreement is breached by terminating or reducing the Nisga'a fish allocations pursuant to subparagraph (a).
23. The Harvest Agreement will be established under federal and provincial settlement legislation.
24. The Harvest Agreement is not intended to be a treaty or land claims agreement, and it is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
25. The Minister will implement the Harvest Agreement by:
  - a. issuing licences to Nisga'a Lisims Government; or
  - b. other means under federal or provincial laws.
26. Fisheries under the Harvest Agreement have the same priority as commercial and recreational fisheries in fisheries management decisions made by the Minister.
27. Fish harvested under the Harvest Agreement may be sold in accordance with the Harvest Agreement.

**Harvest of Surplus Nass Salmon**

28. In any year, the Minister may determine whether there is a surplus of a species of Nass salmon, and the size of that surplus.
29. The Joint Fisheries Management Committee may:
  - a. recommend to the Minister procedures for the identification of a surplus and terms and conditions for the harvest of the surplus; and
  - b. provide advice to the Minister in respect of the size of the surplus.
30. The Minister may permit Nisga'a Lisims Government to harvest some or all of the surplus Nass salmon on reaching agreement with Nisga'a Lisims Government in respect of:
  - a. the terms and conditions of the harvest; and
  - b. whether all or part of the harvest will be included in the determination of overages and underages.

**Disposition of Salmon Harvests**

31. Subject to paragraph 33, the Nisga'a Nation, and its agents, contractors, and licensees authorized by Nisga'a Lisims Government, have the right to sell Nass salmon harvested under this Agreement.
32. For greater certainty, in accordance with paragraph 13 of the General Provisions Chapter, federal and provincial laws of general application pertaining to the sale of fish, in respect of commercial transactions, health and safety, transport, inspection, processing, packaging, storage, export, quality control, and labelling of fish, apply to the sale of all Nass salmon harvested in Nisga'a fisheries.
33. If, in any year, there are no directed harvests in Canadian commercial or recreational fisheries of a species of Nass salmon, sale of that species of Nass salmon harvested in directed harvests of that species in that year's Nisga'a fisheries will not be permitted.

**ENHANCEMENT**

34. Nisga'a Lisims Government may conduct enhancement initiatives for Nass salmon or Nass steelhead only with the approval of the Minister. This approval will include provisions in respect of the determination of surpluses resulting from an approved enhancement initiative. The Joint Fisheries Management Committee may make recommendations in respect of those initiatives and provisions.

35. In any year, the portion of the return to Canadian waters of chinook, coho, or chum salmon that can be identified as resulting from approved Nisga'a enhancement initiatives in the Nass Area will be excluded from the determination of the Nisga'a fish allocations under paragraph 13 for that year. The Nisga'a fish allocations of these fish are 21% of the chinook, 8% of the coho and 8% of the chum salmon, subject to measures that are necessary for conservation for non-enhanced Nass salmon and non-enhanced Nass steelhead stocks.
36. The Nisga'a Nation has the right to harvest surplus Nass salmon that result from an approved Nisga'a enhancement initiative, in the same proportion as the Nisga'a contribution to the total cost of the initiative. These harvests are not subject to paragraph 16 and are in addition to the Nisga'a fish allocations under paragraph 13 and 35 and the Harvest Agreement.
37. Notwithstanding paragraphs 13, 16, 35, and 36, the Minister and Nisga'a Lisims Government may negotiate agreements in respect of the Nisga'a harvests of Nass salmon or Nass steelhead that result from Nisga'a enhancement initiatives.

## **STEELHEAD**

### **General**

38. Subject to paragraph 43, Nisga'a fish entitlements of Nass steelhead are for domestic purposes.
39. The Parties, or any of them, may conduct studies to determine the status, conservation requirements, and Canadian total allowable catch of Nass steelhead stocks. The studies may include the determination of:
  - a. reliable estimates of sustainable harvest, including the determination of escapement requirements and total allowable catch;
  - b. the productive capacity of fish habitat in the Nass Area; and
  - c. measures to improve Nass steelhead stocks and plans to implement those measures.
40. The Joint Fisheries Management Committee will formulate plans for any studies to be conducted under paragraph 39 and will provide recommendations to the Minister and Nisga'a Lisims Government on the conduct of those studies.
41. If a study conducted under paragraph 39 identifies a conservation concern for a Nass steelhead stock, the Joint Fisheries Management Committee will provide recommendations to the Minister and Nisga'a Lisims Government on appropriate measures to address the concern.

42. After considering studies conducted under paragraphs 44 or 51, if it is necessary for conservation, the Minister will establish an annual escapement goal for summer-run or winter-run Nass steelhead stocks returning to Canadian waters below which no directed harvests for that stock will be permitted.

### **Disposition of Steelhead Harvests**

43. Any sale of Nass steelhead harvested under this Agreement will be in accordance with federal and provincial laws of general application, and any Nisga'a law in respect of sale of fish.

### **Summer-run Steelhead**

44. British Columbia and the Nisga'a Nation will negotiate and attempt to reach agreement about studies required to determine an annual escapement goal for summer-run Nass steelhead. The Minister will not permit any directed harvest of summer-run Nass steelhead during those studies.
45. If no annual escapement goal for summer-run Nass steelhead is established under paragraph 42, subject to paragraph 43, Nisga'a citizens have the right to harvest summer-run Nass steelhead for domestic purposes.
46. If an annual escapement goal for summer-run Nass steelhead is established under paragraph 42, Nisga'a citizens have the right to harvest summer-run Nass steelhead under the Nisga'a fish allocation set out in Schedule D.
47. Subject to the Nisga'a fish allocation of summer-run Nass steelhead set out in subparagraph 2(a) of Schedule D, if the number of summer-run Nass steelhead returning to the Nass watershed is less than the annual escapement goal, the Nisga'a Nation and British Columbia will take measures to limit summer-run Nass steelhead mortalities.

### **Winter-run Steelhead**

48. Before a Nisga'a fish allocation of winter-run Nass steelhead is established under paragraph 49, subject to paragraph 43, Nisga'a citizens have the right to harvest winter-run Nass steelhead for domestic purposes.
49. If an annual escapement goal for winter-run Nass steelhead is established under paragraph 42, British Columbia and the Nisga'a Nation may negotiate a Nisga'a fish allocation of winter-run Nass steelhead. Any Nisga'a fish allocation established under this paragraph will be added to Schedule D.
50. If a Nisga'a fish allocation of winter-run Nass steelhead is established under paragraph 49,

Nisga'a citizens have the right to harvest winter-run Nass steelhead under that Nisga'a fish allocation.

51. If the Minister determines that it is necessary to suspend directed harvesting of winter-run Nass steelhead because of a conservation concern about winter-run Nass steelhead, studies under paragraph 39 will be conducted. The Minister will not permit any directed harvest of winter-run Nass steelhead during those studies.

## **NON-SALMON SPECIES AND AQUATIC PLANTS**

### **Nisga'a Fish Entitlements of Non-Salmon Species and Aquatic Plants**

52. Subject to paragraph 67, Nisga'a fish entitlements to non-salmon species and aquatic plants are for domestic purposes.
53. Before a Nisga'a fish allocation of a non-salmon species or an aquatic plant is established under this Agreement, Nisga'a citizens have the right to harvest non-salmon species and aquatic plants within the Nass Area for domestic purposes.
54. Canada or British Columbia, in respect of any non-salmon species or aquatic plant within their respective management authority, or the Nisga'a Nation may propose the establishment of a Nisga'a fish allocation that will be the Nisga'a fish entitlement to that non-salmon species or aquatic plant.
55. Unless otherwise agreed by the Nisga'a Nation and Canada or British Columbia for non-salmon species or aquatic plants, within their respective management authority, the Nisga'a fish allocation of each non-salmon species or aquatic plant will be 125% of the basic Nisga'a fish entitlement to that species.
56. The basic Nisga'a fish entitlements to non-salmon species and aquatic plants will be determined by taking into account:
  - a. current and past Nisga'a use for domestic purposes;
  - b. the impact of conservation requirements and harvesting by others on Nisga'a use for domestic purposes;
  - c. the biological status of the species;
  - d. changes in Nisga'a fishing effort; and
  - e. other factors that the Nisga'a Nation and Canada or British Columbia, as the case may be, agree are relevant.

57. Before a Nisga'a fish allocation of a non-salmon species or aquatic plant is established, the Nisga'a Nation and Canada or British Columbia, for non-salmon species and aquatic plants within their respective management authority, will:
  - a. seek the advice of the Joint Fisheries Management Committee on the determination of the basic Nisga'a fish entitlement to that non-salmon species or aquatic plant; and
  - b. conduct any studies they consider necessary to determine the basic Nisga'a fish entitlement to that non-salmon species or aquatic plant.
58. As soon as practicable after the effective date, the Nisga'a Nation and Canada or British Columbia, for non-salmon species and aquatic plants within their respective management authority, will negotiate and attempt to reach agreement on basic Nisga'a fish entitlements to:
  - a. dungeness, tanner, and king crab;
  - b. halibut;
  - c. prawns and shrimp;
  - d. herring; and
  - e. aquatic plants used in the herring roe-on-kelp fishery.
59. If the Nisga'a Nation and Canada or British Columbia, for non-salmon species and aquatic plants within their respective management authority, do not agree on the basic Nisga'a fish entitlement to a non-salmon species or aquatic plant, that basic Nisga'a fish entitlement will be finally determined by arbitration under the Dispute Resolution Chapter.
60. Any Nisga'a fish allocation of non-salmon species or aquatic plants established under this Chapter will be set out in Schedule E.
61. If a Nisga'a fish allocation is established for a non-salmon species or aquatic plant, Nisga'a citizens have the right to harvest that non-salmon species or aquatic plant under that Nisga'a fish allocation.

### Oolichan

62. The Nisga'a Nation, together with any other persons who have aboriginal rights to harvest oolichan in the Nass Area, has the right to harvest the total harvest of oolichan in the Nass Area.
  63. If there are any agreements between the Nisga'a Nation and other aboriginal people in
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respect of the harvesting of oolichan in the Nass Area, Nisga'a harvests of those oolichan will be in accordance with those agreements.

### Intertidal Bivalves

64. Nisga'a citizens have the right to harvest, for domestic purposes, intertidal bivalves within those portions of the Nass Area set out in Appendix I.
65. The right to harvest intertidal bivalves set out in paragraph 64 is the Nisga'a fish allocation of intertidal bivalves.
66. The Minister will not permit commercial harvesting of intertidal bivalves within those portions of the Nass Area set out in Appendix I.

### Disposition of Non-Salmon Species and Aquatic Plants

67. Any sale of non-salmon species and aquatic plants harvested under Nisga'a fish entitlements will be in accordance with federal and provincial laws of general application and any Nisga'a law in respect of sale of fish or aquatic plants.

## FISHERIES MANAGEMENT

### Responsibilities of the Parties

68. Subject to this Agreement, the Minister is responsible for the management of fisheries and fish habitat.
69. Nisga'a Lisims Government may make laws that are in respect of the Nisga'a Nation's rights and obligations in respect of fish and aquatic plants under, and that are consistent with, this Agreement and the Harvest Agreement and that are not inconsistent with Nisga'a annual fishing plans including matters such as:
  - a. distribution of the Nisga'a fish entitlements under this Agreement and Nisga'a fish allocations under the Harvest Agreement;
  - b. authorization of persons other than Nisga'a citizens to harvest fish or aquatic plants from the Nisga'a fish entitlements under this Agreement and Nisga'a fish allocations under the Harvest Agreement;
  - c. the trade or barter of fish or aquatic plants harvested under the Nisga'a fish entitlements under this Agreement or the Nisga'a fish allocations under the Harvest Agreement;

- d. designation and documentation of fishing vessels;
  - e. identification, in a manner compatible with that required under federal and provincial laws of general application, of fishing vessels and gear; and
  - f. other matters agreed to by the Parties.
70. Nisga'a Lisims Government will make laws that are consistent with this Agreement and the Harvest Agreement and that are not inconsistent with Nisga'a annual fishing plans:
- a. to establish and administer licensing requirements, for the harvest of fish or aquatic plants under this Agreement and the Harvest Agreement; and
  - b. to require the designation and documentation of persons who harvest fish or aquatic plants under this Agreement or the Harvest Agreement.
71. In the event of an inconsistency or conflict between a Nisga'a law made under paragraphs 69 or 70 and a federal or provincial law, the Nisga'a law will prevail to the extent of the inconsistency or conflict.
72. Nisga'a Lisims Government may make laws in respect of sale, in accordance with this Agreement, of fish or aquatic plants that are harvested under this Agreement or the Harvest Agreement.
73. In the event of a conflict between a law made under paragraph 72 and a federal or provincial law of general application, the federal or provincial law will prevail to the extent of the conflict.
74. Nisga'a Lisims Government will make laws to require:
- a. that any fish harvested under this Agreement or the Harvest Agreement that are transported outside Nisga'a Lands for the purpose of trade or barter be identified as fish for trade or barter; and
  - b. Nisga'a citizens and the authorized agents, contractors, and licensees of Nisga'a Lisims Government to comply with Nisga'a annual fishing plans.

### Nisga'a Fisheries Operational Guidelines

75. The Parties will prepare and maintain a document to be known as the "Nisga'a Fisheries Operational Guidelines" that will set out the operational principles, procedures, and guidelines to assist each of them, and the Joint Fisheries Management Committee, in carrying out the provisions of this Chapter and the Harvest Agreement, including the preparation and recommendation of Nisga'a annual fishing plans. The Parties will amend
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the document as required as improved fisheries management and stock assessment procedures are developed.

76. The Nisga'a Fisheries Operational Guidelines:

- a. is not a part of this Agreement;
- b. is not intended to be a treaty or land claims agreement, and it is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 or 35 of the *Constitution Act, 1982*; and
- c. does not create legal obligations.

#### Management Structure

77. On the effective date, the Parties will establish the Joint Fisheries Management Committee to facilitate cooperative planning and conduct of Nisga'a fisheries and enhancement initiatives in the Nass Area. For this purpose, the Joint Fisheries Management Committee will carry out the responsibilities assigned to it under this Agreement, including:

- a. sharing information and plans for existing and proposed fisheries that could affect or be affected by Nisga'a fisheries;
- b. arranging for collection and exchange of data required to carry out the provisions of this Chapter;
- c. providing advice concerning escapement goals;
- d. making recommendations to the Minister and Nisga'a Lisims Government in respect of other conservation requirements and the management of fish and aquatic plants;
- e. providing advice to the Parties in respect of the determination of the basic Nisga'a fish entitlements to non-salmon species and aquatic plants;
- f. making recommendations to the Minister and Nisga'a Lisims Government in respect of Nisga'a overages and underages, in accordance with Schedule B;
- g. making recommendations to the Minister and Nisga'a Lisims Government in respect of Nisga'a annual fishing plans;
- h. making recommendations to the Minister and Nisga'a Lisims Government in respect of studies for enhancement and enhancement initiatives;
- i. making recommendations and providing advice to the Minister in respect of

- surpluses;
- j. making recommendations to the trustees of the Lisims Fisheries Conservation Trust in respect of projects, programs, and activities to be funded with expenditures from that Trust;
  - k. communicating with other management or advisory bodies in respect of matters of mutual interest;
  - l. providing advice on the coordination of the Nisga'a annual fishing plans and proposed decisions of Nisga'a Lisims Government in respect of methods, timing, and locations of harvests;
  - m. providing advice in respect of any proposed in-season adjustments to the Nisga'a annual fishing plans; and
  - n. carrying out other responsibilities agreed to by the Parties.
78. The Minister will, as far in advance as practicable, give notice to the Joint Fisheries Management Committee of any proposed in-season adjustments to the Nisga'a annual fishing plan, and Nisga'a Lisims Government will, as far in advance as practicable, give notice to the Joint Fisheries Management Committee of any proposed decisions of Nisga'a Lisims Government in respect of methods, timing, and locations of Nisga'a harvests.
79. The Joint Fisheries Management Committee will have six members. The Nisga'a Nation, Canada, and British Columbia will each appoint two members to represent them on the Joint Fisheries Management Committee. The members of the Joint Fisheries Management Committee representing the Nisga'a Nation and Canada are responsible for functions in respect of fisheries managed by Canada. The members of the Joint Fisheries Management Committee representing the Nisga'a Nation and British Columbia are responsible for functions in respect of fisheries managed by British Columbia.
80. The Joint Fisheries Management Committee will meet as often as necessary to carry out its responsibilities and will establish its procedures, including procedures to carry out its responsibilities relating to in-season fisheries management.
81. Whenever possible, the Joint Fisheries Management Committee will carry out its responsibilities by consensus of the members responsible for each function. If there is no consensus, the Joint Fisheries Management Committee will submit the recommendations or advice of each Party's representatives.
82. If it is impracticable for the Joint Fisheries Management Committee to address an issue, each Party's representatives may submit their recommendations or advice.

### Other Fisheries Management Bodies

83. The Parties acknowledge that fisheries management may involve the consideration of issues on a regional or watershed basis. If Canada or British Columbia proposes to establish fisheries management advisory bodies for areas that include any part of the Nass Area, Canada or British Columbia will consult with the Nisga'a Nation in developing those bodies and, if appropriate, will provide for the participation of the Nisga'a Nation in those bodies.

### Nisga'a Annual Fishing Plans

84. Nisga'a annual fishing plans are plans for the harvest, and if applicable the sale, of fish and aquatic plants under this Agreement and the Harvest Agreement. The plans will include, as appropriate, provisions in respect of:
- a. the methods, timing, and locations of harvest;
  - b. monitoring of harvest;
  - c. enforcement;
  - d. stock assessment and enhancement;
  - e. the terms and conditions for the sale of fish or aquatic plants;
  - f. authorized harvest by persons other than Nisga'a citizens or Nisga'a Lisims Government;
  - g. in-season adjustments to any of the matters referred to in this paragraph; and
  - h. other matters that the Parties agree to include in the Nisga'a annual fishing plans.
85. The monitoring provisions referred to in subparagraph 84(b) may include:
- a. requirements for identification of persons authorized to harvest;
  - b. processes for catch monitoring that may include the establishment of designated landing sites and procedures for the transportation of fish;
  - c. processes for reporting and accounting of harvest and sale;
  - d. requirements for compiling and reporting data to the Minister; and
  - e. processes for verification by the Minister of the monitoring processes.

86. Each year Nisga'a Lisims Government will propose Nisga'a annual fishing plans that:
  - a. are consistent with Nisga'a fish entitlements under this Agreement and Nisga'a fish allocations under the Harvest Agreement;
  - b. set out any Nisga'a preferences for methods, timing, and locations of harvest; and
  - c. take into account any management concerns identified by the Minister or Nisga'a Lisims Government.
87. Nisga'a Lisims Government will forward the proposed Nisga'a annual fishing plans to the Joint Fisheries Management Committee on a timely basis.
88. The Joint Fisheries Management Committee, on a timely basis, will:
  - a. consider the proposed Nisga'a annual fishing plans;
  - b. make any appropriate adjustments that are necessary to integrate the Nisga'a annual fishing plans with other fisheries conservation and harvesting plans, while giving effect to the Nisga'a preferences in respect of methods, timing, and locations of harvest, to the extent possible; and
  - c. make recommendations regarding the proposed Nisga'a annual fishing plans to the Minister and Nisga'a Lisims Government.

#### **Review of Recommendations**

89. In considering recommendations of the Joint Fisheries Management Committee, the Minister will take into account:
  - a. conservation requirements and availability of fisheries resources;
  - b. any Nisga'a preferences in respect of methods, timing, and locations of harvests throughout the Nass Area, set out in the recommendations;
  - c. utilization of the fisheries resources for the benefit of all Canadians;
  - d. efficient and effective harvesting of fisheries resources;
  - e. requirements for integration and efficient management of all fisheries;
  - f. accepted scientific procedures for management of fisheries resources; and
  - g. any other matters the Minister considers appropriate.

90. After considering the recommendations of the Joint Fisheries Management Committee under paragraph 89, the Minister, on a timely basis, will:

- a. approve, or vary and approve, the Nisga'a annual fishing plans recommended by the Joint Fisheries Management Committee, or its members, and provide written reasons for varying Nisga'a annual fishing plans; and
- b. approve or reject, in whole or in part, all other recommendations made by the Joint Fisheries Management Committee, or its members, and provide written reasons for rejecting, in whole or in part, any of those other recommendations

but approved Nisga'a annual fishing plans, and approvals and rejections of other recommendations, must be consistent with this Agreement and the Harvest Agreement.

91. If special circumstances make it impracticable to receive advice from the Joint Fisheries Management Committee, the Minister:

- a. may make the decision or take the action that the Minister considers necessary, without receiving advice from the Joint Fisheries Management Committee; and
- b. will advise the Joint Fisheries Management Committee as soon as practicable of the special circumstances and the decision made or action taken.

### **Federal and Provincial Laws of General Application**

92. In order to:

- a. avoid duplication of requirements between a Nisga'a annual fishing plan and federal and provincial laws of general application; and
- b. otherwise facilitate the management of Nisga'a fisheries

if there is an inconsistency between a Nisga'a annual fishing plan and a federal or provincial law of general application, the Nisga'a annual fishing plan prevails to the extent of the inconsistency.

### **Enforcement**

93. The Nisga'a Nation may negotiate agreements with Canada or British Columbia concerning enforcement of federal, provincial or Nisga'a laws in respect of fisheries.

94. Persons who harvest or sell fish or aquatic plants under this Agreement may be required to show proof of their authority to do so.

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95. Nisga'a laws made in accordance with this Chapter may be enforced by persons authorized to enforce federal, provincial, or Nisga'a laws in respect of fish and aquatic plants in British Columbia.

## LISIMS FISHERIES CONSERVATION TRUST

### Establishment

96. As soon as practicable after the effective date, Canada and the Nisga'a Nation will establish a trust to be known as the Lisims Fisheries Conservation Trust, and will undertake all actions required to register the trust as a charity for the purposes of the *Income Tax Act*.

### Appointment of Trustees

97. Canada and the Nisga'a Nation will each appoint an equal number of trustees of the Lisims Fisheries Conservation Trust, and Canada and the Nisga'a Nation will appoint one additional trustee jointly.

### Other Charities

98. In order to realize most effectively the objects of the Lisims Fisheries Conservation Trust, Canada and the Nisga'a Nation may establish other charities having substantially the same objects as the Lisims Fisheries Conservation Trust, but they will have no obligation to do so or to contribute any amount to any other charity.

### Objects of Trust

99. The objects of the Lisims Fisheries Conservation Trust will be to:
- a. promote conservation and protection of Nass Area fish species;
  - b. facilitate sustainable management of fisheries for Nass Area species and stocks; and
  - c. promote and support Nisga'a participation in the stewardship of Nass Area fisheries for the benefit of all Canadians.

### Trustees' Responsibilities

100. The trustees will hold the Lisims Fisheries Conservation Trust property in trust exclusively
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for the objects of the Lisims Fisheries Conservation Trust and will administer the property in accordance with the trust agreement establishing the trust.

101. In pursuance of the objects of the Lisims Fisheries Conservation Trust, the trustees will review, sponsor, and fund, projects, programs, and activities that the trustees in their discretion determine serve some or all of the following objectives:
  - a. to evaluate specific and integrated conservation needs and habitat requirements for all species of Nass Area fish;
  - b. to assess the status of Nass salmon and non-salmon species;
  - c. to provide for appropriate salmon escapement monitoring processes;
  - d. to facilitate the seasonal estimation of Nass salmon and non-salmon species production including providing procedures required to give effect to the Nisga'a fisheries;
  - e. to facilitate the discrimination of Nass salmon stocks and to evaluate factors limiting the production of Nass salmon and non-salmon species; and
  - f. to obtain gifts, donations, grants, and other contributions to the Lisims Fisheries Conservation Trust.
102. In pursuance of the objects of the Lisims Fisheries Conservation Trust, the trustees may, in their discretion, initiate and direct projects, programs, and activities that the trustees, in their discretion, determine serve some or all of the objectives set out in paragraph 101.
103. In reviewing, sponsoring, funding, initiating, and directing, projects, programs, and activities under paragraphs 101 and 102, the trustees will give priority to the monitoring of Nass salmon escapement, the monitoring of harvests in the Nisga'a fisheries and the determination of factors limiting the production of Nass salmon and non-salmon species.
104. In addition to any projects, programs, and activities undertaken under paragraphs 101 and 102, the trustees may review, sponsor, fund, initiate, or direct any other projects, programs, or activities that the trustees, in their discretion, determine appropriate in pursuance of the objects of the Lisims Fisheries Conservation Trust.
105. The trustees will not use the Lisims Fisheries Conservation Trust property to support:
  - a. projects, programs, or activities that:
    - i. monitor fisheries, other than Nisga'a fisheries, outside the Nass Area, or
    - ii. collect stock assessment data for salmon stocks originating from streams

- outside of the Nass Area, except as required to assess Nass salmon stocks;
- b. the establishment or operation of, or representation on, the Joint Fisheries Management Committee;
  - c. salaries of full time employees of the Department of Fisheries and Oceans; or
  - d. the purchase of equipment for the Department of Fisheries and Oceans.
106. In pursuance of the objects of the Lisims Fisheries Conservation Trust, the trustees will seek and consider recommendations from the Joint Fisheries Management Committee regarding projects, programs, and activities to be funded by the Lisims Fisheries Conservation Trust.
- Settlement**
107. Within 60 days of the effective date, or later if Canada and the Nisga'a Nation agree, Canada and the Nisga'a Nation will each settle on the trustees the respective amounts described in Schedule F.
108. The Lisims Fisheries Conservation Trust property may be increased by gifts, donations, grants, and other contributions.
109. When Canada has contributed the full amount referred to in subparagraph 1(a) of Schedule F, Canada will have discharged its obligations under this Agreement to fund projects, programs, and activities that are funded by the Lisims Fisheries Conservation Trust.

**Other Responsibilities**

110. The operation of the Lisims Fisheries Conservation Trust will not affect the responsibilities of Canada under federal legislation, or the obligations of Canada or the Nisga'a Nation under this Agreement.

**PARTICIPATION IN THE GENERAL COMMERCIAL FISHERY**

111. On the effective date, Canada and British Columbia will each provide funding in the respective amounts described in Schedule G to the Nisga'a Nation to enable it to increase its capacity, in the form of commercial licences, or vessels and commercial licences, to participate in the general commercial fishery in British Columbia. These commercial licenses and vessels will be subject to federal and provincial laws of general application in respect of commercial fisheries in British Columbia.
112. At the request of the Nisga'a Nation, Canada, and British Columbia will provide the Nisga'a
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Nation with support for the acquisition of the commercial licences, or vessels and commercial licences, referred to in paragraph 111, including:

- a. general fishing industry information;
  - b. available information concerning the fleet composition and number of commercial vessels;
  - c. available commercial fishing industry cost and earnings information;
  - d. estimated commercial vessel and commercial licence costs; and
  - e. recent estimates of commercial harvests and landed values.
113. Notwithstanding paragraph 111, the Nisga'a Nation may spend up to \$3 million, as adjusted under Schedule G, of the amounts referred to in paragraph 1 of Schedule G for other fisheries related activities.

#### **HERRING ROE-ON-KELP STUDY**

114. As soon as practicable after the effective date, the Parties will conduct a study to assess the availability of herring and kelp within the Nass Area to determine the feasibility of a Nisga'a herring roe-on-kelp impoundment.

#### **INTERNATIONAL ARRANGEMENTS**

115. Canada will consult with the Nisga'a Nation with respect to the formulation of Canada's positions in relation to international discussions or negotiations that may significantly affect fisheries resources referred to in this Agreement.
116. This Agreement will not affect or preclude participation of the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens in commissions or fisheries management advisory bodies.

#### **PROCESSING FACILITIES**

117. The Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, or Nisga'a Corporations will not establish a new fish processing facility capable of processing more than 2,000 metric tons of round weight of fish per year, within eight years of the effective date, except as agreed to by the Parties.

**SCHEDULE A -- NISGA'A FISH ALLOCATIONS FOR SALMON**

1. Subject to paragraphs 2 and 3 of this Schedule, in each year the Nisga'a fish allocation of each species of Nass salmon is:
  - a. the percentage for that species set out in Table 1, Row 1, multiplied by
  - b. the estimated number of that species returning to Canada in that year, and
  - c. if a portion of the return to Canadian waters of chinook, coho, or chum salmon can be identified as resulting from Nisga'a enhancement initiatives in the Nass Area approved under paragraph 34 of the Fisheries Chapter, that portion will be subtracted from the estimated number of Nass salmon of that species returning to Canadian waters in that year.
2. If the Minister has established a minimum escapement level for a species under paragraph 11 of the Fisheries Chapter, and the number of Nass salmon of that species returning to Canada exceeds the minimum escapement level but does not exceed the small return to Canada for that species set out in Table 1, Row 2, the Nisga'a fish allocation will increase in a linear manner, from zero at the minimum escapement level to the threshold for that species set out in Table 1, Row 3, except that the Nisga'a fish allocation will not exceed the return to Canada minus the minimum escapement level.
3. If the number of Nass salmon of a species returning to Canada exceeds the large return to Canada for that species set out in Table 1, Row 2, the Nisga'a fish allocation will not exceed the maximum for that species set out in Table 1, Row 3.
4. If, in any year, a portion of the return of chinook, coho, or chum salmon is identified as resulting from Nisga'a enhancement initiatives in the Nass Area, as described in subparagraph 1(c) of this Schedule, the Nisga'a fish allocations of these fish are as set out in paragraph 35 of the Fisheries Chapter.

## SCHEDULE A -- continued

Table 1.

	Species	Sockeye	Pink	Chinook	Coho	Chum
1.	<u>Nisga'a share (%) of return to Canada</u>	10.5%	0.6%	21.0%	8.0%	8.0%
2.	<u>Return to Canada</u>					
	Small	160,000	300,000	13,000	40,000	30,000
	Large	600,000	1,100,000	60,000	240,000	150,000
3.	<u>Nisga'a fish allocations at small and large returns to Canada</u>					
	Threshold (at small return to Canada)	16,800	1,800	2,730	3,200	2,400
	Maximum (at large return to Canada)	63,000	6,600	12,600	19,200	12,000

**SCHEDULE B -- OVERAGES AND UNDERAGES****Determination of Overages and Underages**

1. For the purpose of catch accounting, harvests for each salmon species are classified into two groups of fisheries:
  - a. Nisga'a fisheries; and
  - b. other Canadian fisheries harvesting Nass salmon.
2. To determine the overage or underage for a Nass salmon species in Nisga'a fisheries, the following post-season estimates are required for each species of salmon:
  - a. the total return to Canada (the "TRTC") for that species of Nass salmon;
  - b. the total escapement to Nass Area streams (the "Post-Season Escapement Estimate");
  - c. the harvest share for Nisga'a fisheries (the "Nisga'a Share") for that year determined in accordance with the Nisga'a fish allocations set out in the Fisheries Chapter and the Harvest Agreement using the post-season estimate of the TRTC and the escapement goal for that year, including any adjustments to the Nisga'a Share for overages and underages;
  - d. the harvest allowed for other Canadian fisheries (the "Remaining Allowable Catch") based on the post-season estimate of TRTC, the escapement goal and the Nisga'a Share for that year;
  - e. the total number of fish of that species caught in Nisga'a fisheries (the "Nisga'a Catch");
  - f. the total number of Nass salmon of that species caught in other Canadian fisheries (the "Other Catch"); and
  - g. the total catch for a year (the "Total Catch") determined by adding the Nisga'a Catch to the Other Catch.
3. In each year, the Nisga'a Account will be calculated for each species, as set out below, to determine if an overage or underage has occurred for that species. If the Nisga'a Account is a number greater than zero, then there is an overage. If the Nisga'a Account is a number less than zero, then there is an underage.
4. The Nisga'a Account for salmon in each year will be calculated as follows:

- a. if the Post-Season Escapement Estimate is greater than or equal to the escapement goal and the Minister has provided reasonable opportunities for the harvest of the Nisga'a fish allocations and the Nisga'a Catch is less than the Nisga'a Share, and the Other Catch is less than or equal to the Remaining Allowable Catch, the Nisga'a Account is zero;
- b. if the Post-Season Escapement Estimate is greater than or equal to the escapement goal and the Nisga'a Catch is more than the Nisga'a Share, the Nisga'a Account is:

*Nisga'a Account = Nisga'a Catch - Nisga'a Share;*

- c. if the Post-Season Escapement Estimate is greater than or equal to the escapement goal and the other Canadian fisheries harvest more than their share, the Nisga'a Account is:

*Nisga'a Account = Remaining Allowable Catch - Other Catch;*

- d. if the Post-Season Escapement Estimate is less than or equal to the escapement goal and there is a Nisga'a Share and there is no Remaining Allowable Catch, the Nisga'a Account is:

*Nisga'a Account = Nisga'a Catch - Nisga'a Share - Other Catch;*

- e. if the Post-Season Escapement Estimate is less than the escapement goal and there is a Nisga'a Share and there is a Remaining Allowable Catch, the Nisga'a Account for sockeye salmon is:

*Nisga'a Account = Nisga'a Catch - Nisga'a Share - 13% of the Overharvest;*

and the Nisga'a Account for pink salmon is:

*Nisga'a Account = Nisga'a Catch - Nisga'a Share - 15% of the Overharvest;*

and the Nisga'a Account for each of the other salmon species is:

$$\text{Nisga'a Account} = \frac{\text{Nisga'a Share} \cdot \text{Total Catch}}{(\text{Nisga'a Share} + \text{Remaining Allowable Catch})}$$

- 5. In each year, the "Cumulative Nisga'a Account" for each species will be calculated by adding that year's Nisga'a Account for that species, to the previous year's Cumulative Nisga'a Account for that species as adjusted under paragraph 6 of this Schedule or paragraph 30 of the Fisheries Chapter.

**Adjustment of the Nisga'a Harvest**

6. The Minister and Nisga'a Lisims Government will endeavour to minimize any overages or underages in each year and to minimize the accumulation of overages and underages in successive years, but in any year:
  - a. unless otherwise agreed by the Minister and Nisga'a Lisims Government, any adjustments to the Nisga'a harvest in that year for past overages will not exceed 5% of the total Nisga'a fish allocations of that species;
  - b. any adjustments to the Nisga'a harvest in that year for past underages will only be made if those adjustments:
    - i. are approved by Nisga'a Lisims Government, and
    - ii. unless otherwise agreed by the Minister and Nisga'a Lisims Government, do not exceed 5% of the pre-season estimate of the Remaining Allowable Catch for that species;
  - c. the Minister and Nisga'a Lisims Government may agree to reduce an overage for one species by an underage for another species, in accordance with the system of equivalencies set out in Schedule C, in order to reduce the overages and underages in the Cumulative Nisga'a Account; and
  - d. if an adjustment is made to the Nisga'a harvest under subparagraphs (a), (b), or (c) or paragraph 30 of the Fisheries Chapter, a corresponding adjustment will be made to the Cumulative Nisga'a Account.

**Joint Fisheries Management Committee Recommendations**

7. The Joint Fisheries Management Committee will recommend to the Minister and Nisga'a Lisims Government adjustments to the Nisga'a harvest in Nisga'a fisheries for each year to account for cumulative overages and cumulative underages in accordance with this Schedule.

## SCHEDULE C -- SYSTEM OF SALMON EQUIVALENCIES

1. Equivalencies for conversions among salmon species will be expressed as sockeye equivalents, where the value of each species is calculated relative to the value of sockeye salmon. Sockeye equivalents will be based on average weights and average commercial landed value statistics for salmon in the Nass Area, unless otherwise agreed by the Minister and Nisga'a Lisims Government.
2. The sockeye equivalent factor for each salmon species will be calculated as follows:

$$SE_{Chinook} = \frac{\text{Chinook average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Chinook average price/weight}}{\text{Sockeye average price/weight}}$$

$$SE_{Coho} = \frac{\text{Coho average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Coho average price/weight}}{\text{Sockeye average price/weight}}$$

$$SE_{Pink} = \frac{\text{Pink average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Pink average price/weight}}{\text{Sockeye average price/weight}}$$

$$SE_{Chum} = \frac{\text{Chum average weight}}{\text{Sockeye average weight}} \cdot \frac{\text{Chum average price/weight}}{\text{Sockeye average price/weight}}$$

**SCHEDULE D -- DETERMINATION OF THE NISGA'A FISH ALLOCATION OF STEELHEAD**

1. In this Schedule, the adjusted total allowable catch of summer-run Nass steelhead is equal to 95% of the total number of the summer-run Nass steelhead returning to the Nass Area less the annual escapement goal.
2. The Nisga'a fish allocation of summer-run Nass steelhead under paragraph 46 of the Fisheries Chapter will be equal to:
  - a. 5% of the total number of summer-run Nass steelhead returning to the Nass Area;  
plus
  - b. 25% of the adjusted total allowable catch

but, in any event, the Nisga'a fish allocation will not exceed 1000 summer-run Nass steelhead.

**SCHEDULE E -- NISGA'A FISH ALLOCATIONS OF NON-SALMON SPECIES OR AQUATIC PLANTS**

This schedule will set out Nisga'a fish allocations of non-salmon species or aquatic plants established under this Chapter after the effective date.

**SCHEDULE F -- PROVISIONAL SCHEDULE OF LISIMS FISHERIES CONSERVATION TRUST SETTLEMENT AMOUNTS**

1. The amounts to be settled on the trustees of the Lisims Fisheries Conservation Trust are:
  - a. \$10 million by Canada; and
  - b. \$3 million by the Nisga'a Nation.

Note 1 to this Schedule will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with that note and the effective date occurs.

**Note 1**

The amounts stated in (a) and (b) will be adjusted on the revision date by multiplying each amount by N and dividing by O

where:

N is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the revision date;

O is the value of the FDDIPI for the last quarter in the 1995 calendar year published by Statistics Canada at the same time as the value used in N; and

FDDIPI is the Final Domestic Demand Implicit Price Index for Canada, series D15613, published regularly by Statistics Canada in Matrix 6544: Implicit Price Indexes, Gross Domestic Product.

The revision date will be a date 14 days before the effective date, or such other date as the Parties may agree. On the revision date, the amounts in (a) and (b) will be replaced by amounts adjusted in accordance with this note, the title of this schedule will be changed to "Schedule F - Lisims Fisheries Conservation Trust Settlement Amounts".

**SCHEDULE G -- PROVISIONAL SCHEDULE OF FUNDING UNDER PARAGRAPH 111  
OF THE FISHERIES CHAPTER**

1. Funding under paragraph 111 of the Fisheries Chapter will be as follows:
  - a. \$5.75 million will be paid by Canada; and
  - b. \$5.75 million will be paid by British Columbia.

Note 1 to this Schedule will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with that note and the effective date occurs.

**Note 1**

The amounts stated in (a) and (b) will be adjusted on the revision date by multiplying each amount by N and dividing by O

where:

N is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the revision date;

O is the value of the FDDIPI for the last quarter in the 1995 calendar year published by Statistics Canada at the same time as the value used in N; and

FDDIPI is the Final Domestic Demand Implicit Price Index for Canada, series D15613, published regularly by Statistics Canada in Matrix 6544: Implicit Price Indexes, Gross Domestic Product.

The revision date will be a date 14 days before the effective date, or such other date as the Parties may agree. On the revision date, the amounts in (a) and (b) will be replaced by amounts adjusted in accordance with this note, the title of this schedule will be changed to "Schedule G - Funding under paragraph 111 of the Fisheries Chapter".

## CHAPTER 9

### WILDLIFE AND MIGRATORY BIRDS

#### **GENERAL**

##### **Nisga'a Wildlife Entitlements**

1. Nisga'a citizens have the right to harvest wildlife throughout the Nass Wildlife Area in accordance with this Agreement subject to:
    - a. measures that are necessary for conservation; and
    - b. legislation enacted for the purposes of public health or public safety.
  2. The entitlement set out in paragraph 1 is a right to harvest in a manner that:
    - a. is consistent with:
      - i. the communal nature of the Nisga'a harvest for domestic purposes, and
      - ii. the traditional seasons of the Nisga'a harvest; and
    - b. does not interfere with other authorized uses of Crown land.
  3. Notwithstanding paragraphs 1 and 2, the Crown may authorize uses of or dispose of Crown land, and any authorized use or disposition may affect the methods, times, and locations of harvesting wildlife under Nisga'a wildlife entitlements, provided that the Crown ensures that those authorized uses or dispositions do not:
    - a. deny Nisga'a citizens the reasonable opportunity to harvest wildlife under Nisga'a wildlife entitlements; or
    - b. reduce Nisga'a wildlife allocations.
  4. Subject to paragraph 3, Nisga'a citizens may harvest wildlife under Nisga'a wildlife entitlements on lands that are owned in fee simple off of Nisga'a Lands, but that harvesting will be in accordance with laws of general application in respect of harvesting wildlife on fee simple lands.
  5. Subject to paragraphs 70, 92, and 93, Nisga'a wildlife entitlements are for domestic purposes.
  6. Notwithstanding that Nisga'a wildlife entitlements are treaty rights, a Nisga'a wildlife allocation that is set out as a percentage of the total allowable harvest has the same priority as the recreational and commercial harvest of the total allowable harvest of that species.
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7. This Agreement is not intended to alter federal or provincial laws of general application in respect of property in wildlife or migratory birds.
8. Nisga'a wildlife entitlements are held by the Nisga'a Nation.
9. The Nisga'a Nation may not dispose of Nisga'a wildlife entitlements.

#### **Licences, Fees, Charges, and Royalties**

10. Canada and British Columbia will not require Nisga'a citizens:
  - a. to have federal or provincial licences; or
  - b. to pay fees, charges, or royalties

in respect of the harvest of wildlife or migratory birds under Nisga'a wildlife entitlements. This paragraph does not restrict Canada's ability to require licences for the use and possession of firearms under federal laws on the same basis as applies to other aboriginal people of Canada.

11. From time to time the Nisga'a Nation and British Columbia will negotiate and attempt to reach agreements concerning the Nisga'a Nation contributions to any provincial fund dedicated to wildlife conservation and habitat protection, at a level that is commensurate with and takes into account:
  - a. the contributions made by licensed hunters throughout British Columbia;
  - b. the application of the provincial fund to the Nass Wildlife Area; and
  - c. the performance of similar wildlife management activities by Nisga'a Lisims Government.

#### **Harvesting Under Other Laws and Agreements**

12. This Agreement does not preclude Nisga'a citizens from harvesting wildlife or migratory birds throughout Canada in accordance with:
  - a. federal and provincial laws;
  - b. any agreements that are in accordance with laws of general application between the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation on the one hand, and other aboriginal people on the other; or

- c. any arrangements between other aboriginal people and Canada or British Columbia.

## NASS WILDLIFE AREA

- 13. British Columbia and the Nisga'a Nation may agree to alter the boundaries of the Nass Wildlife Area from time to time.
- 14. Provincial laws in respect of the designation of wildlife management areas and critical wildlife areas do not apply on Nisga'a Lands.

## DESIGNATED SPECIES

### Initial Designated Species

- 15. On the effective date, the Minister will designate moose, grizzly bear, and mountain goat as the initial designated species.

### Designation of Wildlife Species and Determination of Total Allowable Harvests

- 16. Nisga'a Lisims Government or British Columbia may request the Wildlife Committee to recommend whether a wildlife species should be, or continue to be, a designated species.
- 17. The Minister may designate a wildlife species, other than the initial designated species, only if the Minister determines that, in order to address a significant risk to a wildlife population, there should be a total allowable harvest of that wildlife species.
- 18. The Minister may determine that a wildlife species is no longer a designated species only if the Minister determines that the significant risk to the wildlife population no longer exists.
- 19. The Minister will request and consider recommendations from the Wildlife Committee before determining whether a species will be, or continue to be, a designated species.
- 20. British Columbia and Nisga'a Lisims Government will provide the Wildlife Committee with the information that is reasonably available and necessary to enable the Wildlife Committee to recommend whether a wildlife species should be, or continue to be, a designated species.

### Total Allowable Harvests

- 21. The Minister will request and consider recommendations from the Wildlife Committee before determining the total allowable harvest for any designated species.
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22. In determining the total allowable harvest for a designated species, the Minister will, in accordance with proper wildlife management, take into account:
- a. the population of the species within the Nass Wildlife Area; and
  - b. the population of the species within its normal range or area of movement outside the Nass Wildlife Area.

## **ENTITLEMENTS AND ALLOCATIONS**

### **Nisga'a Wildlife Entitlements**

23. Before:
- a. a wildlife species is designated in accordance with this Agreement;
  - b. a Nisga'a wildlife allocation of that wildlife species is established; and
  - c. a total allowable harvest of that wildlife species is determined,

subject to paragraph 70, Nisga'a citizens have the right to harvest that wildlife species for domestic purposes.

### **Nisga'a Wildlife Allocations**

24. If:
- a. a wildlife species is designated in accordance with this Agreement;
  - b. a Nisga'a wildlife allocation of that wildlife species is established; and
  - c. a total allowable harvest of that wildlife species is determined

Nisga'a citizens have the right to harvest that designated species, in accordance with that Nisga'a wildlife allocation.

25. The Nisga'a wildlife allocations of the initial designated species are set out in Schedule A.
26. A Nisga'a wildlife allocation that is determined or varied under this Agreement, and any review provisions agreed to under paragraph 28, will be added to Schedule A.
27. Unless British Columbia and the Nisga'a Nation otherwise agree, or it is otherwise determined by arbitration under paragraph 33, the Nisga'a wildlife allocation of a species that
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is designated after the effective date:

- a. will, at or below the estimated harvest level at the time of the designation of the species, reflect the share of the harvest that was harvested by the Nisga'a Nation before the designation;
  - b. will provide for an increasing share of the total allowable harvest by persons other than Nisga'a citizens as the total allowable harvest increases above the level at which the species was designated; and
  - c. may provide for a maximum amount for the Nisga'a harvest.
28. If the Minister designates a species after the effective date, British Columbia and the Nisga'a Nation will negotiate and attempt to reach agreement on a Nisga'a wildlife allocation of that designated species, and they may also agree to provisions to review that Nisga'a wildlife allocation.
29. Any determination or variation of a Nisga'a wildlife allocation, including a determination or variation by an arbitrator under paragraph 33, will take into account all relevant information presented by British Columbia and the Nisga'a Nation and in particular information presented in respect of:
- a. the status of the species;
  - b. conservation requirements;
  - c. current and past Nisga'a harvest for domestic purposes;
  - d. change in Nisga'a harvesting effort; and
  - e. the effect on the species of harvesting by others.

#### **Review of Nisga'a Wildlife Allocations of Initial Designated Species**

30. Within 15 years of the effective date, British Columbia and the Nisga'a Nation will review the Nisga'a wildlife allocation of an initial designated species:
- a. once at the request of either British Columbia or the Nisga'a Nation at any time after five years from the effective date; and
  - b. if there has been a review under subparagraph (a):
    - i. once at the request of British Columbia, and

- ii. once at the request of the Nisga'a Nation  
at any time after five years from the date the review under subparagraph (a) was requested.
31. British Columbia and the Nisga'a Nation may agree to vary the Nisga'a wildlife allocation of an initial designated species after any review under paragraph 30.
32. Notwithstanding paragraphs 30 and 31, British Columbia and the Nisga'a Nation may agree to review and vary the Nisga'a wildlife allocation of an initial designated species at any time.

### **Arbitration**

33. If British Columbia and the Nisga'a Nation fail to agree on:
- the Nisga'a wildlife allocation of an initial designated species following a review under paragraph 30; or
  - the Nisga'a wildlife allocation of any other designated species under paragraphs 27 to 29
- the allocation will be finally determined by arbitration under the Dispute Resolution Chapter.
34. The Party requesting a review of the Nisga'a wildlife allocation of a designated species has the onus of establishing that the Nisga'a wildlife allocation should be varied.

## **WILDLIFE MANAGEMENT**

### **Responsibilities of the Parties**

35. Subject to this Agreement, the Minister is responsible for wildlife.
36. The Minister will manage all wildlife harvesting within the Nass Wildlife Area in a manner consistent with any total allowable harvest and harvest objectives established under this Agreement.
37. Nisga'a Lisims Government may make laws that are in respect of the Nisga'a Nation's rights and obligations in respect of wildlife and migratory birds under, and that are consistent with, this Agreement and that are not inconsistent with the annual management plans, including matters such as:
- the distribution among Nisga'a citizens of Nisga'a wildlife entitlements;

- b. the establishment and administration of licensing requirements for the harvest of wildlife and migratory birds under the Nisga'a wildlife entitlements;
  - c. the methods, timing, and locations of the harvest of species of wildlife included in the annual management plan, and migratory birds under the Nisga'a wildlife entitlements;
  - d. the methods, timing, and locations of the harvest of species of wildlife not included in the annual management plan;
  - e. the designation and documentation of persons who harvest wildlife and migratory birds under the Nisga'a wildlife entitlements;
  - f. the trade or barter of wildlife and migratory birds harvested by Nisga'a citizens under the Nisga'a wildlife entitlements; and
  - g. other matters agreed to by the Parties.
38. In the event of an inconsistency or conflict between a law made under paragraph 37, other than a law made under subparagraph 37(d), and a federal or provincial law, the Nisga'a law will prevail to the extent of the inconsistency or conflict.
39. Nisga'a Lisims Government may make laws in respect of any sale of wildlife, migratory birds, or the inedible by-products or down of migratory birds, that are harvested under this Agreement.
40. In the event of a conflict between a law made under subparagraph 37(d) or paragraph 39 and a federal or provincial law of general application, the federal or provincial law will prevail to the extent of the conflict.
41. Nisga'a Lisims Government will make laws to require:
- a. that any wildlife or wildlife parts, including meat, harvested under this Agreement, that are transported outside Nisga'a Lands for the purpose of trade or barter be identified as wildlife for trade or barter; and
  - b. Nisga'a citizens to comply with the annual management plan.
42. Nisga'a Lisims Government may develop and carry out training programs for hunters in relation to conservation and safety, that are comparable to training programs that are carried out under provincial laws of general application, and successful completion of these programs will be deemed to satisfy any training requirements in relation to conservation and safety under those provincial laws.
43. Nisga'a Lisims Government may develop and carry out training programs for hunters in
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relation to conservation and safety, that are comparable to training programs that are carried out under federal laws.

44. The person authorized under federal or provincial legislation to designate persons to administer tests in respect of firearms use or safety, will designate any person nominated by Nisga'a Lisims Government for the purpose of carrying out the responsibilities of administering federal and provincial tests in respect of firearms use or safety, if the person nominated by Nisga'a Lisims Government has the firearms licence and the firearms use or safety testing qualifications:
  - a. generally required of all persons who administer those tests in British Columbia; or
  - b. required of aboriginal persons who administer those tests in British Columbia, if specific qualifications have been established for aboriginal persons to administer those tests.

#### **Wildlife Committee**

45. On the effective date, the Parties will establish a Wildlife Committee to facilitate wildlife management within the Nass Wildlife Area. For this purpose, the Wildlife Committee will carry out the responsibilities assigned to it under this Agreement, including:
  - a. recommending to the Minister and Nisga'a Lisims Government any conservation requirements it considers advisable for wildlife species within the Nass Wildlife Area;
  - b. recommending to the Minister and Nisga'a Lisims Government whether any wildlife species should be, or continue to be, a designated species;
  - c. recommending to the Minister and Nisga'a Lisims Government each year the total allowable harvest levels for designated species, including the objectives for:
    - i. the geographic distribution of the harvest within the Nass Wildlife Area,
    - ii. the sex and age composition of the harvest,
    - iii. monitoring, reporting, and auditing requirements, and
    - iv. other similar matters;
  - d. recommending to the Minister and Nisga'a Lisims Government whether there should be an annual management plan for any wildlife species other than designated species;
  - e. recommending to the Minister and Nisga'a Lisims Government annual management

- plans, that are consistent with this Agreement and proper wildlife management, for the Nisga'a harvest of designated species and any other wildlife species for which the Minister and Nisga'a Lisims Government have agreed that there should be an annual management plan;
- f. advising the Minister and Nisga'a Lisims Government in respect of the design of any studies necessary to carry out the terms of this Chapter or to facilitate proper wildlife management within the Nass Wildlife Area;
  - g. advising the Minister and Nisga'a Lisims Government in respect of amendments to laws that apply to the management of wildlife and wildlife harvests within the Nass Wildlife Area;
  - h. advising the Minister and Nisga'a Lisims Government on wildlife management policies, projects, plans, and programs, that significantly affect the Nass Wildlife Area and its wildlife populations;
  - i. developing long-term wildlife management plans it considers necessary for carrying out its responsibilities;
  - j. facilitating sharing of information and plans for existing and proposed wildlife harvesting that could affect or be affected by Nisga'a wildlife harvesting;
  - k. communicating with other management or advisory bodies about matters of mutual interest; and
  - l. carrying out other activities agreed to by the Nisga'a Nation and British Columbia or Canada, as the case may be.
46. The Wildlife Committee has up to nine members. The Nisga'a Nation and British Columbia will each appoint an equal number of members, to a maximum of four each, and Canada will appoint one member, to represent them on the Wildlife Committee. The members of the Wildlife Committee representing the Nisga'a Nation, Canada and British Columbia are responsible for functions in respect of wildlife fish. The members of the Wildlife Committee representing the Nisga'a Nation and British Columbia are responsible for functions in respect of all other wildlife.
47. The Wildlife Committee will meet as often as necessary to carry out its responsibilities and will establish its procedures.
48. Whenever possible, the Wildlife Committee will carry out its responsibilities by consensus. If there is no consensus, the Wildlife Committee will submit the recommendations or advice of each Party's representatives.

49. If it is impracticable for the Wildlife Committee to address an issue, each Party's representatives may submit the recommendations or advice.
50. British Columbia or Canada, as the case may be, will consult with the Nisga'a Nation before enacting regulations or adopting policies that will significantly affect wildlife management or harvesting within the Nass Wildlife Area. Unless the Nisga'a Nation and British Columbia or Canada, as the case may be, otherwise agree, this consultation will take place through the Wildlife Committee.
51. Nisga'a Lisims Government and the Minister will provide the Wildlife Committee with all relevant data in their possession in respect of all wildlife harvesting and other matters relevant to wildlife management within the Nass Wildlife Area.

#### **Other Wildlife Management Bodies**

52. The Parties acknowledge that wildlife management may involve the consideration of matters on a regional or watershed basis.
53. If Canada or British Columbia proposes to establish a wildlife or migratory birds management advisory body:
  - a. for an area that includes any portion of the Nass Wildlife Area; or
  - b. in respect of wildlife or migratory bird populations whose normal range of movement includes any portion of the Nass Wildlife Area

Canada or British Columbia, as the case may be, will consult with the Nisga'a Nation in developing that body.

54. The Nisga'a Nation is entitled to appropriate representation on any regional or provincial advisory body established by Canada or British Columbia to provide advice or recommendations to the Minister in respect of:
  - a. matters pertaining to wildlife or migratory birds in an area that includes any portion of the Nass Wildlife Area; or
  - b. wildlife or migratory bird populations whose normal range of movement includes any portion of the Nass Wildlife Area.

#### **Annual Management Plans**

55. An annual management plan will set out the management provisions in respect of the Nisga'a harvest under this Agreement of designated species and other species that the Nisga'a

Nation and British Columbia or Canada, as the case may be, have agreed should be included in the annual management plan. The plan will include, as appropriate, provisions consistent with this Agreement in respect of:

- a. the identification of Nisga'a harvesters;
  - b. the methods, timing, and locations of the harvest;
  - c. the sex and age composition of the harvest of designated species and other species as agreed;
  - d. monitoring of the harvest and data collection;
  - e. possession and transportation of wildlife or wildlife parts;
  - f. the level of harvest of any designated and any other species that may be harvested on Nisga'a Public Lands by persons other than Nisga'a citizens, in accordance with the Access Chapter;
  - g. angling guiding under paragraph 83; and
  - h. other matters in respect of wildlife that the Nisga'a Nation and British Columbia or Canada, as the case may be, agree to include in the annual management plan.
56. Each year Nisga'a Lisims Government will propose an annual management plan, for designated species and any other species that the Nisga'a Nation and British Columbia or Canada, as the case may be, have agreed to include in the annual management plan, that will:
- a. be consistent with Nisga'a wildlife entitlements to wildlife;
  - b. set out any Nisga'a preferences for methods, timing, and locations of harvest; and
  - c. take into account any management concerns identified by the Minister or Nisga'a Lisims Government.
57. Nisga'a Lisims Government will forward the proposed annual management plans to the Wildlife Committee on a timely basis.
58. The Wildlife Committee, on a timely basis, will:
- a. consider the proposed annual management plans, taking into account the matters set out in paragraph 59;
  - b. make any appropriate adjustments that are necessary to integrate the Nisga'a annual
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- management plans with other wildlife conservation and harvesting plans, while giving effect to the Nisga'a preferences in respect of methods, timing, and locations of harvest, to the extent possible; and
- c. make recommendations in respect of the proposed annual management plans to the Minister and Nisga'a Lisims Government.

#### **Review of Recommendations**

59. In considering the recommendations of the Wildlife Committee or its members, the Minister will take into account:
  - a. conservation requirements and availability of wildlife resources;
  - b. any Nisga'a preferences in respect of harvest locations, methods, or times stated in the recommendations;
  - c. utilization of the wildlife resources for the benefit of all Canadians;
  - d. efficient and effective management of wildlife resources;
  - e. requirements for the integration and efficient management of the overall wildlife resources;
  - f. accepted scientific procedures for wildlife management; and
  - g. other relevant statutory considerations.
60. The Minister will not delegate the authority to reject recommendations of the Wildlife Committee, or its members, in whole or in part, below the Assistant Deputy Minister level.
61. If special circumstances make it impracticable to receive recommendations or advice from the Wildlife Committee, the Minister:
  - a. may make the decision or take the action that the Minister considers necessary, without receiving recommendations or advice from the Wildlife Committee;
  - b. will advise Nisga'a Lisims Government and the Wildlife Committee as soon as practicable of that decision or action; and
  - c. will provide Nisga'a Lisims Government and the Wildlife Committee with written reasons for that decision or action if the matter is one about which the Wildlife Committee is required to make a recommendation.

62. If an annual management plan, or any amendment to an annual management plan, recommended by the Wildlife Committee or its members is consistent with this Agreement, the Minister will approve the annual management plan or the amendment.
63. If the Minister receives, from the Wildlife Committee, more than one recommendation that is consistent with this Agreement, in respect of an annual management plan, or any amendment to an annual management plan, the Minister will approve the recommendation that, in the Minister's opinion, best takes into account the matters set out in paragraph 59.
64. If the Minister does not approve an annual management plan, or any amendment to an annual management plan, recommended by the Wildlife Committee or its members, the Minister will provide written reasons and specify what changes are necessary for its approval.
65. The Minister, on a timely basis and in a manner consistent with this Agreement, will:
  - a. approve or reject, in whole or in part, all recommendations, other than recommendations in respect of an annual management plan, made by the Wildlife Committee or its members; and
  - b. provide written reasons for rejecting any recommendations.
66. Notwithstanding paragraph 62, the Minister will not approve any method of harvest that differs from those permitted under federal or provincial laws of general application unless the Minister is satisfied that the method is consistent with public safety.

#### **Federal and Provincial Laws of General Application**

67. In order to:
  - a. avoid duplication of requirements between an annual management plan and federal and provincial laws of general application; and
  - b. otherwise facilitate the management of Nisga'a wildlife harvesting

if there is an inconsistency between an annual management plan and a federal or provincial law of general application, the annual management plan prevails to the extent of the inconsistency.

#### **TRADE, BARTER, AND SALE OF WILDLIFE**

68. Nisga'a citizens have the right to trade or barter among themselves, or with other aboriginal people, any wildlife or wildlife parts harvested under this Agreement.

69. Notwithstanding paragraphs 37, 38, and 68, any export of wildlife or wildlife parts from British Columbia or Canada will be in accordance with federal and provincial laws of general application.
70. Any sale of wildlife or wildlife parts, including meat, harvested under this Agreement will be in accordance with federal and provincial laws of general application, and with any Nisga'a law in respect of sale of wildlife.

## TRAPPING

71. On the effective date, the traplines wholly or partially on Nisga'a Lands that are, on the effective date, not registered to any person, and are listed in Schedule B, are registered to the Nisga'a Nation.
72. If the holder of a trapline within the Nass Wildlife Area agrees to transfer the trapline to the Nisga'a Nation, a Nisga'a Institution, or a Nisga'a Corporation, British Columbia will consent to the transfer.
73. If a trapline that is wholly or partially on Nisga'a Lands becomes vacant by reason of abandonment or by operation of law, British Columbia will register the trapline to the Nisga'a Nation, a Nisga'a Institution, or a Nisga'a Corporation, as designated by Nisga'a Lisims Government.
74. Nisga'a citizens who hold traplines that are wholly outside Nisga'a Lands continue to hold those traplines in accordance with federal and provincial laws of general application. Those traplines are set out in Schedule C.
75. British Columbia will not register any new traplines within Nisga'a Lands without the consent of the Nisga'a Nation.
76. British Columbia will consult with the Nisga'a Nation before approving any proposed transfer of, or change in terms and conditions of, an existing trapline that is wholly or partially within Nisga'a Lands.
77. British Columbia and the Nisga'a Nation will negotiate and attempt to reach agreement in respect of Nisga'a Lisims Government authority for the management of some or all of traplines that are registered to the Nisga'a Nation, a Nisga'a Village, a Nisga'a Institution, a Nisga'a Corporation, or Nisga'a citizens, in the Nass Wildlife Area.
78. Subject to paragraph 79, trapping on Nisga'a Lands is regulated in the same manner as trapping is regulated on fee simple land in British Columbia.
79. Trapping on traplines that are held by an individual and are on Nisga'a Lands, is regulated in the same manner as trapping on Crown land in British Columbia, but construction of

cabins or other structures associated with traplines is subject to Nisga'a laws.

80. For greater certainty, in accordance with paragraph 13 of the General Provisions Chapter, federal and provincial laws of general application apply to the sale of furs.

## GUIDING

81. If a guide outfitter's certificate registered to a person other than the Nisga'a Nation ceases to apply to an area wholly or partially on Nisga'a Lands by reason of abandonment or operation of law, British Columbia will issue to the Nisga'a Nation a guide outfitter's licence and a guide outfitter's certificate for the area set out in Appendix K. This licence and certificate will be subject to federal and provincial laws of general application.
82. British Columbia will not issue a new guide outfitter's certificate or licence that applies to any portion of Nisga'a Lands without the consent of the Nisga'a Nation. British Columbia will consult with the Nisga'a Nation before approving any proposed transfer, or change in terms and conditions, of any guide outfitter's certificate or licence that applies to any portion of the Nass Wildlife Area.
83. On the effective date, British Columbia will issue an angling guide licence to the Nisga'a Nation, for the watercourses outside of Nisga'a Lands that are identified in Schedule D.
84. British Columbia will not:
  - a. issue any new angling guide licences that apply to watercourses within Nisga'a Lands; or
  - b. include any watercourses within Nisga'a Lands in the angling guide licences set out in Appendix C-7, other than those watercourses that are listed in those angling guide licences on the effective datewithout the consent of the Nisga'a Nation.
85. British Columbia will consult with the Nisga'a Nation before approving any proposed transfer, or change in terms and conditions, of an existing angling guide licence that applies to watercourses within Nisga'a Lands.
86. The annual management plan will include provisions in respect of Nisga'a guiding of anglers within Nisga'a Lands that are comparable to those provisions applicable outside of Nisga'a Lands in respect of matters such as training, insurance, and reporting.

**MIGRATORY BIRDS****Nisga'a Wildlife Entitlement**

87. Nisga'a citizens have the right to harvest migratory birds within the Nass Area throughout the year for domestic purposes, in accordance with this Agreement, subject to:
  - a. measures that are necessary for conservation; and
  - b. legislation enacted for the purposes of public health or public safety.
88. The entitlement set out in paragraph 87 is a right to harvest in a manner that:
  - a. is consistent with the communal nature of the Nisga'a harvest for domestic purposes, and
  - b. does not interfere with other authorized uses of Crown land.
89. Notwithstanding paragraphs 87 and 88, the Crown may authorize uses of or dispose of Crown land, and any authorized use or disposition may affect the methods, times, and locations of harvesting migratory birds under Nisga'a wildlife entitlements, provided that the Crown ensures that those authorized uses or dispositions do not deny Nisga'a citizens the reasonable opportunity to harvest migratory birds under Nisga'a wildlife entitlements.

**Trade, Barter, and Sale**

90. Nisga'a citizens have the right to trade or barter among themselves, or with other aboriginal people, any migratory birds harvested under this Agreement.
91. Notwithstanding paragraphs 37, 38, and 90:
  - a. any export of migratory birds from British Columbia or Canada; and
  - b. the identification of migratory birds that are transported outside Nisga'a Lands for trade and barterwill be in accordance with federal and provincial laws of general application.
92. Any sale of migratory birds will be in accordance with federal and provincial laws of general application and with any Nisga'a law in respect of sale of migratory birds harvested under this Agreement.
93. Nisga'a citizens have the right to sell inedible by-products, including down, of migratory birds harvested under this Agreement.

94. Any collection and sale of down of migratory birds other than down of migratory birds harvested under this Agreement will be in accordance with federal and provincial laws.

#### **Management**

95. Canada will consult with the Nisga'a Nation in respect of the management of the harvest by aboriginal people of migratory birds within the Nass Area.
96. Canada will consult with the Nisga'a Nation in respect of the formulation of Canada's positions relating to international agreements that may significantly affect migratory birds or their habitat within the Nass Area.

#### **OTHER**

97. The Parties may negotiate agreements for purposes of managing habitat critical for conservation of migratory birds or endangered species.
98. The Nisga'a Nation may negotiate agreements with Canada or British Columbia concerning enforcement of federal, provincial, or Nisga'a laws in respect of wildlife and migratory birds.
99. Nisga'a laws enacted in accordance with this Chapter may be enforced by persons authorized to enforce federal, provincial, or Nisga'a laws in respect of wildlife or migratory birds in British Columbia.

**SCHEDULE A -- NISGA'A WILDLIFE ALLOCATIONS OF DESIGNATED SPECIES****General**

1. If the calculation of a Nisga'a wildlife allocation results in a fractional number, the Nisga'a allocation will be:
  - a. the next higher whole number, if the number is 0.5 or greater; and
  - b. the next lower whole number, if the number is less than 0.5.

**Moose**

2. The Nisga'a wildlife allocation of moose from the total allowable harvest is:
  - a. 80% of the first 50 moose; plus
  - b. 32% of the next 50 moose; plus
  - c. 56% of all remaining moose, to a maximum of 170 moose.

**Mountain Goats**

3. The Nisga'a wildlife allocation of mountain goats is 25% of the total allowable harvest.

**Grizzly Bears**

4. The Nisga'a wildlife allocation of grizzly bears is:
  - a. if the total allowable harvest is six or fewer grizzly bears, 40% of the total allowable harvest;
  - b. if the total allowable harvest is seven or eight grizzly bears, 50% of the total allowable harvest;
  - c. if the total allowable harvest is nine or ten grizzly bears, 40% of the total allowable harvest; or
  - d. if the total allowable harvest is greater than 10 grizzly bears, 40% of the first 10 grizzly bears, plus 30% of the remainder of the total allowable harvest.

**SCHEDULE B -- UNREGISTERED TRAPLINES WHOLLY OR PARTIALLY ON NISGA'A LANDS ON THE EFFECTIVE DATE**

**Trapline Number**

616 T 014

**SCHEDULE C -- TRAPLINES WHOLLY OUTSIDE NISGA'A LANDS HELD BY NISGA'A CITIZENS**

614T 010	614T 079	614T 112
614T 016	614T 083	615T 018
614T 017	614T 084	615T 026
614T 018	614T 085	615T 030
614T 048	614T 086	616T 006
614T 078	614T 087	616T 007
614T 090	614T 093	614T 096
614T 092	614T 094	614T 097
	614T 099	

**SCHEDULE D -- STREAMS IN NISGA'A ANGLING GUIDE LICENCE**

**Nass River Watershed**

Bell-Irving River  
Bowser River  
Burton Creek  
Cranberry River  
Kinskuch River  
Kiteen River  
Kwinageese River  
Meziadin River  
Nass River  
Oweegee Lake  
Welda Creek  
Tchitin River

**Portland Canal**

Bear River

**Observatory Inlet**

Illiance River  
Kitsault River

## CHAPTER 10

### ENVIRONMENTAL ASSESSMENT AND PROTECTION

#### ENVIRONMENTAL ASSESSMENT

1. At the request of any Party, the Parties will negotiate and attempt to reach agreements:
  - a. to coordinate any Nisga'a, federal, and provincial environmental assessment requirements that will meet the Parties' legal requirements concerning environmental assessments; and
  - b. to avoid duplication of environmental assessment requirements.
2. Agreements under paragraph 1 may be between the Nisga'a Nation and one or both of the other Parties, and may cover the environmental assessment of one or more projects, including an assessment referred to in paragraph 4.
3. Nisga'a Lisims Government may make laws in respect of the environmental assessment of projects on Nisga'a Lands. In the event of a conflict between a Nisga'a law under this paragraph and a federal or provincial law of general application, the federal or provincial law will prevail to the extent of the conflict.
4. A project on Nisga'a Lands that requires an environmental assessment under Nisga'a law and the law of another Party will be assessed only under the process prescribed by Nisga'a law if the Nisga'a Nation and the other Party agree under paragraph 1 that the Nisga'a environmental assessment will provide the information that the other Party requires to make its decisions concerning the project. In the absence of an agreement, the Parties may carry out concurrent environmental assessments.
5. If a proposed project on Nisga'a Lands may reasonably be expected to have adverse environmental effects, the Nisga'a Nation will ensure that Canada and British Columbia:
  - a. receive timely notice of, and relevant available information on, the project and the potential adverse environmental effects;
  - b. are consulted regarding the environmental effects of the project if there may be adverse environmental effects off Nisga'a Lands, or on federal or provincial interests referred to in this Agreement; and
  - c. receive an opportunity to participate in any environmental assessment under Nisga'a laws related to those effects, in accordance with those laws, if there may be significant adverse environmental effects off Nisga'a Lands, or on federal or provincial interests referred to in this Agreement.

6. If a proposed project that will be located off Nisga'a Lands may reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests set out in this Agreement, Canada or British Columbia, or both, as the case may be, will ensure that the Nisga'a Nation:
  - a. receives timely notice of, and relevant available information on, the project and the potential adverse environmental effects;
  - b. is consulted regarding the environmental effects of the project; and
  - c. receives an opportunity to participate in any environmental assessment under federal or provincial laws related to those effects, in accordance with those laws, if there may be significant adverse environmental effects.
7. If Canada or British Columbia establishes a board, panel, or tribunal to provide advice or make recommendations with respect to the environmental effects of a project on Nisga'a Lands or a project off Nisga'a Lands that may reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands, or Nisga'a interests set out in this Agreement, the Nisga'a Nation will:
  - a. have standing before the board, panel, or tribunal; and
  - b. be entitled to nominate a member of the assessment board, panel, or tribunal, unless the board, panel, or tribunal is a decision-making body, such as the National Energy Board.
8. All environmental assessment processes referred to in this Agreement will, in addition to the requirements of applicable environmental assessment legislation:
  - a. coordinate to the extent possible the environmental assessment requirements placed by the Parties upon a project proponent;
  - b. require the project proponent to provide information or studies, as appropriate, about the project and its potential environmental effects and the measures that can be taken to prevent or mitigate those effects;
  - c. ensure that all information relevant to the assessment of the project is available to the public, other than information that is required to be kept confidential under applicable law;
  - d. provide for public participation in the assessment process, including public notice of the project, an opportunity to make submissions, and, when deemed appropriate by the Party conducting the assessment, public hearings conducted by an independent review panel;

- e. assess whether the project can reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands, or Nisga'a interests set out in this Agreement and, where appropriate, make recommendations to prevent or mitigate those effects;
  - f. assess the effects of the project on the existing and future economic, social and cultural well-being of Nisga'a citizens who may be affected by the project;
  - g. set out time periods within which the assessor must make its recommendation in respect of whether or not the project should proceed;
  - h. provide for recommendations, based on the assessment, to the Party or Parties with decision-making authority over the project, in respect of whether the project should proceed;
  - i. take into account any agreements between the project proponent and the Nisga'a Nation or a Nisga'a Village concerning the effects of the project; and
  - j. be conducted and completed by a Party before that Party issues final approval.
9. Decisions by any Party regarding the issuance of a permit or approval for a project will take into account the recommendations of the environmental assessment.
10. In exercising decision-making authority for projects that may have adverse environmental effects on residents of Nisga'a Lands, Nisga'a Lands, or Nisga'a interests set out in this Agreement, the decision maker will take into account, but will not be bound by, any agreements between the Nisga'a Nation or a Nisga'a Village and the project proponent concerning the project.

## ENVIRONMENTAL PROTECTION

11. Except as otherwise set out in this Agreement, Nisga'a Lisims Government may make laws in respect of environmental protection on Nisga'a Lands, including discharges into streams within Nisga'a Lands. In the event of a conflict between a Nisga'a law under this paragraph and a federal or provincial law, the federal or provincial law will prevail to the extent of the conflict.
12. Any Party may respond to an environmental emergency or natural disaster if the Party with primary responsibility for responding has not responded, or is unable to respond, in a timely manner.
13. If there is an environmental emergency or natural disaster, the Party responding will, if possible, notify the Party with primary responsibility in advance of taking action, but, in any case, will notify that Party as soon as practicable after responding.
-

14. Canada and the Nisga'a Nation may enter into agreements concerning the performance of specified federal environmental protection functions by Nisga'a Institutions.
15. British Columbia and the Nisga'a Nation will negotiate and attempt to reach agreements concerning the performance of specified provincial environmental protection functions by Nisga'a Institutions within an area to be defined in those agreements.
16. Any agreements entered into under paragraph 15 will be in accordance with the technical and administrative capacity and resources of Nisga'a Institutions to carry out the functions in accordance with relevant provincial standards.
17. Each Party will enforce its environmental laws in the Nass Area in a fair, impartial and effective manner, through appropriate governmental action, consistent with the exercise of prosecutorial discretion.
18. No Party should relax its environmental standards in the Nass Area for the purpose of providing an encouragement to the establishment, acquisition, expansion, or retention of an investment.
19. This Agreement does not preclude a Party, within the scope of its jurisdiction, from establishing environmental standards that take into account the specific environmental conditions of a region, location, or type of project.

## CHAPTER 11

### NISGA'A GOVERNMENT

#### **SELF-GOVERNMENT**

1. The Nisga'a Nation has the right to self-government, and the authority to make laws, as set out in this Agreement.

#### **RECOGNITION OF NISGA'A LISIMS GOVERNMENT AND NISGA'A VILLAGE GOVERNMENTS**

2. Nisga'a Lisims Government and Nisga'a Village Governments, as provided for under the Nisga'a Constitution, are the governments of the Nisga'a Nation and the Nisga'a Villages, respectively.
3. Except as may otherwise be agreed to by the relevant Parties in respect of particular matters, Nisga'a Lisims Government is responsible for intergovernmental relations between the Nisga'a Nation on the one hand, and Canada or British Columbia, or both, on the other hand.
4. The exercise of Nisga'a Government jurisdiction and authority set out in this Agreement will evolve over time.

#### **LEGAL STATUS AND CAPACITY**

5. The Nisga'a Nation, and each Nisga'a Village, is a separate and distinct legal entity, with the capacity, rights, powers, and privileges of a natural person, including to:
  - a. enter into contracts and agreements;
  - b. acquire and hold property or an interest in property, and sell or otherwise dispose of that property or interest;
  - c. raise, spend, invest, or borrow money;
  - d. sue and be sued; and
  - e. do other things ancillary to the exercise of its rights, powers and privileges.
6. The rights, powers, and privileges of the Nisga'a Nation, and of each Nisga'a Village, will be exercised in accordance with:

- a. this Agreement;
  - b. the Nisga'a Constitution; and
  - c. Nisga'a laws.
7. The Nisga'a Nation will act through Nisga'a Lisims Government in exercising its rights, powers, and privileges and in carrying out its duties, functions, and obligations.
8. Each Nisga'a Village will act through its Nisga'a Village Government in exercising its rights, powers, and privileges and in carrying out its duties, functions, and obligations.

## NISGA'A CONSTITUTION

9. The Nisga'a Nation will have a Nisga'a Constitution, consistent with this Agreement, which will:
- a. provide for Nisga'a Lisims Government and Nisga'a Village Governments, including their duties, composition, and membership;
  - b. provide that this Agreement sets out the authority of Nisga'a Government to make laws;
  - c. assign to Nisga'a Lisims Government and Nisga'a Village Governments the rights, powers, privileges, and responsibilities under this Agreement that are not specifically assigned to Nisga'a Lisims Government;
  - d. provide for the enactment of laws by Nisga'a Government;
  - e. provide for challenging the validity of Nisga'a laws;
  - f. provide for the creation, continuation, amalgamation, dissolution, naming, or renaming of:
    - i. Nisga'a Villages on Nisga'a Lands, and
    - ii. Nisga'a Urban Locals;
  - g. provide for Nisga'a Urban Locals, or other means by which Nisga'a citizens residing outside of the Nass Area may participate in Nisga'a Lisims Government;
  - h. provide for the establishment of Nisga'a Public Institutions;
  - i. provide for the role of the Nisga'a elders, *Simgigat* and *Sigidimhaanał*, in providing

- guidance and interpretation of the *Ayuuk* to Nisga'a Government;
- j. provide that in the event of an inconsistency or conflict between the Nisga'a Constitution and the provisions of any Nisga'a law, the Nisga'a law is, to the extent of the inconsistency or conflict, of no force or effect;
  - k. require that Nisga'a Government be democratically accountable to Nisga'a citizens, and, in particular:
    - i. that elections for Nisga'a Lisims Government and each Nisga'a Village Government be held at least every five years, and
    - ii. that, subject to residency, age, and other requirements set out in the Nisga'a Constitution or Nisga'a law, all Nisga'a citizens are eligible to vote in Nisga'a elections and to hold office in Nisga'a Government;
  - l. require a system of financial administration comparable to standards generally accepted for governments in Canada, through which Nisga'a Lisims Government will be financially accountable to Nisga'a citizens, and Nisga'a Village Governments will be financially accountable to Nisga'a citizens of those Nisga'a Villages;
  - m. require conflict of interest rules that are comparable to standards generally accepted for governments in Canada;
  - n. provide conditions under which the Nisga'a Nation or a Nisga'a Village may:
    - i. dispose of the whole of its estate or interest in any parcel of Nisga'a Lands or Nisga'a Fee Simple Lands, and
    - ii. from the whole of its estate or interest, create or dispose of any lesser estate or interest in any parcel of Nisga'a Lands or Nisga'a Fee Simple Lands;
  - o. recognize and protect rights and freedoms of Nisga'a citizens;
  - p. provide that every Nisga'a participant who is a Canadian citizen or permanent resident of Canada is entitled to be a Nisga'a citizen;
  - q. provide for Nisga'a Government during the period from the effective date until the date on which the office holders elected in the first Nisga'a elections take office;
  - r. provide for amendment of the Nisga'a Constitution; and
  - s. include other provisions, as determined by the Nisga'a Nation.
10. The Nisga'a Constitution, as approved in accordance with the Ratification Chapter, comes

into force on the effective date.

11. The Nisga'a Constitution will initially include an amending procedure requiring that an amendment be approved by at least 70% of Nisga'a citizens voting in a referendum.

### **NISGA'A GOVERNMENT STRUCTURE**

12. Each Nisga'a Village Government consists of elected members as set out in the Nisga'a Constitution.
13. On the effective date, there are three Nisga'a Urban Locals, as set out in the Nisga'a Constitution, known as:
  - a. Greater Vancouver Urban Local;
  - b. Terrace Urban Local; and
  - c. Prince Rupert/Port Edward Urban Local.
14. Nisga'a Lisims Government consists of the following members, as set out in the Nisga'a Constitution:
  - a. at least three officers elected by the Nisga'a Nation in a general election;
  - b. the elected members of the Nisga'a Village Governments; and
  - c. at least one representative elected by the Nisga'a citizens of each Nisga'a Urban Local.

### **ELECTIONS**

15. Elections for Nisga'a Government will be held in accordance with the Nisga'a Constitution and Nisga'a laws.

### **APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS**

16. Nisga'a Government will provide appropriate procedures for the appeal or review of administrative decisions of Nisga'a Public Institutions.
17. The Supreme Court of British Columbia has jurisdiction in respect of applications for judicial review of administrative decisions of Nisga'a Institutions exercising a statutory power of decision under Nisga'a law, but no application for judicial review of those decisions may

be brought until all procedures for appeal or review provided by Nisga'a Government and applicable to that decision have been exhausted.

## REGISTER OF LAWS

18. Nisga'a Lisims Government will:

- a. maintain a public registry of Nisga'a laws in the English language and, at the discretion of Nisga'a Lisims Government, in the Nisga'a language;
- b. provide Canada and British Columbia with a copy of a Nisga'a law as soon as practicable after that law is enacted; and
- c. establish procedures for the coming into force and publication of Nisga'a laws.

## RELATIONS WITH INDIVIDUALS WHO ARE NOT NISGA'A CITIZENS

19. Nisga'a Government will consult with individuals who are ordinarily resident within Nisga'a Lands and who are not Nisga'a citizens about Nisga'a Government decisions that directly and significantly affect them.
20. Nisga'a Government will provide that individuals who are ordinarily resident within Nisga'a Lands and who are not Nisga'a citizens may participate in a Nisga'a Public Institution, if the activities of that Nisga'a Public Institution directly and significantly affect them.
21. The means of participation under paragraph 20 will be:
  - a. a reasonable opportunity to make representations to the Nisga'a Public Institution in respect of activities that significantly and directly affect them;
  - b. if the members of a Nisga'a Public Institution are elected:
    - i. the ability to vote for or become members of the Nisga'a Public Institution, or
    - ii. a guaranteed number of members, with the right to vote, on the Nisga'a Public Institution; or
  - c. other comparable measures.
22. Nisga'a Government will provide that individuals who are ordinarily resident within Nisga'a Lands and who are not Nisga'a citizens may avail themselves of the appeal or review procedures referred to in paragraph 16.

23. Nisga'a Government may appoint individuals who are not Nisga'a citizens as members of Nisga'a Public Institutions.

## TRANSITIONAL PROVISIONS

24. From the effective date until the office holders elected in the first Nisga'a elections take office:
- a. the members and officers of the General Executive Council of the Nisga'a Tribal Council on the day immediately before the effective date are the members of Nisga'a Lisims Government, in accordance with the transition provisions of the Nisga'a Constitution; and
  - b. the Chief Councillor and councillors of each of the Nisga'a band councils under the *Indian Act* on the day immediately before the effective date are the elected members of the respective successor Nisga'a Village Governments.
25. The first elections for the officers of Nisga'a Lisims Government, the members of each of the Nisga'a Village Governments, and the Nisga'a Urban Local representatives to Nisga'a Lisims Government, will be held no later than six months after the effective date.
26. The Parties acknowledge that it is desirable that the exercise of Nisga'a Government authority be introduced in an effective and orderly manner.
27. Before Nisga'a Lisims Government first exercises law making authority in respect of social services, health services, child and family services, adoption, or pre-school to Grade 12 education, Nisga'a Lisims Government will give notice to Canada and British Columbia of the intended exercise of authority.
28. After Nisga'a Lisims Government has given notice under paragraph 27, at the request of Canada or British Columbia, Nisga'a Lisims Government will consult or otherwise discuss with Canada or British Columbia, as the case may be, in respect of:
- a. any transfer of cases and related documentation from federal or provincial institutions to Nisga'a Institutions, including any confidentiality and privacy considerations;
  - b. any transfer of assets from federal or provincial institutions to Nisga'a Institutions;
  - c. immunity of Nisga'a Government employees providing services or exercising authority under Nisga'a laws;
  - d. any appropriate amendments to federal or provincial laws; and
  - e. other matters agreed to by the Parties.

29. The Parties may negotiate agreements regarding any of the matters set out in paragraph 28, but an agreement under this paragraph is not a condition precedent to the exercise of law making authority by Nisga'a Government.

### **Amendment of Provincial Legislation**

30. British Columbia will consult with Nisga'a Lisims Government before amending a provincial law if:
- a. this Agreement provides for Nisga'a Government law making authority in respect of the subject matter of the provincial law being amended;
  - b. Nisga'a Government has made a law in respect of that subject matter;
  - c. the validity of the Nisga'a law depends upon a comparison with the provincial law being amended; and
  - d. the proposed amendment would result in the Nisga'a law ceasing to be valid.
31. Consultations under paragraph 30 may include:
- a. the nature and purpose of the proposed amendment to the provincial law;
  - b. the anticipated date the proposed amendment will take effect;
  - c. any necessary changes to Nisga'a law as a result of the amendment; and
  - d. other matters agreed to by the Parties.

## **LEGISLATIVE JURISDICTION AND AUTHORITY**

### **General**

32. In the event of an inconsistency or conflict between this Agreement and the provisions of any Nisga'a law, this Agreement prevails to the extent of the inconsistency or conflict.
33. Nisga'a Lisims Government and Nisga'a Village Governments, respectively, have the principal authority, as set out in, and in accordance with, this Agreement, in respect of Nisga'a Government, Nisga'a citizenship, Nisga'a culture, Nisga'a language, Nisga'a Lands, and Nisga'a assets.

**Nisga'a Government**

34. Nisga'a Lisims Government may make laws in respect of the administration, management and operation of Nisga'a Government, including:
- a. the establishment of Nisga'a Public Institutions, including their respective powers, duties, composition, and membership;
  - b. powers, duties, responsibilities, remuneration, and indemnification of members, officials, employees, and appointees of Nisga'a Institutions;
  - c. the establishment of Nisga'a Corporations, but the registration or incorporation of the Nisga'a Corporations must be under federal or provincial laws;
  - d. the delegation of Nisga'a Government authority, but the authority to make laws may be delegated only to a Nisga'a Institution;
  - e. financial administration of the Nisga'a Nation, Nisga'a Villages, and Nisga'a Institutions; and
  - f. elections, by-elections, and referenda.
35. Each Nisga'a Village Government may make laws in respect of the administration, management, and operation of that Nisga'a Village Government, including:
- a. the establishment of Nisga'a Public Institutions of that Nisga'a Village Government, including their respective powers, duties, composition, and membership;
  - b. powers, duties, responsibilities, remuneration, and indemnification of members, officials, employees, and appointees of Nisga'a Public Institutions referred to in subparagraph (a); and
  - c. the delegation of the Nisga'a Village Government's authority, but the authority to make laws may be delegated only to a Nisga'a Institution.
36. In the event of an inconsistency or conflict between a Nisga'a law under paragraphs 34 or 35 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
37. Nisga'a Lisims Government may make laws in respect of the creation, continuation, amalgamation, dissolution, naming, or renaming of:
- a. Nisga'a Villages on Nisga'a Lands; and
  - b. Nisga'a Urban Locals.

38. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 37 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.

### Nisga'a Citizenship

39. Nisga'a Lisims Government may make laws in respect of Nisga'a citizenship. The conferring of Nisga'a citizenship does not:
- confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
  - except as set out in this Agreement or in any federal or provincial law, impose any obligation on Canada or British Columbia to provide rights or benefits.
40. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 39 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.

### Culture and Language

41. Nisga'a Lisims Government may make laws to preserve, promote, and develop Nisga'a culture and Nisga'a language, including laws to authorize or accredit the use, reproduction, and representation of Nisga'a cultural symbols and practices, and the teaching of Nisga'a language.
42. Except as provided for by federal or provincial law, Nisga'a Lisims Government jurisdiction under paragraph 41 to make laws in respect of Nisga'a culture and Nisga'a language does not include jurisdiction to make laws in respect of intellectual property, the official languages of Canada or the prohibition of activities outside of Nisga'a Lands.
43. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 41 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.

### Nisga'a Property in Nisga'a Lands

44. Nisga'a Lisims Government may make laws in respect of:
- the use and management of Nisga'a Lands owned by the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation;

- b. the possession of Nisga'a Lands owned by the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, including the granting of rights of possession in Nisga'a Lands and any conditions or restrictions on those rights;
  - c. the disposition of an estate or interest of the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation, in any parcel of Nisga'a Lands, including:
    - i. the disposition of the whole of an estate or interest,
    - ii. from the whole of its estate or interest, the creation or disposition of any lesser estate or interest, and
    - iii. the creation of rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*;
  - d. the conditions on, and restrictions subject to which, the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation may create or dispose of its estates or interests in any parcel of Nisga'a Lands;
  - e. the conditions or restrictions, to be established at the time of the creation or disposition of an estate or interest of the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation in any parcel of Nisga'a Lands, in respect of that and any subsequent disposition;
  - f. the reservation or exception of interests, rights, privileges, and titles from any creation or disposition of an estate or interest of the Nisga'a Nation, a Nisga'a Village, or Nisga'a Corporation in Nisga'a Lands; and
  - g. other similar matters relating to the property interests of the Nisga'a Nation, Nisga'a Villages, and Nisga'a Corporations in Nisga'a Lands.
45. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 44 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
46. Nisga'a laws under paragraph 44(c) in respect of estates or interests that are recognized and permitted by federal or provincial laws of general application will be consistent with federal and provincial laws of general application in respect of those estates or interests, other than the provincial Torrens system and any federal land title or land registry laws.

#### **Regulation, Administration and Expropriation of Nisga'a Lands**

47. Nisga'a Lisims Government may make laws in respect of:

- a. the use, management, planning, zoning, and development of Nisga'a Lands;
  - b. regulation, licensing, and prohibition of the operation on Nisga'a Lands of businesses, professions, and trades, including the imposition of licence fees or other fees, other than laws in respect of the accreditation, certification, or professional conduct of professions and trades; and
  - c. other similar matters related to the regulation and administration of Nisga'a Lands.
48. Each Nisga'a Village Government may make laws in respect of the matters referred to in paragraph 47, to apply on their respective Nisga'a Village Lands.
49. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 47 or 48 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
50. Nisga'a Lisims Government may make laws in respect of:
- a. subject to paragraphs 2, 3, and 4 of the Land Title Chapter, the establishment and operation of a land title or land registry system, in respect of estates, interests, charges, encumbrances, conditions, provisos, restrictions, exceptions, and reservations on or in Nisga'a Lands, including the establishment of a requirement similar to subsection 20(1) of the *Land Title Act*;
  - b. designation of any parcel of Nisga'a Lands as Nisga'a Private Lands or Nisga'a Village Lands;
  - c. expropriation by Nisga'a Government for public purposes and public works, of estates, or interests in Nisga'a Lands other than:
    - i. interests referred to in paragraphs 30 and 41 of the Lands Chapter to which Nisga'a Lands are subject on the effective date,
    - ii. subject to paragraphs 35 and 36 of the Lands Chapter, interests referred to in paragraphs 33 and 34 of the Lands Chapter to which Nisga'a Lands are subject on the effective date,
    - iii. estates or interests expropriated by Canada in accordance with the Lands Chapter, and
    - iv. rights of way acquired by British Columbia or a public utility in accordance with the Roads and Rights of Way Chapter; and
  - d. other similar matters related to the regulation and administration of Nisga'a Lands.

51. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 50 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
52. Notwithstanding paragraphs 45, 49 and 51, in the event of a conflict between a Nisga'a law and a federal law of general application in respect of prospecting for, production of, refining, and handling of uranium or other products capable of releasing atomic energy, the federal law prevails to the extent of the conflict. Nothing in this paragraph is intended to require the production of uranium or other products capable of releasing atomic energy.

#### Nisga'a Assets

53. Nisga'a Lisims Government may make laws in respect of:
  - a. the use, possession, and management of the assets, other than real property, on Nisga'a Lands of the Nisga'a Nation, Nisga'a Villages, and Nisga'a Corporations;
  - b. the imposition of conditions on, and restrictions subject to which, Nisga'a Government, and Nisga'a Corporations may authorize the disposition of the assets, other than real property, within Nisga'a Lands of the Nisga'a Nation, Nisga'a Villages, and Nisga'a Corporations; and
  - c. other similar matters relating to the property interests of the Nisga'a Nation, Nisga'a Villages, and Nisga'a Corporations in their assets, other than real property, on Nisga'a Lands.
54. A Nisga'a Village Government may make laws in respect of the matters referred to in paragraph 53, to apply to its assets, other than real property, on its Nisga'a Village Lands.
55. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 53 or 54 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
56. Nisga'a Lisims Government may make laws in respect of the use, possession, and management of assets, located off of Nisga'a Lands, of the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation.
57. A Nisga'a Village Government may make laws in respect of the use, possession, and management of assets of that Nisga'a Village, located off of Nisga'a Lands.
58. In the event of a conflict between a Nisga'a law under paragraphs 56 or 57 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.

### Public Order, Peace, and Safety

59. Nisga'a Lisims Government may make laws in respect of the regulation, control, or prohibition of any actions, activities, or undertakings on Nisga'a Lands, or on submerged lands within Nisga'a Lands, other than actions, activities, or undertakings on submerged lands that are authorized by the Crown, that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace, or safety.
60. A Nisga'a Village Government may make laws in respect of the regulation, control, or prohibition of any actions, activities, or undertakings on the Nisga'a Village Lands of that Nisga'a Village, or on submerged lands within those Nisga'a Village Lands, other than actions, activities, or undertakings on those submerged lands that are authorized by the Crown, that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace, or safety.
61. For greater certainty, Nisga'a Government authority does not include authority in respect of criminal law.
62. In the event of a conflict between a Nisga'a law under paragraph 59 or 60 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.

### Duty to Accommodate

63. Nisga'a Lisims Government may make laws prescribing the aspects of Nisga'a culture, including aspects such as cultural leave from employment, to be accommodated in accordance with federal and provincial laws of general application by employers and employees' organizations that have the duty to accommodate employees under those federal and provincial laws.

### Industrial Relations

64. If, in any industrial relations matter or industrial relations proceeding involving individuals employed on Nisga'a Lands, other than a matter or proceeding arising from a collective agreement, an issue arises in respect of this Agreement or Nisga'a culture, the matter or proceeding will not be concluded until notice has been served on Nisga'a Lisims Government in accordance with the rules for giving notice that govern that matter or proceeding.
65. In any industrial relations matter or industrial relations proceeding to which paragraph 64 applies, Nisga'a Lisims Government may make representations concerning this Agreement or the effect of the matter or proceeding on Nisga'a culture.

66. Any representations of Nisga'a Lisims Government in an industrial relations matter or industrial relations proceeding before a board, commission, or other tribunal under paragraph 65 will be in accordance with the rules in respect of the industrial relations matter or proceeding and will not affect the ability of the board, commission, or other tribunal to control its process.
67. For greater certainty, paragraphs 64 to 66 do not affect federal or provincial jurisdiction in respect of industrial relations, employment standards, and occupational health and safety.

### **Human Resource Development**

68. At the request of any Party, the Parties will negotiate and attempt to reach agreements for Nisga'a Lisims Government delivery and administration of federal or provincial services or programs that are intended to:
  - a. improve the employability or skill level of the labour force and persons destined for the labour force; or
  - b. create new employment or work experience opportunities.

### **Buildings, Structures, and Public Works**

69. Subject to the Roads and Rights of Way Chapter, Nisga'a Lisims Government may make laws in respect of the design, construction, maintenance, repair, and demolition of buildings, structures, and public works on Nisga'a Lands.
70. Subject to the Roads and Rights of Way Chapter, a Nisga'a Village Government may make laws in respect of the matters referred to in paragraph 69, to apply on the Nisga'a Village Lands of that Nisga'a Village.
71. In the event of a conflict between a Nisga'a law under paragraph 69 or 70 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.

### **Traffic and Transportation**

72. A Nisga'a Village Government may make laws in respect of the regulation of traffic and transportation on Nisga'a Roads within its village, to the same extent as municipal governments have authority in respect of the regulation of traffic and transportation in municipalities in British Columbia.
73. Nisga'a Lisims Government may make laws in respect of the regulation of traffic and

transportation on Nisga'a Roads, other than Nisga'a Roads within Nisga'a villages, to the same extent as municipal governments have authority in respect of the regulation of traffic and transportation in municipalities in British Columbia.

74. In the event of a conflict between a Nisga'a law under paragraphs 72 or 73 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.

### Solemnization of Marriages

75. Nisga'a Lisims Government may make laws in respect of solemnization of marriages within British Columbia, including prescribing conditions under which individuals appointed by Nisga'a Lisims Government may solemnize marriages.
76. In the event of a conflict between a Nisga'a law under paragraph 75 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.
77. Individuals appointed by Nisga'a Lisims Government to solemnize marriages:
  - a. will be registered by British Columbia as persons authorized to solemnize marriages; and
  - b. have the authority to solemnize marriages under British Columbia law and Nisga'a law, and have all the associated rights, duties and responsibilities of a marriage commissioner under the provincial *Marriage Act*.

### Social Services

78. Nisga'a Lisims Government may make laws in respect of the provision of social services by Nisga'a Government to Nisga'a citizens, other than the licensing and regulation of facility-based services off Nisga'a Lands.
79. In the event of a conflict between a Nisga'a law under paragraph 78 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.
80. If Nisga'a Lisims Government makes laws under paragraph 78, at the request of any Party, the Parties will negotiate and attempt to reach agreements in respect of exchange of information, avoidance of double payments, and related matters.
81. At the request of any Party, the Parties will negotiate and attempt to reach agreements for administration and delivery by Nisga'a Government of federal and provincial social services

and programs for all individuals residing within Nisga'a Lands. Those agreements will include a requirement that Nisga'a citizens and individuals who are not Nisga'a citizens be treated equally in the provision of those social services and programs.

### **Health Services**

82. Nisga'a Lisims Government may make laws in respect of health services on Nisga'a Lands.
83. In the event of a conflict between a Nisga'a law under paragraph 82 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.
84. Notwithstanding paragraph 83, in the event of an inconsistency or conflict between a Nisga'a law determining the organization and structure for the delivery of health services on Nisga'a Lands, and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
85. At the request of any Party, the Parties will negotiate and attempt to reach agreements for Nisga'a Lisims Government delivery and administration of federal and provincial health services and programs for all individuals residing within Nisga'a Lands. Those agreements will include a requirement that Nisga'a citizens and individuals who are not Nisga'a citizens be treated equally in the provision of those health services and programs.

### **Aboriginal Healers**

86. Nisga'a Lisims Government may make laws in respect of the authorization or licensing of individuals who practice as aboriginal healers on Nisga'a Lands, but, this authority to make laws does not include the authority to regulate products or substances that are regulated under federal or provincial laws of general application.
87. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 86 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
88. Any Nisga'a law under paragraph 86 will include measures in respect of competence, ethics and quality of practice that are reasonably required to protect the public.

### **Child and Family Services**

89. Nisga'a Lisims Government may make laws in respect of child and family services on Nisga'a Lands, provided that those laws include standards comparable to provincial standards intended to ensure the safety and well-being of children and families.

90. Notwithstanding any laws made under paragraph 89, if there is an emergency in which a child on Nisga'a Lands is at risk, British Columbia may act to protect the child and, in those circumstances, unless British Columbia and Nisga'a Lisims Government otherwise agree, British Columbia will refer the matter back to Nisga'a Lisims Government after the emergency.
91. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 89 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
92. At the request of Nisga'a Lisims Government, Nisga'a Lisims Government and British Columbia will negotiate and attempt to reach agreements in respect of child and family services for Nisga'a children who do not reside on Nisga'a Lands.
93. Laws of general application in respect of reporting of child abuse apply on Nisga'a Lands.

### **Child Custody**

94. Nisga'a Government has standing in any judicial proceedings in which custody of a Nisga'a child is in dispute, and the court will consider any evidence and representations in respect of Nisga'a laws and customs in addition to any other matters it is required by law to consider.
95. The participation of Nisga'a Government in proceedings referred to in paragraph 94 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Adoption**

96. Nisga'a Lisims Government may make laws in respect of the adoption of Nisga'a children, provided that those laws:
  - a. expressly provide that the best interests of the child be the paramount consideration in determining whether an adoption will take place; and
  - b. require Nisga'a Lisims Government to provide British Columbia and Canada with records of all adoptions occurring under Nisga'a laws.
97. Nisga'a law applies to the adoption of a Nisga'a child residing off Nisga'a Lands if:
  - a. the parent, parents, or guardian of the child consent to the application of Nisga'a law to the adoption; or
  - b. a court dispenses with the requirement for the consent referred to in

- subparagraph (a), in accordance with the criteria that would be used by that court in an application to dispense with the requirement for a parent or guardian's consent to an adoption.
98. If the Director of Child Protection, or a successor to that position, becomes the guardian of a Nisga'a child, the Director will:
- a. provide notice to Nisga'a Lisims Government that the Director is the guardian of the Nisga'a child;
  - b. provide notice to Nisga'a Lisims Government of any plan for the Nisga'a child's care that could result in an application to adopt the Nisga'a child; and
  - c. consent to the application of Nisga'a law to the adoption of that child, unless it is determined under provincial law that there are good reasons to believe it is in the best interests of the child to withhold consent.
99. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 96 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.

#### **Pre-school to Grade 12 Education**

100. Nisga'a Lisims Government may make laws in respect of pre-school to grade 12 education on Nisga'a Lands of Nisga'a citizens, including the teaching of Nisga'a language and culture, provided that those laws include provisions for:
- a. curriculum, examination, and other standards that permit transfers of students between school systems at a similar level of achievement and permit admission of students to the provincial post-secondary education systems;
  - b. certification of teachers, other than for the teaching of Nisga'a language and culture, by:
    - i. a Nisga'a Institution, in accordance with standards comparable to standards applicable to individuals who teach in public or independent schools in British Columbia, or
    - ii. a provincial body having the responsibility to certify individuals who teach in public or independent schools in British Columbia; and
  - c. certification of teachers, for the teaching of Nisga'a language and culture, by a Nisga'a Institution, in accordance with standards established under Nisga'a law.

101. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 100 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
102. If Nisga'a Lisims Government makes laws under paragraph 100, at the request of Nisga'a Lisims Government or British Columbia, those Parties will negotiate and attempt to reach agreements concerning the provision of Kindergarten to Grade 12 education to:
  - a. persons other than Nisga'a citizens residing within Nisga'a Lands; and
  - b. Nisga'a citizens residing off Nisga'a Lands.

#### **Post-Secondary Education**

103. Nisga'a Lisims Government may make laws in respect of post-secondary education within Nisga'a Lands, including:
  - a. the establishment of post-secondary institutions that have the ability to grant degrees, diplomas or certificates;
  - b. the determination of the curriculum for post-secondary institutions established under Nisga'a law;
  - c. the accreditation and certification of individuals who teach or research Nisga'a language and culture; and
  - d. the provision for and coordination of all adult education programs.
104. Nisga'a laws in respect of post-secondary education will include standards comparable to provincial standards in respect of:
  - a. institutional organizational structure and accountability;
  - b. admission standards and policies;
  - c. instructors' qualifications and certification;
  - d. curriculum standards sufficient to permit transfers of students between provincial post-secondary institutions; and
  - e. requirements for degrees, diplomas, or certificates.
105. In the event of an inconsistency or conflict between a Nisga'a law under paragraph 103 and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or

conflict.

106. Nisga'a Lisims Government may operate and provide post-secondary education services outside Nisga'a Lands in accordance with federal and provincial laws.
107. Nisga'a Lisims Government may prescribe the terms and conditions under which Nisga'a post-secondary institutions may enter into arrangements with other institutions or British Columbia to provide post-secondary education outside Nisga'a Lands.

### **Gambling and Gaming**

108. British Columbia will not licence or approve gambling or gaming facilities on Nisga'a Lands other than in accordance with any terms and conditions established by Nisga'a Government that are not inconsistent with federal and provincial laws of general application.
109. Any change in federal or provincial legislation or policy that permits the involvement of aboriginal peoples in the regulation of gambling and gaming will, with the consent of Nisga'a Lisims Government, apply to Nisga'a Government.

### **Intoxicants**

110. Nisga'a Government may make laws in respect of the prohibition of, and the terms and conditions for, the sale, exchange, possession, or consumption of intoxicants on Nisga'a Lands.
111. In the event of a conflict between a Nisga'a law under paragraph 110 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.
112. The Nisga'a Nation, its agents and assignees have:
  - a. the exclusive right to sell liquor on Nisga'a Lands in accordance with laws of general application; and
  - b. the right to purchase liquor from the British Columbia Liquor Distribution Branch, or its successors, in accordance with federal and provincial laws of general application.
113. British Columbia will approve an application made by or with the consent of Nisga'a Lisims Government for a license, permit, or other authority to sell liquor on Nisga'a Lands, if the application meets provincial regulatory requirements.
114. British Columbia will authorize persons designated by Nisga'a Government, in accordance

with provincial laws of general application, to approve or deny applications for special occasion or temporary permits to sell liquor.

### **Devolution of Cultural Property**

115. In paragraphs 116 to 119, "cultural property" means:
  - a. ceremonial regalia and similar personal property associated with a Nisga'a chief or clan; and
  - b. other personal property that has cultural significance to the Nisga'a Nation.
116. Nisga'a Lisims Government may make laws in respect of devolution of the cultural property of a Nisga'a citizen who dies intestate. In the event of an inconsistency or conflict between a Nisga'a law under this paragraph and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.
117. Nisga'a Lisims Government has standing in any judicial proceeding in which:
  - a. the validity of the will of a Nisga'a citizen; or
  - b. the devolution of the cultural property of a Nisga'a citizenis at issue, including any proceedings under wills variation legislation.
118. Nisga'a Lisims Government may commence an action under wills variation legislation in British Columbia in respect of the will of a Nisga'a citizen that provides for a devolution of cultural property.
119. In a proceeding to which paragraph 116, 117 or 118 applies, the court will consider, among other matters, any evidence or representations in respect of Nisga'a laws and customs dealing with the devolution of cultural property.
120. The participation of Nisga'a Lisims Government in proceedings referred to in paragraphs 116 to 118 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Other Areas of Legislative Jurisdiction**

121. In addition to the laws that Nisga'a Government may make under this Chapter, Nisga'a Government may make laws in respect of matters within Nisga'a Government jurisdiction as set out in, and in accordance with, this Agreement.

## EMERGENCY PREPAREDNESS

122. Nisga'a Lisims Government, with respect to Nisga'a Lands, has the rights, powers, duties, and obligations of a local authority under federal and provincial legislation in respect of emergency preparedness and emergency measures.
123. Nisga'a Lisims Government may make laws in respect of its rights, powers, duties, and obligations under paragraph 122. In the event of a conflict between a Nisga'a law under this paragraph and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict.
124. For greater certainty, Nisga'a Lisims Government may declare a state of local emergency, and exercise the powers of a local authority in respect of local emergencies in accordance with federal and provincial laws in respect of emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia set out in those federal and provincial laws.
125. Nothing in this Agreement affects the authority of:
  - a. Canada to declare a national emergency; or
  - b. British Columbia to declare a provincial emergencyin accordance with federal and provincial laws of general application.

## OTHER MATTERS

126. For greater certainty, the authority of Nisga'a Government to make laws in respect of a subject matter as set out in this Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.
127. Nisga'a Government may make laws and do other things that may be necessary to enable each of the Nisga'a Nation, a Nisga'a Village, and Nisga'a Government to exercise its rights, or to carry out its responsibilities, under this Agreement.
128. Nisga'a Government may provide for the imposition of penalties, including fines, restitution, and imprisonment for the violation of Nisga'a laws, within the limits set out for summary conviction offences in the *Criminal Code of Canada* or the *British Columbia Offence Act*.
129. Nisga'a Government may adopt federal or provincial laws in respect of matters within Nisga'a Government jurisdiction as set out in this Agreement.

## NISGA'A GOVERNMENT LIABILITY

### Elected Members of Nisga'a Government

130. No action for damages lies, or may be instituted against, an elected member, or former elected member, of Nisga'a Lisims Government or of a Nisga'a Village Government:
- a. for anything said or done, or omitted to be said or done, by or on behalf of the Nisga'a Nation, Nisga'a Lisims Government, a Nisga'a Village, or a Nisga'a Village Government, while that person is, or was, an elected member;
  - b. for any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of the Nisga'a Nation, Nisga'a Lisims Government, a Nisga'a Village, or a Nisga'a Village Government, while that person is, or was, an elected member;
  - c. for anything said or done, or omitted to be said or done, by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or
  - d. for any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.
131. Subparagraphs 130(c) and (d) do not provide a defence if:
- a. the person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - b. the cause of action is libel or slander.
132. Subparagraphs 130(c) and (d) do not absolve the Nisga'a Nation or a Nisga'a Village from vicarious liability arising out of a tort committed by an elected member or former elected member of Nisga'a Lisims Government, or the Nisga'a Village Government for which the Nisga'a Nation or the Nisga'a Village would have been liable had those subparagraphs not been in effect.

### Nisga'a Nation and Nisga'a Villages

133. The Nisga'a Nation, and each Nisga'a Village, has the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a municipality under Part 7 of the *Municipal Act*.
134. Subject to paragraph 1 of the Access Chapter, the Nisga'a Nation and each Nisga'a Village has the protections, immunities, limitations in respect of liability, remedies over, and rights

provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities, limitations in respect of liability, remedies over, and rights, in respect of a road on Nisga'a Lands used by the public, or by industrial or resource users, if the Nisga'a Nation or the Nisga'a Village is the occupier of that road.

### Nisga'a Governments

135. Nisga'a Lisims Government, and each Nisga'a Village Government, has the protections, immunities, limitations in respect of liability, remedies over, and rights provided to the council of a municipality under Part 7 of the *Municipal Act*.

### Writ of Execution Against Nisga'a Nation or Nisga'a Village

136. Notwithstanding paragraphs 133 and 135, a writ of execution against the Nisga'a Nation or a Nisga'a Village must not be issued without leave of the Supreme Court of British Columbia, which may:
- permit the issue of the writ at a time and on conditions the court considers proper; or
  - refuse to permit the writ to be issued, or suspend action under the writ, on terms and conditions the court thinks proper or expedient.
137. In determining how it will proceed under paragraph 136, the court must have regard to:
- any reputed insolvency of the Nisga'a Nation or Nisga'a Village;
  - any security afforded to the person entitled to the judgment by the registration of the judgment;
  - the delivery of programs or services by the Nisga'a Nation or the Nisga'a Village that are not provided by municipalities in British Columbia, and the funding of those programs or services; and
  - the immunities from seizure of assets of the Nisga'a Nation or the Nisga'a Village as set out in this Agreement.

### Nisga'a Public Officers

138. A Nisga'a public officer has the protections, immunities, limitations in respect of liability, and rights provided to a municipal public officer under Part 7 of the *Municipal Act*.
139. Notwithstanding paragraph 138, except as may be otherwise provided under federal or
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provincial law, a Nisga'a public officer does not have protections, immunities, or limitations in respect of liability, in respect of the provision of:

- a. a service, if no persons delivering reasonably similar programs or services under federal or provincial laws have protections, immunities, limitations in respect of liability, or rights under federal or provincial laws; or
  - b. a program or service of the Nisga'a Court, Nisga'a Police Board, or Nisga'a Police Service, except as provided for in the Administration of Justice Chapter.
140. The Inspector of Municipalities for British Columbia will not unreasonably withhold consent to the approval of the documents of incorporation of a Nisga'a Corporation if the principal function of the Nisga'a Corporation is to provide public programs or services reasonably similar to those provided by federal, provincial, or municipal governments, rather than to engage in commercial activities.
141. British Columbia will consult with Nisga'a Lisims Government in respect of any change to provincial law that would affect the protections, immunities, limitations in respect of liability, remedies over, and rights referred to in paragraphs 133, 134, 135, or 138 to the extent and in the manner that it consults with municipalities.

#### **OTHER PROVINCES AND TERRITORIES**

142. Notwithstanding paragraph 4 of the General Provisions Chapter, this Agreement is not intended to bind provinces, other than British Columbia, or territories, on matters within their jurisdiction without their consent.

## CHAPTER 12

### ADMINISTRATION OF JUSTICE

#### POLICE SERVICES

##### General

1. If Nisga'a Lisims Government decides to provide policing within Nisga'a Lands, it may do so by:
  - a. making laws for a Nisga'a Police Board and a Nisga'a Police Service under paragraph 3;
  - b. entering into agreements under which some or all of the policing will be provided by the provincial police service or other police services; or
  - c. both (a) and (b).
2. The Parties' objectives are that a Nisga'a Police Service:
  - a. be responsive to the needs and priorities of the Nisga'a Nation;
  - b. has the full range of police responsibilities and the authority to enforce Nisga'a laws, the laws of British Columbia, the criminal law, and other federal laws within Nisga'a lands; and
  - c. contributes to the administration of justice, the maintenance of social order, and public security.

##### Establishment of Nisga'a Police Board and Nisga'a Police Service

3. If Nisga'a Lisims Government decides to establish a Nisga'a Police Service, Nisga'a Lisims Government will make laws to provide for the establishment, organization, composition, indemnification, and roles and responsibilities of a Nisga'a Police Board and a Nisga'a Police Service.
4. Nisga'a laws under paragraph 3 will include provisions:
  - a. in substantial conformity with provincial legislation in respect of:
    - i. minimum standards for certification of members of the Nisga'a Police Service,

- ii. the swearing in of the members of the Nisga'a Police Service and the Nisga'a Police Board,
  - iii. use of force by members of the Nisga'a Police Service,
  - iv. discipline and dismissal procedures for members of the Nisga'a Police Service, and
  - v. a public complaint procedure; and
- b. compatible with provincial legislation in respect of:
    - i. selection standards for the members of the Nisga'a Police Service,
    - ii. a code of conduct for members of the Nisga'a Police Service,
    - iii. appropriate mechanisms to ensure police independence, accountability, and competence, and
    - iv. police operations.

#### **Nisga'a Police Board**

- 5. The Nisga'a Police Board will:
  - a. be independent and accountable in accordance with the standards that apply generally to police boards in British Columbia;
  - b. provide general direction and training to the Nisga'a Police Service;
  - c. determine priorities and goals of the Nisga'a Police Service;
  - d. act as the employer of the members of the Nisga'a Police Service;
  - e. appoint members of the Nisga'a Police Service, including a chief constable who, under the direction of the Nisga'a Police Board, will have general supervision and command over the Nisga'a Police Service, and will have the powers and authorities necessary to direct the members of the Nisga'a Police Service;
  - f. make rules respecting standards for the administration of the Nisga'a Police Service, the prevention of neglect and abuse by its members, and the efficient discharge of their duties and functions;
  - g. enforce the code of conduct established for the Nisga'a Police Service and take any

- necessary disciplinary action; and
- h. enter into agreements from time to time for training, specialized training, mutual support, assistance, and exchange of information and expertise.
6. The Nisga'a Police Board may exercise its functions when the Lieutenant Governor in Council has:
- a. approved the Nisga'a Police Board's structure and membership qualifications; and
- b. appointed the Nisga'a Police Board's members.
7. An amendment to the Nisga'a Police Board's structure and membership qualifications will take effect when approved by the Lieutenant Governor in Council.
8. If Nisga'a Lisims Government has made laws in accordance with paragraphs 3 and 4, the Lieutenant Governor in Council will:
- a. approve the Nisga'a Police Board's structure and membership qualifications;
- b. approve any amendment to the structure or membership qualifications; and
- c. appoint the members of the Nisga'a Police Board.
9. If, after Nisga'a Lisims Government makes a law under paragraph 3, the effect of a change in a provincial law is that the Nisga'a law ceases to be:
- a. in substantial conformity with provincial legislation in respect of the matters set out in subparagraph 4(a); or
- b. compatible with provincial legislation in respect of the matters set out in subparagraph 4(b)
- the Nisga'a law will be deemed to incorporate the provincial law to the extent necessary for substantial conformity or compatibility, as the case may be, until the Nisga'a law is amended by Nisga'a Lisims Government.
10. The Lieutenant Governor in Council will appoint to the Nisga'a Police Board only individuals who have been recommended by Nisga'a Lisims Government, and will not revoke the appointment of any Nisga'a Police Board member, other than for cause, without the concurrence of Nisga'a Lisims Government.
11. When the Lieutenant Governor in Council has approved the structure and membership qualifications of the Nisga'a Police Board and appointed its members, Nisga'a Lisims Government:

- a. will provide policing sufficient to maintain law and order within Nisga'a Lands;
  - b. will ensure that there are adequate physical resources for the proper operation of police services within Nisga'a lands; and
  - c. is jointly and severally liable for torts committed by members of the Nisga'a Police Service or by other employees of the Nisga'a Police Board in the performance of their duties.
12. The Nisga'a Police Board and its members are not liable for torts committed by members of the Nisga'a Police Service, or by other employees of the Nisga'a Police Board, in the performance of their duties.

#### Nisga'a Police Service

13. A member of the Nisga'a Police Service:
  - a. has the powers, duties, privileges, liabilities and responsibilities of a peace officer according to law;
  - b. has the immunity from personal liability provided to police officers under provincial law; and
  - c. has authority throughout British Columbia while carrying out the powers, duties, privileges, and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out according to law.
14. If a member of the Nisga'a Police Service performs duties outside of Nisga'a Lands, the member will, if possible, notify in advance the municipal police service or the provincial police service of the area in which the member performs duties, but in any case will promptly notify the municipal police service or provincial police service after performing those duties.
15. If a provincial or other police constable performs duties within Nisga'a Lands, the constable will, if possible, notify the Nisga'a Police Service in advance, but in any case will notify the Nisga'a Police Service promptly after performing those duties.
16. The Nisga'a Police Service and other police forces in British Columbia will respond to requests from one another for temporary assistance in accordance with federal and provincial law.
17. British Columbia will be jointly and severally liable with respect to torts committed by a member of the Nisga'a Police Service in the performance of the member's duties outside of Nisga'a Lands.

18. At the request of the Nisga'a Nation, the Parties will, to the extent of their respective jurisdictions, negotiate and attempt to reach agreements or protocols as may be necessary to enable Nisga'a Lisims Government to carry out its policing responsibilities, including agreements concerning:
    - a. the role and responsibility of the provincial police service in the provision of police services within Nisga'a Lands;
    - b. mutual assistance and operational cooperation between the Nisga'a Police Service and other police services;
    - c. other matters required by this Chapter; and
    - d. any other matters relating to police services.
  19. If the Minister is of the opinion that:
    - a. effective policing in accordance with standards prevailing elsewhere in British Columbia is not being delivered within Nisga'a Lands; or
    - b. it is necessary or desirable to ensure effective delivery of policing in accordance with standards prevailing elsewhere in British Columbiathe Minister, on terms approved by the Lieutenant Governor in Council, may provide or reorganize policing within Nisga'a Lands by appointing individuals as constables, using the provincial police force to provide policing, or by other means.
  20. The Minister will not exercise authority under paragraph 19 if that exercise discriminates against the Nisga'a Police Service or is aimed at aboriginal police forces generally throughout British Columbia.
  21. If practicable, before exercising authority under paragraph 19, the Minister will provide Nisga'a Lisims Government with:
    - a. written notice of the reasons or circumstances that form the basis of the Minister's decision to provide or reorganize policing;
    - b. reasonable opportunity to show cause why no action should be taken; and
    - c. reasonable opportunity to correct or modify any Nisga'a Lisims Government acts or omissions that form the basis for the Minister's decision to provide or reorganize policing.
  22. If it is not practicable for the Minister to comply with paragraph 21 before exercising authority under paragraph 19, the Minister, after exercising that authority, will forthwith
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provide Nisga'a Lisims Government with the notice and opportunities described in paragraph 21.

## COMMUNITY CORRECTION SERVICES

23. Nisga'a Lisims Government may appoint one or more persons to provide community correction services in respect of persons charged with, or convicted of, offences under Nisga'a laws.
24. At the request of the Nisga'a Nation, the Nisga'a Nation and British Columbia will negotiate and attempt to reach agreements to enable the persons appointed under paragraph 23 to provide community correction services within Nisga'a Lands under provincial legislation.
25. An agreement under paragraph 24 will contain provisions:
  - a. ensuring that community correction services are delivered in accordance with generally accepted standards;
  - b. confirming the authority of the official charged with the responsibility for investigations, inspections, and standards under provincial legislation; and
  - c. for Nisga'a Lisims Government to provide community correction services consistent with the needs and priorities of the Nisga'a Nation.
26. The Nisga'a Nation and British Columbia may enter into agreements to enable the persons appointed under paragraph 23 to provide community correction services outside Nisga'a Lands under provincial legislation.
27. Persons performing duties under agreements referred to in paragraphs 24 to 26 will comply with all provincial standards respecting professional, personal, and other qualifications, except as modified by those agreements.
28. The Nisga'a Nation and Canada may enter into agreements:
  - a. to enable the persons appointed under paragraph 23 to provide community correction services under federal legislation; and
  - b. for the provision of services or programs for adult and young offenders, including their care and custody.
29. This Agreement does not authorize Nisga'a Government to establish places of confinement, other than jails or lockups operated by the Nisga'a Police Service, or as provided for under an agreement referred to in paragraph 28.

**NISGA'A COURT****General**

30. Nisga'a Lisims Government may make laws to provide for the constitution, maintenance, and organization of a Nisga'a Court for the better administration of Nisga'a laws.
31. Until Nisga'a Lisims Government establishes a Nisga'a Court that has been approved by the Lieutenant Governor in Council, prosecutions under Nisga'a laws will be heard in the Provincial Court of British Columbia.
32. Any fines collected in respect of a penalty imposed on a person by the Provincial Court of British Columbia for a violation of a Nisga'a law will be paid to Nisga'a Lisims Government on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia for a violation of a federal law.

**Establishment of Nisga'a Court**

33. If Nisga'a Lisims Government decides to establish a Nisga'a Court, Nisga'a Lisims Government will make laws to:
  - a. ensure that the Nisga'a Court and its judges comply with generally recognized principles in respect of judicial fairness, independence, and impartiality;
  - b. provide for means of supervision of judges of the Nisga'a Court by the Judicial Council of British Columbia or other similar means; and
  - c. provide procedures for appeals from decisions of the Nisga'a Court.
34. The Nisga'a Court may exercise its functions when the Lieutenant Governor in Council has approved the Nisga'a Court's structure, procedures, and method of selection of judges of the Nisga'a Court.
35. An amendment to the Nisga'a Court's structure, procedures, or method of selection of judges of the Nisga'a Court will take effect when approved by the Lieutenant Governor in Council.
36. The Lieutenant Governor in Council will approve the Nisga'a Court's structure, procedures, and the method of selection of the judges of the Nisga'a Court or any amendment to the structure, procedures, or method of selection of judges of the Nisga'a Court, if Nisga'a Lisims Government has made laws in accordance with paragraph 33.
37. Nisga'a Lisims Government will appoint the judges of the Nisga'a Court.

**Nisga'a Court**

38. The Nisga'a Court may exercise the powers and perform all the duties conferred or imposed on it by or under Nisga'a laws, in respect of:
  - a. the review of administrative decisions of Nisga'a Public Institutions;
  - b. the adjudication of prosecutions under Nisga'a laws; and
  - c. the adjudication of disputes arising under Nisga'a laws between Nisga'a citizens on Nisga'a Lands that would be within the jurisdiction of the Provincial Court of British Columbia if the disputes arose under provincial law.
39. The Nisga'a Court may adjudicate in respect of a dispute not referred to in paragraph 38 if the parties to that dispute, before commencing the proceeding in the Nisga'a Court, agree:
  - a. to accept the Nisga'a Court's authority to decide the dispute and to grant the remedies as between the parties sought in the proceeding; and
  - b. that any order of the Nisga'a Court will be final and binding, except for an appeal under paragraph 48.
40. In addition to the matters set out in paragraphs 38 and 39, the Nisga'a Court may exercise jurisdiction that may be assigned to the Nisga'a Court by federal or provincial law.
41. The Nisga'a Court:
  - a. may impose penalties and other remedies under the laws of Nisga'a Government, British Columbia, or Canada in accordance with generally accepted principles of sentencing;
  - b. in disputes under subparagraph 38(c), may make any order that could be made by the Provincial Court of British Columbia if the disputes arose under provincial law;
  - c. in disputes under paragraph 39, may grant the remedies sought by the parties;
  - d. may apply traditional Nisga'a methods and values, such as using Nisga'a elders to assist in adjudicating and sentencing, and emphasizing restitution; and
  - e. may issue process, such as summons, subpoenas, and warrants.
42. Any process issued by the Nisga'a Court has the same force and effect as process issued by the Provincial Court of British Columbia.
43. In proceedings in which an accused person may receive a sentence of imprisonment under

Nisga'a law, the accused person may elect to be tried in the Provincial Court of British Columbia.

44. The Nisga'a Court may not impose on a person who is not a Nisga'a citizen a sanction or penalty different in nature from those generally imposed by provincial or superior courts in Canada, without the person's consent.

#### Appeals

45. An appeal from a final decision of the Nisga'a Court in respect of prosecutions under Nisga'a laws may be taken to the Supreme Court of British Columbia on the same basis as summary conviction appeals under the *Criminal Code of Canada*.
46. An appeal from a final decision of the Nisga'a Court in respect of a review of an administrative decision under subparagraph 38(a) may be taken to the Supreme Court of British Columbia on an error of law or jurisdiction.
47. An appeal from a decision of the Nisga'a Court in respect of a matter under subparagraph 38(c) may be taken to the Supreme Court of British Columbia on the same basis as a similar decision could be appealed from the Provincial Court of British Columbia.
48. An appeal from a final decision of the Nisga'a Court in respect of a matter under paragraph 39 may be taken to the Supreme Court of British Columbia on an error of law or jurisdiction.

#### Enforcement

49. An order of the Nisga'a Court may be registered in the Supreme Court of British Columbia and, once registered, will be enforceable as an order of the Supreme Court of British Columbia.

#### Other

50. The Lieutenant Governor in Council, upon recommendation of Nisga'a Lisims Government and with the concurrence of the persons or bodies required under provincial law, may appoint a judge of the Nisga'a Court as a provincial court judge, justice of the peace, or referee.
51. Nisga'a Lisims Government is responsible for the prosecution of all matters arising from Nisga'a laws, including appeals, and may carry out this responsibility by:
  - a. appointing or retaining individuals to conduct prosecutions and appeals, in a manner

- consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia;
- b. entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals; or
  - c. both (a) and (b).

## REVIEW

- 52. The Parties will review this Chapter no later than 10 years after the effective date, and may amend this Chapter if all Parties agree.

## CHAPTER 13 *INDIAN ACT TRANSITION*

### GENERAL

1. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a Nisga'a citizen who:
  - a. died testate or intestate before the effective date; and
  - b. at the time of death, was a member of the:
    - i. Gitlakdamix Indian Band,
    - ii. Gitwinksihlkw Indian Band,
    - iii. Lakalzap Indian Band, or
    - iv. Gingolk Indian Band.
2. Before the effective date, Canada will take reasonable steps to:
  - a. notify in writing all members of the Nisga'a Indian bands that are referred to in paragraph 1 who have deposited wills with the Minister; and
  - b. provide information to persons who may be eligible for enrolment under this Agreement

that their wills may not be valid after the effective date, and that their wills should be reviewed to ensure validity under provincial laws.
3. Section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of a Nisga'a citizen:
  - a. who was a "mentally incompetent Indian" as defined in the *Indian Act* immediately before the effective date; and
  - b. whose property and estate was under the authority of the Minister under section 51 of the *Indian Act* immediately before the effective date

until they are no longer a "mentally incompetent Indian".
4. Sections 52, 52.2, 52.3, 52.4 and 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which a Nisga'a citizen who

is an infant child of an Indian is entitled, if the Minister was administering that property under the *Indian Act* immediately before the effective date, until the duties of the Minister in respect of the administration have been discharged.

5. Nisga'a Government will provide for participation in Nisga'a Public Institutions by individuals who are ordinarily resident within Nisga'a Lands, who are not Nisga'a citizens, and who were members of the Indian bands referred to in paragraph 1 on the date immediately before the effective date.
6. The means of participation under paragraph 5 will be:
  - a. a reasonable opportunity to make representations to a Nisga'a Public Institution;
  - b. the ability to vote for, or become a member of, a Nisga'a Public Institution if the members of the Nisga'a Public Institution are elected; or
  - c. other comparable measures.

#### CONTINUATION OF *INDIAN ACT* BY-LAWS

7. The by-laws of the Gitlakdamix, Gitwinksihlkw, Gingolx or Lakalzap Indian Bands that were in effect immediately before the effective date, have effect for 30 days after the effective date on the Nisga'a Village Lands of the Nisga'a Village Government that replaces the band council that made the by-law.
8. The relationship between a by-law referred to in paragraph 7, and federal and provincial laws, will be governed by the provisions of this Agreement governing the relationship between Nisga'a laws and federal and provincial laws in respect of the subject matter of the by-law.
9. The Nisga'a Village Government replacing the band council that made a by-law referred to in paragraph 7, may repeal, but not amend, that by-law.
10. Nothing in this Agreement precludes a person from challenging the validity of a by-law referred to in paragraph 7.

#### STATUS OF BANDS AND TRANSFER OF BAND ASSETS

11. Subject to this Agreement, on the effective date, all of the rights, titles, interests, assets, obligations, and liabilities of:
  - a. the Gitlakdamix Indian Band vest in the Nisga'a Village of New Aiyansh;

- b. the Gitwinksihlkw Indian Band vest in the Nisga'a Village of Gitwinksihlkw;
  - c. the Lakalzap Indian Band vest in the Nisga'a Village of Laxgalt'sap; and
  - d. the Gingolx Indian Band vest in the Nisga'a Village of Gingolx
- and those Indian Bands cease to exist.
12. On the effective date, Nisga'a Lisims Government will designate the Nisga'a Lands that were, before the effective date, Indian reserves set aside for the use and benefit of:
- a. the Gitlakdamix Indian Band, as Nisga'a Village Lands of New Aiyansh;
  - b. the Gitwinksihlkw Indian Band, as Nisga'a Village Lands of Gitwinksihlkw;
  - c. the Lakalzap Indian Band, as Nisga'a Village Lands of Laxgalt'sap; and
  - d. the Gingolx Indian Band, as Nisga'a Village Lands of Gingolx.

#### **NISGA'A TRIBAL COUNCIL**

13. Subject to this Agreement, on the effective date, all of the rights, titles, interests, assets, obligations, and liabilities of the Nisga'a Tribal Council vest in the Nisga'a Nation, and the Nisga'a Tribal Council ceases to exist.

**CHAPTER 14**  
**CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT**

**CAPITAL TRANSFER**

1. Subject to paragraph 4, Canada and British Columbia will each pay their respective capital transfer amounts to the Nisga'a Nation, in accordance with Schedule A.

**NEGOTIATION LOAN REPAYMENT**

2. Subject to paragraph 3, the Nisga'a Nation will pay loan repayment amounts to Canada in accordance with Schedule B.
3. The Nisga'a Nation may pay to Canada, in advance and on account, without bonus or penalty, amounts that will be credited against the loan repayment amounts in the manner described in Schedule B.
4. Canada may deduct from a capital transfer amount that it would otherwise be required to pay to the Nisga'a Nation on a scheduled date in accordance with Schedule A, any loan repayment amount, or portion thereof, that the Nisga'a Nation would otherwise be required to pay to Canada in accordance with Schedule B on that scheduled date, except to the extent that the loan repayment amount has been prepaid in accordance with paragraph 3.

**SCHEDULE A -- PROVISIONAL SCHEDULE OF CAPITAL TRANSFER AMOUNTS**

DATE	AMOUNTS	
	CANADA WILL PAY	BRITISH COLUMBIA WILL PAY
On the effective date	\$20,327,328.42	\$1,672,671.58
On the first anniversary	\$20,327,328.42	\$1,672,671.58
On the second anniversary	\$12,011,603.16	\$988,396.84
On the third anniversary	\$12,011,603.16	\$988,396.84
On the fourth anniversary	\$12,011,603.16	\$988,396.84
On the fifth anniversary	\$12,011,603.16	\$988,396.84
On the sixth anniversary	\$12,011,603.16	\$988,396.84
On the seventh anniversary	\$12,011,603.16	\$988,396.84
On the eighth anniversary	\$20,896,021.94	\$1,719,467.57
On the ninth anniversary	\$20,896,021.94	\$1,719,467.57
On the 10 <sup>th</sup> anniversary	\$20,896,021.94	\$1,719,467.57
On the 11 <sup>th</sup> anniversary	\$20,896,021.94	\$1,719,467.57
On the 12 <sup>th</sup> anniversary	\$20,896,021.94	\$1,719,467.57
On the 13 <sup>th</sup> anniversary	\$20,896,021.94	\$1,719,467.57
On the 14 <sup>th</sup> anniversary	\$20,896,021.94	\$1,719,467.57

In this schedule "anniversary" means an anniversary of the effective date.

Note 1 and Note 2 to this Schedule will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with those Notes and the effective date occurs.

#### Note 1 to Schedule A

The Parties will calculate on the calculation date the amounts to be shown in the provisional schedule of capital transfer amounts in accordance with this Note.

The Canada and British Columbia capital transfer amounts for the effective date will sum to \$22.0 million.

The Canada and British Columbia capital transfer amounts for the first anniversary will sum to \$22.0 million.

The Canada and British Columbia capital transfer amounts will sum to \$13.0 million for each of the second, third, fourth, fifth, sixth, and seventh anniversaries.

The capital transfer amounts for the eighth to fourteenth anniversaries, inclusive, will be calculated on the calculation date as follows:

all seven of the Canada capital transfer amounts will be equal amounts and each will be calculated so that the net present value, calculated on the calculation date, of all of the Canada capital transfer amounts in the provisional schedule of capital transfer amounts, discounted back to the beginning of the provisional schedule of capital transfer amounts, and using the calculation rate as the discount rate, will equal \$175,554,200 multiplied by M and divided by L; and

all seven of the British Columbia capital transfer amounts will be equal amounts and each will be calculated so that the net present value, calculated on the calculation date, of all of the British Columbia capital transfer amounts in the provisional schedule of capital transfer amounts, discounted back to the beginning of the provisional schedule of capital transfer amounts, and using the calculation rate as the discount rate, will equal \$14,445,800 multiplied by M and divided by L

where L, M, the calculation date and the calculation rate are defined in Note 2 to this schedule.

On each scheduled date, the Canada capital transfer amount will be approximately 92.4 per cent of the sum of the Canada capital transfer amount and the British Columbia capital transfer amount, and the British Columbia capital transfer amount will be approximately 7.6 per cent of the same sum.

**Note 2 to Schedule A**

The Parties will calculate on the revision date the amounts to be shown in the final version of this schedule in accordance with this Note and will delete the word "PROVISIONAL" from the title of this schedule.

In this note "signing of the Nisga'a final agreement" means signing by the Parties after the ratification by the Nisga'a Nation in accordance with paragraph 2 of the Ratification Chapter.

If, within fifteen months after the signing of the Nisga'a final agreement, the Parliament of Canada has not enacted settlement legislation to give effect to the Nisga'a final agreement, Part B of this note will apply. Otherwise, Part A will apply. In either event, the following will apply:

"\*" means multiplied by, and "/" means divided by;

CR is the calculation rate;

L is the value of FDDIPI for the fourth quarter of 1995 published by Statistics Canada at the same time as the value used in M is published;

M is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the calculation date;

FDDIPI is the Final Domestic Demand Implicit Price Index for Canada, series D15613, published regularly by Statistics Canada in Matrix 6544: Implicit Price Indexes, Gross Domestic Product;

the calculation date is a date 14 days before the signing of the Nisga'a final agreement, or another date if the Parties agree, and is the same calculation date as that referred to in Schedule B; and

the revision date is a date 14 days before the effective date, or another date if the Parties agree, and is the same revision date as that referred to in Schedule B.

**Part A of Note 2**

On the revision date, the final schedule of capital transfer amounts will be prepared by amending each amount in this provisional schedule as follows:

amount in provisional schedule \* (L/M) \* (N/O)

where:

N is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the revision date, and

O is the value of FDDIPI for the fourth quarter of 1995 published by Statistics Canada at the same time as the value used in N is published.

Part B of Note 2

On the revision date, the final schedule of capital transfer amounts will be prepared by amending each amount in the provisional schedule as follows:

$$\text{amount in provisional schedule} * (L/M) * (P/Q) * (1 + CR)^Y * (1 + CR * D/365)$$

where:

P is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the transition date,

Q is the value of FDDIPI for the fourth quarter of 1995 published by Statistics Canada at the same time as the value used in P is published,

Y is the number of complete years between the transition date and the effective date,

D is the number of days remaining in the period between the transition date and the effective date, after deducting the complete years in that period that have been taken into account in the determination of Y,

the transition date is the date that is 15 months after the date of the signing of the Nisga'a final agreement, and

the calculation rate is 5.185 per cent per year.

[The rate to be inserted in the definition of calculation rate is the most recently released rate of interest, as of the calculation date, that the Minister of Finance for Canada has approved on loans from the Consolidated Revenue Fund amortized over 14 years, less 0.125 per cent (specified to three decimal places of a per cent).]

This paragraph is for information purposes and not for calculation purposes. The approximate effects of applying Part B are to limit the period for which the capital transfer is adjusted by FDDIPI to the period that ends on the date that is 15 months after the signing of the Nisga'a final agreement, and to lengthen the period for which the capital transfer is adjusted by the calculation rate to the period between the date that is 15 months after the signing of the Nisga'a final agreement and the effective date.

**SCHEDULE B -- LOAN REPAYMENT AMOUNTS**

On the effective date	0
On the first anniversary	0
On the second anniversary	\$2,000,000
On the third anniversary	\$2,000,000
On the fourth anniversary	\$2,000,000
On the fifth anniversary	\$2,000,000
On the sixth anniversary	\$2,000,000
On the seventh anniversary	\$2,000,000
On the eighth anniversary	to be calculated on revision date
On the ninth anniversary	to be calculated on revision date
On the 10th anniversary	to be calculated on revision date
On the 11th anniversary	to be calculated on revision date
On the 12th anniversary	to be calculated on revision date
On the 13th anniversary	to be calculated on revision date
On the 14th anniversary	to be calculated on revision date

In this schedule "anniversary" means an anniversary of the effective date.

**PREPAYMENTS**

In addition to any required loan repayment amount, at each anniversary, and up to three times during the first nine months after an anniversary, the Nisga'a Nation may make loan prepayments to Canada. All prepayments will be applied to the outstanding scheduled loan repayment amount(s) in consecutive order from the effective date.

The "r" anniversary at which a prepayment is to be applied is the earliest anniversary for which a scheduled loan repayment amount, or a portion thereof, remains outstanding. Any loan prepayment applied to an outstanding loan repayment amount, or to a portion thereof, will be credited to the Nisga'a Nation at its future value, as of the "r" anniversary, determined in accordance with the following formula:

Future Value = Prepayment \*  $(1 + \text{calculation rate})^{Zr} * (1 + \text{calculation rate} * E/365)$

where:

“\*” means multiplied by, and “/” means divided by,

Zr is the number of complete years between the date of the prepayment and the “r” anniversary,

E is one plus the number of days between the date of the prepayment and the “r” anniversary, once the number of complete years referred to in “Zr” above has been deducted, and

the calculation rate is 5.185 per cent per year.

[The rate to be inserted in the definition of the calculation rate is the most recently released rate of interest, as of the calculation date, that the Minister of Finance for Canada has approved on loans from the Consolidated Revenue Fund amortized over 14 years, less 0.125 per cent (specified to three decimal places of a per cent). The calculation date is a date 14 days before the signing of the Nisga'a final agreement, or another date if the Parties agree, and is the same calculation date as that referred to in Schedule A. In this paragraph “signing of the Nisga'a final agreement” means signing by the Parties after the ratification by the Nisga'a Nation in accordance with paragraph 2 of the Ratification Chapter. This bracketed paragraph will be deleted on the date that Note 1 to this schedule is deleted.]

If the future value of the prepayment exceeds the outstanding amount of the loan repayment amount scheduled for the “r” anniversary, the excess will be deemed to be a prepayment made on the “r” anniversary so that the future value of the excess will be applied as of the next “r” anniversary in a manner analogous to that described in this paragraph.

On receipt of a loan prepayment, Canada will issue a letter to the Nisga'a Nation setting out the amount of the prepayment received and the manner in which it will be applied in accordance with this “Prepayments” section of this schedule.

#### **Illustrative Example:**

Hypothetical calculation rate = 10.000%

Annual equal payments of \$100.00

Prepayment = \$100, made in year four at day 182

Fifth anniversary payment has been previously prepaid

Amount owing at fifth anniversary = \$0.00

Amount owing at sixth anniversary = \$100.00

Therefore:

$$Zr = 1$$

$$E = 184$$

$$r = 6$$

Future Value of prepayment made in year four at day 182

$$= \$100.00 \cdot (1 + 0.10000)^1 \cdot (1 + 0.10000 \cdot 184/365) = \$115.55$$

Amount prepaid for sixth anniversary = \$100.00

Amount in excess for sixth anniversary = \$115.55 - \$100.00 = \$15.55

Future value of \$15.55 as of the seventh anniversary

$$= \$15.55 \cdot (1 + 0.10000)^1 \cdot (1 + 0.10000 \cdot 0/365) = \$17.11$$

Amount prepaid for seventh anniversary = \$17.11

The prepayment made at day 182 in year four has eliminated the loan repayment amount for the sixth anniversary and reduced the loan repayment amount for the seventh anniversary from \$100.00 to \$82.89.

Note 1 to this Schedule will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with the Note and the effective date occurs.

#### **Note 1 to Schedule B**

Canada will calculate in accordance with this note the actual loan repayment amounts for the eighth to 14<sup>th</sup> anniversaries inclusive to be inserted on the revision date in the final version of this schedule. In the final version of this schedule the loan repayment amounts for the effective date, and for the first to seventh anniversaries inclusive, will remain as set out in the initial version of this schedule.

The revision date is a date 14 days before the effective date, or another date if the Parties agree, and is the same revision date as that referred to in Schedule A.

On the revision date, Canada will calculate the amounts in the final schedule of loan repayment amounts for the eighth to 14<sup>th</sup> anniversaries, inclusive. These seven amounts will be equal amounts and each will be such that the net present value of all of the amounts in the final schedule of loan repayment amounts, discounted back to the effective date using the calculation rate (as described in the "Prepayment" section of this Schedule B) as the discount rate, will equal the loan amount.

In this schedule, the loan amount means the aggregate outstanding balance, at the effective date, of all negotiation and support loans, including principal and accrued interest, made by Canada to the Nisga'a Tribal Council.

Canada will calculate the loan amount, based on a document that Canada and the Nisga'a Tribal Council will produce jointly before the initialling of the Nisga'a final agreement. That document will set out the amounts of all loans from Canada to the Nisga'a Tribal Council, interest accrued to date and the relevant terms and conditions of those loans.

The document referred to in the previous paragraph will be available from either the Nisga'a Tribal Council or the Federal Treaty Negotiation Office of the Department of Indian Affairs and Northern Development, upon request, as of the date of initialling of the Nisga'a final agreement, to persons eligible to be enrolled as participants under that agreement.

For information purposes (and not for calculation purposes), the approximate amount of outstanding loans, including principal and accrued interest, as of the date that settlement legislation is introduced in Parliament, will be inserted in the following blank space before that date: \$ 50.3 million.

## CHAPTER 15 FISCAL RELATIONS

### DEFINITIONS

1. In this Chapter and in the Taxation Chapter:

**“capital transfer”** means an amount paid by Canada or British Columbia under the Capital Transfer and Negotiation Loan Repayment Chapter;

**“Income Tax Act”** means the *Income Tax Act*, S.C. 1985 (5th Supp.) c.1;

**“Income Tax Act (British Columbia)”** means the *Income Tax Act*, RSBC 1996, c. 215;

**“Nisga'a capital”** means all land, cash, and other assets transferred to, or recognized as owned by, the Nisga'a Nation or a Nisga'a Village under this Agreement, except land added to Nisga'a Lands under paragraph 9 or 11 of the Lands Chapter;

**“Nisga'a capital finance authority”** means an authority for the benefit of the Nisga'a Nation and all Nisga'a Villages, established in accordance with a fiscal financing agreement, to enable the financing of capital projects of the Nisga'a Nation or a Nisga'a Village on Nisga'a Lands, and operated in accordance with the most recent fiscal financing agreement;

**“Nisga'a exempt corporation”** means a corporation, other than a Nisga'a government corporation, in which the Nisga'a Nation or a Nisga'a Village has a direct or indirect interest as a shareholder, that is exempt from tax on its taxable income under laws of Canada or British Columbia;

**“Nisga'a government corporation”** means any corporation, commission or association, all of the shares (except directors' qualifying shares) or capital of which belong to the Nisga'a Nation, a Nisga'a Village, or a Nisga'a settlement trust, or any combination thereof, and for this purpose where, at any time, any shares or capital of a corporation, commission or association belong, or are deemed by this paragraph to belong, to another corporation, a partnership, or a trust that is not a Nisga'a settlement trust, (“intermediary”), those shares or that capital will be deemed to belong to each shareholder, partner or beneficiary, as the case may be, of the intermediary, proportionate to the relative fair market values of their respective interests in that intermediary;

**“Nisga'a settlement trust”** means any trust having the following characteristics:

- a. the trust is resident in Canada,
- b. the beneficiaries of the trust are limited to the Nisga'a Nation, any Nisga'a Village, another Nisga'a settlement trust, all Nisga'a citizens, all Nisga'a

citizens in any Nisga'a Village, or any registered charity or non-profit organization, within the meaning of the *Income Tax Act*, that in the reasonable opinion of the trustees directly or indirectly benefits one or more Nisga'a citizens, or any combination of those entities and persons,

- c. the investment of the funds of the trust is restricted to:
  - i. investment instruments that are described as qualified investments for a trust governed by a registered retirement savings plan within the meaning of section 146 of the *Income Tax Act* or in any other investments that may be agreed upon from time to time by the Nisga'a Nation, Canada and British Columbia,
  - ii. loans to a Nisga'a citizen, the Nisga'a Nation, a Nisga'a Village, or a Nisga'a government corporation at a rate of interest equal to the rate prescribed under regulation 4301(c) of the *Income Tax Act* in effect at the time the loan was made or last renewed,
  - iii. investments in a share of a Nisga'a government corporation where the average annual rate of dividends on that share over any five year period cannot exceed the rate prescribed under regulation 4301(c) of the *Income Tax Act* at the beginning of that period, and if the amount receivable on redemption of the share or on liquidation of the corporation is limited to the amount of the consideration for which the share was originally issued, and
  - iv. low interest or interest free loans to a Nisga'a citizen, or a partnership or trust in which Nisga'a citizens hold all the interests as partners or beneficiaries, where the purpose of the loan is to assist the borrower to:
    - A. acquire, construct or renovate a residential property for their own habitation in British Columbia,
    - B. attend courses to further their own education, technical or vocational skills, or attend courses in native studies, culture or language programs, or
    - C. acquire funding for purposes of carrying on a business on Nisga'a Lands or Nisga'a Fee Simple Lands, where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates,

where, at the time the loan was made, *bona fide* arrangements were made for repayment of the loan within a reasonable period of time,

- d. the trust is not permitted to carry on a business as a proprietor or member of a partnership, or acquire any beneficial interest in a trust engaged in a business where one or more of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a settlement trust or a Nisga'a citizen, either alone or in combination, holds more than 10% of all of the beneficial interests in the trust;
- e. the trust does not borrow money except as required to finance the acquisition of qualified investments or to carry out its operations;
- f. contributions to the trust are limited to contributions received from the Nisga'a Nation of capital transfer payments received by it under the Capital Transfer and Negotiation Loan Repayment Chapter or amounts received from another Nisga'a settlement trust where substantially all of the funds of that contributing trust reasonably can be considered to have been derived from a contribution to a Nisga'a settlement trust by the Nisga'a Nation of capital transfer payments received by it under the Financial Transfers Chapter and income and gains derived therefrom, and
- g. the trust is not permitted to make any distributions other than to one or more beneficiaries in accordance with the trust, or to another Nisga'a settlement trust; and

"person" includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives.

## INTERPRETATION

- 2. If a principle in paragraph 16, or in an own source revenue agreement, applies in respect of a Nisga'a exempt corporation, the own source revenue capacity that results:
  - a. will be reduced proportionately to fully account for the direct or indirect ownership interests in the corporation of persons other than the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, and Nisga'a settlement trusts; and
  - b. if the Nisga'a Nation or a Nisga'a Village, or any combination of them, cannot cause a distribution by the corporation, will be taken into account only at the time, and to the extent, that a distribution is made to the Nisga'a Nation, a Nisga'a Village, or a Nisga'a government corporation.

**FISCAL FINANCING AGREEMENTS**

3. Every five years, or at other intervals if the Parties agree, the Parties will negotiate and attempt to reach agreement on a fiscal financing agreement by which funding will be provided to the Nisga'a Nation to enable the provision of agreed-upon public programs and services to Nisga'a citizens and, where applicable, non-Nisga'a occupants of Nisga'a Lands, at levels reasonably comparable to those generally prevailing in northwest British Columbia.
4. A fiscal financing agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
5. The recognition of the legislative authority of Nisga'a Lisims Government and Nisga'a Village Governments does not create or imply any funding or financial obligation for Canada, British Columbia, the Nisga'a Nation, or a Nisga'a Village.
6. Nisga'a citizens are eligible to participate in programs established by Canada or British Columbia and to receive public services from Canada or British Columbia, in accordance with general criteria established for those programs or services from time to time, to the extent that the Nisga'a Nation has not assumed responsibility for those programs or public services under a fiscal financing agreement.
7. The Parties will negotiate and attempt to reach agreements in respect of grants, between them, *in lieu* of property taxes.
8. The funding for the Nisga'a Nation and Nisga'a Villages is a shared responsibility of the Parties and it is the shared objective of the Parties that, where feasible, the reliance of the Nisga'a Nation and Nisga'a Villages on transfers will be reduced over time.
9. In negotiating fiscal financing agreements, the Parties will take into account, among other things:
  - a. costs necessary to establish and operate Nisga'a Lisims Government and Nisga'a Village Governments, and agreed-upon Nisga'a Public Institutions and the Nisga'a Court;
  - b. efficiency and effectiveness in the provision of public programs and services;
  - c. location and accessibility of Nisga'a Lands;
  - d. population and demographic characteristics of persons receiving agreed-upon public programs and services;
  - e. other funding or support in respect of agreed-upon public programs or services provided to the Nisga'a Nation or a Nisga'a Village by Canada or British Columbia;

- f. the level, type and condition of agreed-upon public works and utilities within Nisga'a Lands;
  - g. major maintenance and replacement of assets identified in and funded according to Schedule C to the first fiscal financing agreement, or other agreed-upon community or health capital assets;
  - h. necessary training requirements for agreed-upon public programs and services;
  - i. the desirability of reasonably stable, predictable and flexible funding arrangements;
  - j. the jurisdictions, authorities and obligations of Nisga'a Lisims Government and the Nisga'a Village Governments;
  - k. the authorities and obligations of, and the public programs and services for which responsibility is assumed or is to be assumed by, the Nisga'a Nation or a Nisga'a Village;
  - l. prevailing fiscal policies of Canada and British Columbia;
  - m. Nisga'a cultural values; and
  - n. Nisga'a Nation own source revenue capacity as determined under an own source revenue agreement or, in the absence of an own source revenue agreement, under this Chapter.
10. The Parties will address the following, among other things, in fiscal financing agreements:
- a. procedures for negotiating the next fiscal financing agreement;
  - b. procedures for assuming or transferring responsibility for the provision of agreed-upon programs and services;
  - c. procedures for funding, and assuming or transferring responsibility for, the provision of additional programs and services during the term of the fiscal financing agreement;
  - d. costs of emergencies and of fire suppression;
  - e. payment procedures;
  - f. dispute resolution; and
  - g. information exchange.
11. Unless the Parties otherwise agree, the first fiscal financing agreement will come into effect
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on the effective date.

12. If the Parties do not reach a further fiscal financing agreement by the expiry date of a fiscal financing agreement, the fiscal financing agreement will continue in effect for two years from its original expiry date, or for any other period that the Parties may agree while they attempt to reach a further fiscal financing agreement.
13. Any amounts required for the purposes of a fiscal financing agreement will be paid out of appropriations as may be made by the Parliament of Canada or the Legislature of British Columbia for those purposes.

## OWN SOURCE REVENUE AGREEMENTS

14. Every 10 years, or at other intervals if the Parties agree, the Parties will negotiate and attempt to reach agreement on an own source revenue agreement under which Nisga'a Nation own source revenue capacity, and the manner and extent to which that capacity will be taken into account under fiscal financing agreements, will be determined.
15. An own source revenue agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
16. In determining Nisga'a Nation own source revenue capacity, the Parties will apply the following principles:
  - a. the own source revenue capacity in respect of any source will not be taken into account so as to unreasonably reduce the incentive for the Nisga'a Nation or a Nisga'a Village to raise revenues from that source or to occupy any tax room that other Canadian governments may have made available by agreement with the Nisga'a Nation;
  - b. there should be a fair basis of comparison between the own source revenue capacity in respect of a Nisga'a settlement trust and the additional tax revenue that Canadian governments would have received if the income and capital gains, net of losses, of the trust were earned or realized in equal shares by all Nisga'a citizens, instead of by the trust, and if all Nisga'a citizens were resident in British Columbia;
  - c. the own source revenue capacity in respect of each tax will not exceed the sum of:
    - i. the value of any tax room made available in respect of the tax by Canada or British Columbia under an agreement referred to in subparagraph 3(b) of the Taxation Chapter, or other agreement with the Nisga'a Nation, and
    - ii. where the tax is similar to a tax generally imposed by local authorities in

British Columbia:

- A. if the Nisga'a Nation or a Nisga'a Village is taxing only Nisga'a citizens, the amount by which the revenues derived by the Nisga'a Nation or the Nisga'a Village from the tax exceed the amount, if any, included in subparagraph 16(c)(i), or
  - B. if there is a delegated taxation authority in respect of the tax, under an agreement referred to in subparagraph 3(a) of the Taxation Chapter, the amount by which the tax capacity in respect of all persons over which Nisga'a Government has taxation power or authority exceeds the amount included in subparagraph 16(c)(i), and for this purpose, tax capacity will be determined on a fair and reasonable basis, taking into account the circumstances in Nisga'a communities and in similar communities in northwest British Columbia;
- d. the own source revenue capacity in respect of commercial and investment activities, including exploitation of a natural resource, of the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, Nisga'a exempt corporations, and corporations without share capital established and operated for the benefit of the Nisga'a Nation or a Nisga'a Village, or any combination of them, will be reasonably comparable to, and not exceed, the additional revenues that other Canadian governments would have from taxation of those entities if:
- i. they were Canadian private enterprises subject to taxation under federal and provincial laws of general application,
  - ii. the commercial and investment activities were their only activities,
  - iii. their only properties were properties related to the activities, and
  - iv. those properties were owned by them as private persons and not as governments; and
- e. to the extent that a base is used in the calculation of a tax paid or payable by the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a settlement trust, or a Nisga'a exempt corporation, it will not be used as a base in the calculation of Nisga'a Nation own source revenue capacity in place of that tax.
17. Nisga'a Nation own source revenue capacity in respect of any source not referred to in paragraph 16 will be taken into account in a manner that does not unreasonably reduce the incentive for the Nisga'a Nation or a Nisga'a Village to raise revenues from that source.
18. There is no Nisga'a Nation own source revenue capacity in respect of:

- a. proceeds from the sale of Nisga'a Lands or Nisga'a Fee Simple Lands;
  - b. a capital transfer;
  - c. the capital of a Nisga'a settlement trust, except to the extent that a capital gain results in own source revenue capacity in accordance with the principle in subparagraph 16(b);
  - d. a distribution of capital from a Nisga'a settlement trust, except to the extent that a distribution to a Nisga'a citizen results in a tax that is included in the determination of own source revenue capacity in accordance with the principle in subparagraph 16(c);
  - e. the Nisga'a capital finance authority, including any income, gains or property of the authority, and any distribution by the authority, except to the extent that a distribution is included as own source revenue capacity in respect of a commercial activity of the recipient of the distribution; and
  - f. a transfer by a corporation to the Nisga'a Nation or a Nisga'a Village, to the extent that the transfer represents a distribution out of income that has already been taken into account in determining Nisga'a Nation own source revenue capacity.
19. Nisga'a Nation own source revenue capacity will be phased in over a 12 year period as provided in the own source revenue agreement.
20. Unless the Parties otherwise agree, the first own source revenue agreement will come into effect on the effective date.

#### OWN SOURCE REVENUE ADMINISTRATION

21. Nisga'a Lisims Government may make laws that impose an obligation on the Nisga'a Nation, Nisga'a Villages, Nisga'a settlement trusts, or Nisga'a government corporations, in respect of the determination, adjustment, payment, or collection of amounts, to enable the Nisga'a Nation to recover from those entities amounts in respect of Nisga'a Nation own source revenue capacity.
22. In the event of a conflict between a Nisga'a law under paragraph 21 and a federal or provincial law of general application, the federal or provincial law will prevail to the extent of the conflict.

## CHAPTER 16 TAXATION

### DIRECT TAXATION

1. Nisga'a Lisims Government may make laws in respect of direct taxation of Nisga'a citizens on Nisga'a Lands in order to raise revenue for Nisga'a Nation or Nisga'a Village purposes.
2. Nisga'a Lisims Government powers provided for in paragraph 1 will not limit the powers of Canada or British Columbia to impose or levy tax or make laws in respect of taxation.

### OTHER TAXATION AND TAX ADMINISTRATION AGREEMENTS

3. From time to time Canada and British Columbia, together or separately, may negotiate with the Nisga'a Nation, and attempt to reach agreement on:
  - a. the extent, if any, to which Canada or British Columbia will provide to Nisga'a Lisims Government or a Nisga'a Village Government direct taxation authority over persons other than Nisga'a citizens, on Nisga'a Lands; and
  - b. the coordination of Nisga'a Lisims Government or Nisga'a Village Government taxation, of any person, with existing federal or provincial tax systems.
4. Nisga'a Lisims Government and Nisga'a Village Governments may make laws in respect of the implementation of any taxation agreement entered into with Canada or British Columbia.

### SECTION 87 EXEMPTION

5. Subject to paragraph 6, section 87 of the *Indian Act* applies to Nisga'a citizens only to the extent that an Indian other than a Nisga'a citizen, or the property of that Indian, would be exempt from taxation in similar circumstances by reason of the applicability of section 87 of the *Indian Act*.
6. Section 87 of the *Indian Act* will have no application to Nisga'a citizens:
  - a. in respect of transaction taxes, only as of the first day of the first month that starts after the eighth anniversary of the effective date; and
  - b. in respect of all other taxes, only as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.

**REMISSION ORDERS**

7. Subject to paragraphs 8 and 9, as of the effective date, Canada and British Columbia will each grant a remission of, respectively, federal and provincial tax imposed or levied in respect of:
  - a. the estate or interest of an Indian in lands described in subparagraph 2(b) of the Lands Chapter that are within Nisga'a Lands;
  - b. the personal property of an Indian situated on lands described in subparagraph 2(b) of the Lands Chapter that are within Nisga'a Lands; and
  - c. an Indian's ownership, occupation, possession or use of any property referred to in subparagraph (a) or (b).
8. A remission of tax under paragraph 7 will be granted only where the property referred to in subparagraph 7(a) or (b), or the Indian in respect of the ownership, occupation, possession or use of the property referred to in subparagraph 7(a) or (b) would, but for this Agreement, be exempt from taxation by reason of the applicability of section 87 of the *Indian Act*.
9. The orders authorizing the remissions of tax referred to in paragraph 7 will cease to be effective:
  - a. in respect of transaction taxes, as of the first day of the first month that starts after the eighth anniversary of the effective date; and
  - b. in respect of all other taxes, as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.

**VALUATION TIME**

10. In paragraphs 11 and 12:
  - a. "eligible individual" means an Indian who, at the valuation time, holds an eligible interest;
  - b. "eligible interest" means any estate or interest in specified lands or in personal property situated on specified lands;
  - c. "specified lands" in respect of an Indian means:
    - i. lands described in subparagraph 2(b) of the Lands Chapter that are within Nisga'a Lands, and

- ii. if the Indian is a Nisga'a citizen, a reserve as defined in the *Indian Act*; and
  - d. "valuation time" means the beginning of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.
11. For the purposes of the *Income Tax Act* and the Income Tax Act (British Columbia), if an eligible individual elects as described in paragraph 12 to have this paragraph apply:
- a. the individual is deemed to have disposed of each of the individual's eligible interests, at the time that is immediately before the time that is immediately before the valuation time, for an amount equal to its fair market value at that time, and to have reacquired the eligible interest at the valuation time at a cost equal to that fair market value;
  - b. for greater certainty, it is understood that the deemed disposition and reacquisition described in subparagraph (a) apply to all eligible interests owned by the eligible individual at the valuation time; and
  - c. for the purposes of applying sections 37, 65 to 66.4, 111, subsections 127(5) to 127(26) and section 127.3 of the *Income Tax Act*, the individual will be deemed not to have owned an eligible interest referred to in subparagraph (a) at any time before the time it was deemed to have been reacquired by the individual under that subparagraph.
12. Paragraphs 10 and 11 apply to any eligible individual who so elects in writing in the individual's return of income under Part I of the *Income Tax Act* for the year that starts at the valuation time.

## NISGA'A LANDS

13. Neither the Nisga'a Nation nor any Nisga'a Village is subject to capital taxation, including real property taxes and taxes on capital or wealth, in respect of the estate or interest of either the Nisga'a Nation or any Nisga'a Village in Nisga'a Lands on which there are no improvements or on which there is a designated improvement.
14. In paragraph 13, "designated improvement" means:
- a. a residence of a Nisga'a citizen;
  - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
    - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home,

- public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Nisga'a cultural or spiritual purposes,
- ii. works of public convenience constructed or operated for the benefit of Nisga'a citizens, occupiers of Nisga'a Lands or persons visiting or in transit through Nisga'a Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks, and public parking lots, or
  - iii. similar improvements;
- c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a forestry, fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
  - d. forest resources and forest roads.
15. In paragraph 14(b), "public purpose" does not include the provision of property or services primarily for the purpose of profit.
16. Paragraph 13 does not affect the taxation of a person, other than the Nisga'a Nation or a Nisga'a Village, in respect of an estate or interest in Nisga'a Lands, or exempt from taxation a disposition of capital by the Nisga'a Nation or any Nisga'a Village.
17. If, within 20 years after the effective date, Canada or British Columbia enacts legislation giving effect to another land claims agreement applicable in northwest British Columbia that:
- a. provides that all of the lands that were set apart as reserves of an Indian band whose members were represented by a party to the agreement cease to be reserves; and
  - b. provides a tax exemption, not provided in paragraph 13, in respect of an estate or interest in settlement lands

Canada and British Columbia, upon request of Nisga'a Nation, will negotiate and attempt to reach agreement on the provision of a similar tax exemption for the Nisga'a Nation and Nisga'a Villages.

## **NISGA'A CAPITAL**

18. A transfer, or recognition of ownership, under this Agreement, of Nisga'a capital is not
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taxable.

19. For the purposes of paragraph 18, an amount paid to a Nisga'a participant will be deemed to be a transfer of Nisga'a capital under this Agreement if the payment:
  - a. reasonably can be considered to be a distribution of a capital transfer received by the Nisga'a Nation; and
  - b. becomes payable to the Nisga'a participant within 90 days, and is paid to the Nisga'a participant within 270 days, after the Nisga'a Nation receives the capital transfer.
20. For the purposes of the *Income Tax Act* and the Income Tax Act (British Columbia), Nisga'a capital transferred to, or recognized as owned by, the Nisga'a Nation or any Nisga'a Village under this Agreement will be deemed to have been acquired by the Nisga'a Nation or the Nisga'a Village, as the case may be, on the latest of the effective date, the date of transfer or the date of recognition, at a cost equal to its fair market value on that date.

#### TAXATION AGREEMENT

21. On the effective date, the Parties will enter into a Taxation Agreement. The Taxation Agreement does not form part of this Agreement.
22. The Taxation Agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
23. Canada and British Columbia will recommend to Parliament and the Legislature, respectively, that the provisions of the Taxation Agreement be given effect under federal and provincial law.

## **CHAPTER 17**

### **CULTURAL ARTIFACTS AND HERITAGE**

#### **GENERAL**

1. The Parties recognize the integral role of Nisga'a artifacts in the continuation of Nisga'a culture, values, and traditions.
2. The Parties recognize the Nisga'a Nation's traditional and sacred connection with Nisga'a artifacts, regardless of whether those artifacts are held by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, a Nisga'a citizen, the Canadian Museum of Civilization, or the Royal British Columbia Museum.
3. If the Nisga'a Nation or Canada considers that there may be an error in the determination of whether an artifact:
  - a. set out in Appendix L-1; or
  - b. in the permanent collection of the Canadian Museum of Civilization, including an artifact set out in Appendix L-2

is a Nisga'a artifact, they will endeavour to determine whether the artifact is a Nisga'a artifact.

4. If the Nisga'a Nation or British Columbia considers that there may be an error in the determination of whether an artifact:
  - a. set out in Appendix L-3; or
  - b. in the permanent collection of the Royal British Columbia Museum, including an artifact set out in Appendix L-4

is a Nisga'a artifact, they will endeavour to determine whether the artifact is a Nisga'a artifact.

5. A disagreement in respect of a determination under paragraph 3 or 4 of whether an artifact is a Nisga'a artifact is a disagreement within the meaning of the Dispute Resolution Chapter.
6. An artifact originally obtained from a Nisga'a person, a Nisga'a community, or a Nisga'a heritage site is presumed, in the absence of proof to the contrary, to be a Nisga'a artifact.

**RETURN OF NISGA'A ARTIFACTS****Canadian Museum of Civilization**

7. Appendix L-1 and Appendix L-2 set out all artifacts in the permanent collection of the Canadian Museum of Civilization on the effective date that have been identified as Nisga'a artifacts.
8. The Canadian Museum of Civilization will transfer to the Nisga'a Nation without condition all its legal interests in, and possession of, the Nisga'a artifacts set out in Appendix L-1:
  - a. as soon as practicable following a request by the Nisga'a Nation;
  - b. if there is no request by the Nisga'a Nation, five years after the effective date or the date that the artifact was included in Appendix L-1, whichever date is later; or
  - c. by any other date agreed to by the Canadian Museum of Civilization and the Nisga'a Nation.
9. The transfer of the legal interests in, and possession of, the Nisga'a artifacts under paragraph 8 is deemed to occur when those artifacts arrive at a location for delivery designated in writing by the Nisga'a Nation.
10. If the Nisga'a Nation does not designate a location for delivery, the Canadian Museum of Civilization will deliver those artifacts to the address for the Nisga'a Nation set out in the General Provisions Chapter.
11. The Canadian Museum of Civilization:
  - a. will continue to hold the Nisga'a artifacts set out in Appendix L-1 under the same terms and conditions as they are held on the effective date, until they are transported to the Nisga'a Nation;
  - b. will not be liable for any loss or damage to those Nisga'a artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. will determine the transportation arrangements for, and will transport, those Nisga'a artifacts in accordance with the prevailing practices of the Canadian Museum of Civilization for transportation of artifacts to museums.
12. If, after the effective date:
  - a. a Nisga'a artifact is permanently acquired by the Canadian Museum of Civilization; or

- b. it is determined under paragraph 3 or 5 that another artifact in the collection of the Canadian Museum of Civilization is a Nisga'a artifact  
the artifact will be added to Appendix L-2 or, if the Canadian Museum of Civilization and the Nisga'a Nation agree, to Appendix L-1.
13. If it is determined under paragraph 3 or 5 that an artifact set out in Appendix L-1 is not a Nisga'a artifact:
- a. the artifact will be removed from Appendix L-1; and
  - b. unless the Nisga'a Nation and Canada otherwise agree, the Nisga'a Nation will transfer its legal interests in, and possession of, the artifact to the Canadian Museum of Civilization.
14. If it is determined under paragraph 3 or 5 that an artifact set out in Appendix L-2 is not a Nisga'a artifact, the artifact will be removed from Appendix L-2.
15. The Nisga'a Nation and the Canadian Museum of Civilization will share possession of the Nisga'a artifacts set out in Appendix L-2 in accordance with any custodial agreements negotiated under paragraph 17.
16. The Canadian Museum of Civilization is responsible for the care, maintenance, and preservation of the Nisga'a artifacts listed in Appendix L-2, in accordance with resources available to the Canadian Museum of Civilization for those activities and any custodial agreements negotiated under paragraph 17.
17. From time to time, at the request of the Nisga'a Nation or the Canadian Museum of Civilization, the Nisga'a Nation and the Canadian Museum of Civilization will negotiate and attempt to reach custodial agreements in respect of Nisga'a artifacts listed in Appendix L-2.
18. Custodial agreements under paragraph 17 will:
- a. respect Nisga'a laws and practices relating to Nisga'a artifacts; and
  - b. comply with federal and provincial laws of general application and the statutory mandate of the Canadian Museum of Civilization.
19. Custodial agreements under paragraph 17 may set out:
- a. the Nisga'a artifacts to be in the possession of the Nisga'a Nation and those to be in the possession of the Canadian Museum of Civilization;
  - b. conditions of maintenance, storage, and handling of the Nisga'a artifacts;

- c. conditions of access to and use, including study, display, and reproduction, of the Nisga'a artifacts and associated records by the public, researchers, and scholars;
  - d. provisions for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
  - e. provisions for enhancing public knowledge about the Nisga'a Nation through the participation of Nisga'a citizens in public programs and activities at the Canadian Museum of Civilization.
20. The Nisga'a Nation and the Canadian Museum of Civilization:
- a. will consult each other if either of them proposes to transfer its legal interest in a Nisga'a artifact set out in Appendix L-1 or L-2 respectively; and
  - b. may exercise a right of first refusal to acquire the Nisga'a artifact on the proposed terms of the transfer.

**Royal British Columbia Museum**

21. Appendix L-3 and Appendix L-4 set out all artifacts in the permanent collection of the Royal British Columbia Museum on the effective date, that have been identified as Nisga'a artifacts.
22. British Columbia will transfer to the Nisga'a Nation without condition all its legal interests in, and possession of, the Nisga'a artifacts set out in Appendix L-3:
- a. as soon as practicable following a request by the Nisga'a Nation;
  - b. if there is no request by the Nisga'a Nation, five years after the effective date or the date that the artifact was included in Appendix L-3, whichever date is later; or
  - c. by any other date agreed to by British Columbia and the Nisga'a Nation.
23. The transfer of the legal interests in, and possession of, the Nisga'a artifacts under paragraph 22 is deemed to occur when those artifacts arrive at a location for delivery designated in writing by the Nisga'a Nation.
24. If the Nisga'a Nation does not designate a location for delivery, the Royal British Columbia Museum will deliver those artifacts to the address for the Nisga'a Nation set out in the General Provisions Chapter.
25. The Royal British Columbia Museum:
- a. will continue to hold the Nisga'a artifacts set out in Appendix L-3 under the same

- terms and conditions as they are held on the effective date, until they are transported to the Nisga'a Nation;
- b. will not be liable for any loss or damage to those Nisga'a artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. will determine the transportation arrangements for, and will transport, those Nisga'a artifacts in accordance with the prevailing practices of the Royal British Columbia Museum for transportation of artifacts to museums.
26. British Columbia will not be liable for any loss or damage to Nisga'a artifacts set out in Appendix L-3 unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.
  27. If, after the effective date, a Nisga'a artifact is permanently acquired by the Royal British Columbia Museum, the artifact will be included in Appendix L-4 or, where the Royal British Columbia Museum and Nisga'a Nation agree, will be transferred to Nisga'a Nation in accordance with this Chapter.
  28. If it is determined under paragraph 4 or 5 of this Chapter that another artifact in the collection of the Royal British Columbia Museum on the effective date is a Nisga'a artifact, the artifact will be included in Appendix L-4, or transferred to Nisga'a Nation in accordance with this Chapter, in order to maintain the representative division of the Nisga'a artifacts in Appendix L-3 and Appendix L-4 .
  29. If it is determined under paragraph 4 or 5 that an artifact listed in Appendix L-3 is not a Nisga'a artifact:
    - a. the artifact will be removed from Appendix L-3; and
    - b. unless the Nisga'a Nation and British Columbia otherwise agree, the Nisga'a Nation will transfer its legal interests in, and possession of, the artifact to the Royal British Columbia Museum.
  30. If it is determined under paragraph 4 or 5 that an artifact listed in Appendix L-4 is not a Nisga'a artifact, the artifact will be removed from Appendix L-4 .
  31. From time to time, at the request of the Nisga'a Nation or British Columbia, the Nisga'a Nation and British Columbia will negotiate and attempt to reach custodial agreements in respect of the Nisga'a artifacts listed in Appendix L-4.
  32. Custodial agreements under paragraph 31 will:
    - a. respect Nisga'a laws and practices relating to Nisga'a artifacts; and

- b. comply with federal and provincial laws of general application, and the statutory mandate of the Royal British Columbia Museum.
33. Custodial agreements under paragraph 31 may set out:
- a. conditions of maintenance, storage, and handling of the Nisga'a artifacts;
  - b. conditions of access to and use, including study, display, and reproduction, of the Nisga'a artifacts and associated records by the public, researchers, and scholars;
  - c. provisions for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
  - d. conditions under which Nisga'a artifacts may be permanently removed from the collection of the Royal British Columbia Museum.
34. The Nisga'a Nation and British Columbia may negotiate agreements that:
- a. establish processes for lending Nisga'a artifacts;
  - b. provide for replication of Nisga'a artifacts;
  - c. provide for professional and technical training for Nisga'a citizens in museum skills and conservation expertise;
  - d. provide for enhancing public knowledge about the Nisga'a Nation through the participation of Nisga'a citizens in public programs and activities at the Royal British Columbia Museum; and
  - e. provide for other matters.

## ACCESS TO OTHER COLLECTIONS

35. From time to time, at the request of the Nisga'a Nation, Canada and British Columbia will use reasonable efforts to facilitate the Nisga'a Nation's access to Nisga'a artifacts and human remains of Nisga'a ancestry that are held in other public and private collections.

## PROTECTION OF HERITAGE SITES

36. Nisga'a Government will develop processes to manage heritage sites on Nisga'a Lands in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites.

37. British Columbia will develop or continue processes to manage heritage sites in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites.
38. The processes under paragraphs 36 and 37 will include measures designed to:
  - a. identify heritage sites;
  - b. provide notice to each other of heritage sites;
  - c. assess the significance of heritage sites;
  - d. ensure appropriate protective or management measures are taken to protect, or, if necessary, to mitigate the effects of unavoidable impacts on, heritage sites and associated material; and
  - e. ensure that the appropriate person takes those measures and bears the associated costs.
39. Until Nisga'a Government establishes the processes referred to in paragraph 36, British Columbia's processes will apply on Nisga'a Lands.

## **OTHER NISGA'A ARTIFACTS**

40. The Nisga'a Nation owns any Nisga'a artifact discovered within Nisga'a Lands or Category A Lands after the effective date, unless another person establishes their ownership of the artifact.
41. If any Nisga'a artifact discovered in British Columbia outside Nisga'a Lands and Category A lands comes into the permanent possession, or under the control, of British Columbia, British Columbia will lend the artifact to the Nisga'a Nation in accordance with any agreements negotiated under paragraph 31 or 34, and British Columbia may transfer the artifact to the Nisga'a Nation.
42. If any Nisga'a artifact discovered outside Nisga'a Lands and Category A lands comes into the permanent possession, or under the control, of Canada, Canada may lend the artifact to the Nisga'a Nation in accordance with any agreements negotiated with the Nisga'a Nation, and Canada may transfer the artifact to Nisga'a Nation.

## **HUMAN REMAINS**

43. Subject to federal and provincial laws, any human remains of individuals of Nisga'a ancestry that are removed from a heritage site will be delivered to the Nisga'a Nation.

## CHAPTER 18

### LOCAL AND REGIONAL GOVERNMENT RELATIONSHIPS

1. For purposes of representation of residents of Nisga'a Lands on the board of the Regional District of Kitimat-Stikine, from the effective date, Nisga'a Lands is part of Electoral Area "A" in the Regional District of Kitimat-Stikine.
2. Residents of Nisga'a Lands have the right to vote in elections and referenda of the Regional District of Kitimat-Stikine in accordance with provincial legislation.
3. British Columbia will consult with the Nisga'a Nation before altering the boundaries of Electoral Area "A" in the Regional District of Kitimat-Stikine.
4. British Columbia will not make any changes to electoral area boundaries which would result in Nisga'a Lands being in more than one electoral area, without the consent of the Nisga'a Nation.
5. The Nisga'a Nation and each Nisga'a Village, or any of them, may enter into agreements with the Regional District of Kitimat-Stikine respecting the cost of services and the payment for the delivery of:
  - a. Regional District of Kitimat-Stikine services on Nisga'a Lands; and
  - b. Nisga'a Lisims Government or Nisga'a Village Government services to the Regional District of Kitimat-Stikine.
6. The Nisga'a Nation and the Regional District of Kitimat-Stikine may enter into agreements to coordinate their activities with respect to common areas of responsibility such as planning, health services, and infrastructure development.
7. Nisga'a Lisims Government and the Regional District of Kitimat-Stikine will meet, at the request of either of them, to discuss matters of mutual interest.

## **CHAPTER 19**

### **DISPUTE RESOLUTION**

#### **DEFINITIONS**

1. In this Chapter and in Appendix M-1 to M-6:

“Appendix” means Appendix M-1, M-2, M-3, M-4, M-5, or M-6 to this Agreement.

#### **GENERAL**

2. In this Chapter, and in each Appendix, a Party is deemed to be directly engaged in a disagreement if another Party, acting reasonably, gives the first Party a written notice requiring it to participate in a process described in this Chapter to resolve the disagreement.
3. The Parties share the following objectives:
  - a. to cooperate with each other to develop harmonious working relationships;
  - b. to prevent, or, alternatively, to minimize disagreements;
  - c. to identify disagreements quickly and resolve them in the most expeditious and cost-effective manner possible; and
  - d. to resolve disagreements in a non-adversarial, collaborative, and informal atmosphere.
4. Except as otherwise provided, participating Parties may agree to vary a procedural requirement contained in this Chapter, or in an Appendix, as it applies to a particular disagreement.
5. Participating Parties may agree to, and the Supreme Court of British Columbia, on application, may order:
  - a. the abridgment of a time limit; or
  - b. the extension of a time limit, despite the expiration of that time limitin this Chapter or in an Appendix.

**SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT**

6. This Chapter is not intended to apply to all conflicts or disputes between or among the Parties, but is limited to the conflicts or disputes described in paragraph 7.
7. This Chapter only applies to:
  - a. a conflict or dispute respecting:
    - i. the interpretation, application, or implementation of this Agreement, or
    - ii. a breach or anticipated breach of this Agreement;
  - b. a conflict or dispute, where provided for in this Agreement; or
  - c. negotiations required to be conducted under any provision of this Agreement that provides that the Parties, or any of them, "will negotiate and attempt to reach agreement".
8. This Chapter does not apply to:
  - a. an agreement between or among the Parties that is ancillary, subsequent, or supplemental to this Agreement unless the Parties have agreed that this Chapter applies to that agreement;
  - b. the Implementation Plan; or
  - c. conflicts or disputes, where excluded from this Chapter.
9. Nothing in this Chapter limits the application of a dispute resolution process, under any law of general application, to a conflict or dispute involving a person if that conflict or dispute is not a disagreement.
10. Nothing in any law of general application limits the right of a Party to refer a disagreement to this Chapter.

**DISAGREEMENTS TO GO THROUGH STAGES**

11. The Parties desire and expect that most disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this Chapter.
12. Except as otherwise provided, disagreements not resolved informally will progress, until resolved, through the following stages:

- a. Stage One: formal, unassisted efforts to reach agreement between or among the Parties, in collaborative negotiations under Appendix M-1;
  - b. Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix M-2, M-3, M-4, or M-5 as applicable; and
  - c. Stage Three: final adjudication in arbitral proceedings under Appendix M-6, or in judicial proceedings.
13. Except as otherwise provided, no Party may refer a disagreement to final adjudication in Stage Three without first proceeding through Stage One and a facilitated process in Stage Two as required in this Chapter.
  14. Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
    - a. to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
    - b. to obtain interlocutory or interim relief that is otherwise available pending resolution of the disagreement under this Chapter.

## STAGE ONE: COLLABORATIVE NEGOTIATIONS

15. If a disagreement is not resolved by informal discussion, and a Party directly engaged in the disagreement wishes to invoke this Chapter, that Party will deliver a written notice, as required under Appendix M-1, as soon as practicable to the other Parties, requiring the commencement of collaborative negotiations.
16. Upon receiving the notice under paragraph 15, a Party directly engaged in the disagreement will participate in the collaborative negotiations.
17. A Party not directly engaged in the disagreement may participate in the collaborative negotiations by giving written notice to the other Parties, preferably before the collaborative negotiations commence.
18. If the Parties have commenced negotiations in the circumstances described in subparagraph 7(c), then, for all purposes under this Chapter, those negotiations will be deemed collaborative negotiations and the particular matter under negotiation will be considered a disagreement.
19. Collaborative negotiations terminate in the circumstances set out in Appendix M-1.

**STAGE TWO: FACILITATED PROCESSES**

20. Within 15 days of termination of collaborative negotiations that have not resolved the disagreement, a Party directly engaged in a disagreement, by delivering a notice to the other Parties, may require the commencement of a facilitated process.
21. A notice under paragraph 20:
  - a. will include the name of the Party or Parties directly engaged in the disagreement and a summary of the particulars of the disagreement; and
  - b. may propose the use of a particular facilitated process described in paragraph 24.
22. Upon receiving a notice under paragraph 20, a Party directly engaged in the disagreement will participate in a facilitated process described in paragraph 24.
23. A Party not directly engaged in the disagreement may participate in the facilitated process by giving written notice to the other Parties within 15 days of delivery of a notice under paragraph 20.
24. Within 30 days after delivery of a notice under paragraph 20, the Parties directly engaged in the disagreement will attempt to agree to use one of the following processes:
  - a. mediation under Appendix M-2;
  - b. technical advisory panel under Appendix M-3;
  - c. neutral evaluation under Appendix M-4;
  - d. elders advisory council under Appendix M-5; or
  - e. any other non-binding dispute resolution process assisted by a neutraland if they fail to agree, they will be deemed to have selected mediation under Appendix M-2.
25. A facilitated process terminates:
  - a. in the circumstances set out in the applicable Appendix; or
  - b. as agreed by the participating Parties, if an Appendix does not apply.

**NEGOTIATING CONDITIONS**

26. In order to enhance the prospect of reaching agreement, the Parties participating in

collaborative negotiations or a negotiation component of a facilitated process will:

- a. at the request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;
- b. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
- c. negotiate in good faith.

### **SETTLEMENT AGREEMENT**

27. Any agreement reached in a process under this Chapter:

- a. will be:
  - i. recorded in writing,
  - ii. signed by authorized representatives of the Parties to the agreement, and
  - iii. delivered to all Parties; and
- b. is binding only on the Parties who have signed the agreement.

### **STAGE THREE: ADJUDICATION - ARBITRATION**

28. After the later of termination of collaborative negotiations, or of a required facilitated process, in respect of a disagreement arising out of any provision of this Agreement that provides that a matter will be "finally determined by arbitration", the disagreement will, on the delivery of a notice by a Party directly engaged in the disagreement, to all Parties as required under Appendix M-6, be referred to and finally resolved by arbitration in accordance with that Appendix.
  29. After the later of termination of collaborative negotiations, or a required facilitated process, in respect of any disagreement, other than a disagreement referred to in paragraph 28, and with the written agreement of all Parties directly engaged in the disagreement, the disagreement will be referred to, and finally resolved by, arbitration in accordance with Appendix M-6.
  30. If two Parties make a written agreement under paragraph 29, they will deliver a copy of the agreement as soon as practicable to the other Party.
  31. Upon delivering a written notice to the participating Parties to the arbitration within 15 days
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after receiving a notice under paragraph 28 or copy of a written agreement under paragraph 30, a Party not directly engaged in the disagreement is entitled to be, and will be added as, a party to the arbitration of that disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.

32. Despite paragraph 31, an arbitral tribunal may make an order adding a Party as a participating Party at any time, if the arbitral tribunal considers that:
  - a. the participating Parties will not be unduly prejudiced; or
  - b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under paragraph 28 or the written agreement to arbitrate in paragraph 29

and, in that event, the arbitral tribunal may make any order it considers appropriate or necessary in the circumstances respecting conditions, including the payment of costs, upon which the Party may be added.

### **EFFECT OF ARBITRAL AWARD**

33. An arbitral award is final and binding on all Parties whether or not a Party has participated in the arbitration.
34. Despite paragraph 33, an arbitral award is not binding on a Party that has not participated in the arbitration if:
  - a. the Party did not receive copies of:
    - i. the notice of arbitration or agreement to arbitrate, or
    - ii. the pleadings and any amendments or supplements to the pleadings; or
  - b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 32.

### **APPLICATION OF LEGISLATION**

35. No legislation of any Party respecting arbitration, except the settlement legislation, applies to an arbitration conducted under this Chapter.
  36. A court must not intervene or offer assistance in an arbitration or review an arbitral award under this Chapter except as provided in Appendix M-6.
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**STAGE THREE: ADJUDICATION - JUDICIAL PROCEEDINGS**

37. Nothing in this Chapter creates a cause of action where none otherwise exists.
38. Subject to paragraph 39, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a disagreement.
39. A Party may not commence judicial proceedings in respect of a disagreement if the disagreement:
  - a. is required to be referred to arbitration under paragraph 28 or has been agreed to be referred to arbitration under paragraph 29;
  - b. has not been referred to collaborative negotiations or a facilitated process as required under this Chapter; or
  - c. has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.
40. Nothing in subparagraph 39(a) prevents an arbitral tribunal or the participating Parties from requesting the Supreme Court of British Columbia to make a ruling respecting a question of law as permitted in Appendix M-6.

**NOTICE TO PARTIES**

41. If, in any judicial or administrative proceeding, an issue arises in respect of:
  - a. the interpretation or validity of this Agreement; or
  - b. the validity, or applicability of:
    - i. any settlement legislation, or
    - ii. any Nisga'a law

the issue will not be decided until the party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada, and Nisga'a Lisims Government.

42. In any judicial or administrative proceeding to which paragraph 41 applies, the Attorney General of British Columbia, the Attorney General of Canada, and Nisga'a Lisims Government may appear and participate in the proceedings as parties with the same rights as any other party.

**COSTS**

43. Except as provided otherwise in the Appendices, each participating Party will bear the costs of its own participation, representation, and appointments in collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
44. Subject to paragraph 43 and except as provided otherwise in the Appendices, the participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
45. For purposes of paragraph 44, "costs" include:
  - a. fees of the neutrals;
  - b. costs of hearing and meeting rooms;
  - c. actual and reasonable costs of communications, accommodation, meals, and travel of the neutrals;
  - d. costs of required secretarial and administrative support for the neutrals, as permitted in the Appendices; and
  - e. administration fees of a neutral appointing authority.

## CHAPTER 20

### ELIGIBILITY AND ENROLMENT

#### ELIGIBILITY CRITERIA

1. An individual is eligible to be enrolled under this Agreement if that individual is:
  - a. of Nisga'a ancestry and their mother was born into one of the Nisga'a tribes;
  - b. a descendant of an individual described in subparagraphs 1(a) or 1(c);
  - c. an adopted child of an individual described in subparagraphs 1(a) or 1(b); or
  - d. an aboriginal individual who is married to someone described in subparagraphs 1(a), (b), or (c) and has been adopted by one of the four Nisga'a tribes in accordance with *Ayuukhl Nisga'a*, that is, the individual has been accepted by a Nisga'a tribe, as a member of that tribe, in the presence of witnesses from the other Nisga'a tribes at a settlement or stone moving feast.
2. Enrolment under this Agreement does not:
  - a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
  - b. except as set out in this Agreement or in any federal or provincial law, impose any obligation on Canada or British Columbia to provide rights or benefits.

#### OTHER LAND CLAIMS AGREEMENTS

3. An individual who is enrolled under another land claims agreement in Canada may not at the same time be enrolled under this Agreement.
4. An individual enrolled under another land claims agreement in Canada may apply to enrol under this Agreement, but if their application succeeds that individual must withdraw from enrolment under the other land claims agreement.
5. If the Enrolment Committee determines that an individual who is enrolled under another land claims agreement in Canada meets the eligibility criteria, the individual will be conditionally enrolled, and the individual's enrolment will be effective when the individual ceases to be enrolled under the other land claims agreement.
6. If an individual who has been conditionally enrolled does not, within 60 days after receiving

written notification by the Enrolment Committee, demonstrate that they have ceased to be enrolled under the other land claims agreement, the Enrolment Committee will remove that individual's name from the enrolment register.

## APPLICANTS

7. An individual may:
  - a. apply to the Enrolment Committee for enrolment;
  - b. appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; or
  - c. seek judicial review of a decision of the Enrolment Appeal Board

on their own behalf, or on behalf of a minor, or an adult whose affairs they have the legal authority to manage.

## ENROLMENT COMMITTEE

8. The Enrolment Committee is a committee established by the General Executive Board of the Nisga'a Tribal Council and governed by enrolment rules adopted by the General Executive Board of the Nisga'a Tribal Council.
9. The Enrolment Committee comprises eight Nisga'a individuals, as follows:
  - a. two members from the *Laxsgiik* (Eagle) tribe, as selected by that tribe;
  - b. two members from the *Gisk'aast* (Killer whale) tribe, as selected by that tribe;
  - c. two members from the *Ganada* (Raven) tribe, as selected by that tribe; and
  - d. two members from the *Laxgibuu* (Wolf) tribe, as selected by that tribe

each of whom must understand *Ayuukhl Nisga'a*, Nisga'a culture, Nisga'a ancestry, Nisga'a tribes, and Nisga'a community institutions, and must reside in a Nisga'a Village.
10. During the initial enrolment period, the Nisga'a Tribal Council or the Nisga'a Nation, as the case may be, will notify Canada and British Columbia of the names of the individuals appointed to the Enrolment Committee.
11. During the initial enrolment period, the Enrolment Committee will:
  - a. consider each application and:

- i. enrol each applicant who demonstrates that they meet the eligibility criteria, and
    - ii. refuse to enrol each applicant who does not demonstrate that they meet the eligibility criteria;
  - b. establish and maintain, as a public document, an enrolment register containing the name of each individual who is enrolled;
  - c. take reasonable steps to publish the enrolment rules and the eligibility criteria;
  - d. provide an application form to any individual who wishes to apply for enrolment;
  - e. provide written notification to each applicant of its decision in respect of their application, and if enrolment is refused, include written reasons for that decision;
  - f. provide a copy of the notification referred to in subparagraph 11(e), including any reasons, to the Nisga'a Tribal Council or the Nisga'a Nation, as the case may be, and to Canada;
  - g. upon request, provide in confidence a Party or the Enrolment Appeal Board with information in respect of an individual's enrolment application;
  - h. add names to, or delete names from, the enrolment register in accordance with this Chapter;
  - i. subject to this Chapter, keep information provided by and about applicants confidential; and
  - j. provide a copy of the enrolment register to the Parties each year and at other times on request.
12. In addition to the functions set out in paragraph 11, before the completion of the referendum in respect of this Agreement under paragraph 2 of the Ratification Chapter, the Enrolment Committee will:
- a. provide the Ratification Committee with the name of each individual who is enrolled, and any other information requested by the Ratification Committee; and
  - b. if the Enrolment Committee forms the opinion that an applicant will be refused enrolment, provide the applicant with a reasonable opportunity to present further information or representations, in accordance with the enrolment rules.
13. Each applicant has the burden of proving to the Enrolment Committee that they meet the eligibility criteria.
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14. Subject to this Chapter, all decisions of the Enrolment Committee are final and binding.
15. The Enrolment Committee may, before an appeal of a decision is commenced, vary the decision on the basis of new information, if it considers the decision was in error.
16. If the Enrolment Committee does not make a decision in respect of an application for enrolment within the time established in the enrolment rules, the application will be deemed to be refused.

## **APPLICATION TO REMOVE APPLICANTS FROM ENROLMENT REGISTER**

17. If a Nisga'a participant, or an individual having legal authority to manage the affairs of a Nisga'a participant, applies to have the Nisga'a participant's name removed from the enrolment register, the Enrolment Committee will remove the Nisga'a participant's name and will notify the individual who made that application.

## **ENROLMENT APPEAL BOARD**

### **Appeals**

18. An applicant, a Party, or a Nisga'a Village may appeal to the Enrolment Appeal Board any decision of the Enrolment Committee made under subparagraph 11(a) or paragraph 15.

### **Establishment of Enrolment Appeal Board**

19. On the effective date, the Nisga'a Nation and Canada will establish the Enrolment Appeal Board consisting of three members. The Nisga'a Nation and Canada will each appoint one member and will jointly appoint a chairperson.
20. The Enrolment Appeal Board will:
  - a. establish its own procedures and time limits;
  - b. hear and determine each appeal brought under paragraph 18 and decide whether the applicant will be enrolled;
  - c. conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing; and
  - d. provide written reasons for its decision to the appellant, the applicant and the Parties.

21. The Enrolment Appeal Board:
  - a. by summons, may require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in their possession; and
  - b. may direct a witness to answer on oath or solemn affirmation questions posed to the witness.
22. A judge of the Supreme Court of British Columbia, on application by the Enrolment Appeal Board, may enforce a summons or direction made under paragraph 21.
23. An applicant, a Party, a Nisga'a Village or a witness appearing before the Enrolment Appeal Board may be represented by counsel or agent.
24. No action lies or may be instituted against the Enrolment Appeal Board, or any member of the Enrolment Appeal Board, for anything said or done, or omitted to be said or done, in good faith in the performance, or intended performance, of a duty or in the exercise or intended exercise of a power under this Chapter.
25. Subject to paragraphs 26 to 29, all decisions of the Enrolment Appeal Board are final and binding.

## JUDICIAL REVIEW

26. An applicant, a Party, or a Nisga'a Village may apply to the Supreme Court of British Columbia to review and set aside a decision of the Enrolment Appeal Board, on the grounds that the Enrolment Appeal Board acted without jurisdiction, acted beyond its jurisdiction, refused to exercise its jurisdiction, failed to observe procedural fairness, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner, or without regard for the material before it.
27. On an application for judicial review, the Court may either dismiss the application or set aside the decision and refer the matter back to the Enrolment Appeal Board for determination in accordance with any directions that the Court considers appropriate.
28. If the Enrolment Appeal Board fails to hear or decide an appeal within a reasonable time, an applicant, a Party, or a Nisga'a Village may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board to hear or decide the appeal in accordance with any directions that the Court considers appropriate.
29. An applicant, a Party, or a Nisga'a Village may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board or a longer time determined by the Court.

**FUNDING**

30. During the initial enrolment period, Canada and British Columbia will pay the costs of the Enrolment Committee and the Enrolment Appeal Board as set out in the "Eligibility and Enrolment Funding Agreement for a Nisga'a Final Agreement" dated October 23, 1997.

**DISSOLUTION OF ENROLMENT COMMITTEE AND ENROLMENT APPEAL BOARD**

31. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have made a decision in respect of every application or appeal made or commenced before the end of their respective initial enrolment period.
32. On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records to Nisga'a Lisims Government.

**NISGA'A NATION RESPONSIBILITIES FOR ENROLMENT**

33. Subject to the funding agreement referred to in paragraph 30, after the initial enrolment period the Nisga'a Nation will:
  - a. be responsible for an enrolment process and the administrative costs of that process;
  - b. maintain the enrolment register;
  - c. provide a copy of the enrolment register to Canada and British Columbia each year or as they request; and
  - d. provide information concerning enrolment to Canada and British Columbia as they request.

## **CHAPTER 21**

### **IMPLEMENTATION**

1. On the effective date, the Parties will establish an Implementation Plan to guide the Parties on the implementation of this Agreement.
2. The Implementation Plan will be for a term of 10 years, commencing on the effective date.
3. The Implementation Plan:
  - a. identifies obligations and activities arising from this Agreement;
  - b. identifies the manner in which the Parties anticipate fulfilling those obligations and undertaking those activities;
  - c. contains guidelines for the operation of the Implementation Committee established under this Chapter;
  - d. includes a communication strategy in respect of the implementation and content of this Agreement;
  - e. provides for the preparation of annual reports on the implementation of this Agreement; and
  - f. addresses other matters agreed to by the Parties.
4. The Implementation Plan:
  - a. is not part of this Agreement;
  - b. is not intended to be a treaty or land claims agreement, and it is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 or 35 of the *Constitution Act, 1982*;
  - c. does not create legal obligations;
  - d. does not alter any rights or obligations set out in this Agreement;
  - e. does not preclude any Party from asserting that rights or obligations exist under this Agreement even though they are not referred to in the Implementation Plan; and
  - f. is not to be used to interpret this Agreement.

**IMPLEMENTATION COMMITTEE**

5. On the effective date, the Parties will establish the Implementation Committee for a term of 10 years:
  - a. to provide a forum for the Parties to discuss the implementation of this Agreement; and
  - b. before the tenth anniversary of the effective date, to advise the Parties on the further implementation of this Agreement.

## CHAPTER 22 RATIFICATION

### **GENERAL**

1. Ratification of this Agreement by the Parties in accordance with this Chapter is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.

### **RATIFICATION BY THE NISGA'A NATION**

2. Ratification of this Agreement by the Nisga'a Nation requires:
  - a. debate at an assembly of the Nisga'a Nation called to consider this Agreement and to determine whether to refer it to a referendum;
  - b. proposal at that assembly of a motion to refer this Agreement to a referendum;
  - c. adoption of that motion by a simple majority of those voting on that motion;
  - d. conduct, by the Ratification Committee, of the referendum referred to in paragraph 5; and
  - e. that in that referendum, a simple majority of eligible voters vote in favour of entering into this Agreement.
3. All votes cast in a referendum under this Chapter will be by secret ballot.

### **Ratification Committee**

4. The Ratification Committee is a committee established by the General Executive Board of the Nisga'a Tribal Council and governed by rules adopted by the General Executive Board of the Nisga'a Tribal Council. It includes a representative of Canada, selected by the Minister of Indian Affairs and Northern Development, and a representative of British Columbia.
5. Conduct of the referendum by the Ratification Committee requires the following steps:
  - a. preparing and publishing a preliminary list of voters based on the information provided by the Enrolment Committee under paragraph 12 of the Eligibility and Enrolment Chapter;
  - b. taking reasonable steps to provide the opportunity for the Nisga'a Nation to review

- this Agreement;
- c. preparing and publishing an official voters list at least 14 days before the first day of general voting in the referendum by:
    - i. determining whether or not each individual whose name is provided to it by the Enrolment Committee is eligible to vote, and
    - ii. including on that list the name of each individual whom the Ratification Committee determines to be eligible to vote in accordance with paragraph 6;
  - d. updating the official voters list by:
    - i. at any time before the end of general voting, adding to the official voters list the name of each individual whom the Ratification Committee determines to be eligible to vote in accordance with paragraph 6,
    - ii. adding to the official voters list the name of each individual who votes in accordance with paragraph 7 and whose vote counts in accordance with paragraph 8,
    - iii. removing from the official voters list the name of each individual who died on or before the last day of voting without having voted in the referendum, and
    - iv. removing from the official voters list the name of each individual who did not vote in the referendum and who provides, within seven days of the last scheduled day of voting in the referendum, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for general voting;
  - e. approving the form and content of the ballot;
  - f. authorizing and providing general direction to voting officers;
  - g. conducting the vote on a day or days determined by the Ratification Committee; and
  - h. counting the vote.

#### **Eligible Voters**

- 6. An individual is eligible to vote in the referendum if that individual:
  - a. has been enrolled by the Enrolment Committee as a Nisga'a participant in

accordance with the eligibility criteria set out in paragraph 1 of the Eligibility and Enrolment Chapter;

- b. will be at least 18 years of age on the last scheduled day of voting for the referendum referred to in paragraph 5;
  - c. is ordinarily resident in Canada; and
  - d. is not enrolled in any other land claims agreement in Canada.
7. An individual who is eligible to vote under paragraph 6, but whose name is not included on the official voters list, may vote in the referendum if that individual:
- a. provides the voting officer with a completed enrolment application form or evidence satisfactory to the voting officer that the individual has submitted an enrolment application form to the Enrolment Committee;
  - b. provides evidence satisfactory to the voting officer that the individual meets the requirements set out in subparagraphs 6(b) and (c); and
  - c. declares in writing that they:
    - i. meet the eligibility criteria set out in paragraph 1 of the Eligibility and Enrolment Chapter, and
    - ii. are not enrolled in any other land claims agreement in Canada.
8. The ballot of an individual who votes under paragraph 7 counts in determining the outcome of the referendum only if the Ratification Committee determines that the individual is enrolled by the Enrolment Committee and meets the criteria set out in subparagraphs 6(b), (c), and (d).

#### Costs

9. Canada and British Columbia will pay the costs of the Ratification Committee as set out in the "Ratification Funding Agreement for a Nisga'a Final Agreement" entered into by the Parties on March 31, 1998.

#### RATIFICATION BY CANADA

10. Ratification of this Agreement by Canada requires:
- a. that this Agreement be signed by a Minister of the Crown authorized by the

Governor in Council; and

- b. the enactment of federal settlement legislation giving effect to this Agreement.

**RATIFICATION BY BRITISH COLUMBIA**

11. Ratification of this Agreement by British Columbia requires:

- a. that this Agreement be signed by a Minister of the Crown authorized by the Lieutenant Governor in Council; and
- b. the enactment of provincial settlement legislation giving effect to this Agreement.

**ADOPTION OF THE NISGA'A CONSTITUTION**

12. Adoption of the Nisga'a Constitution requires the support of at least 70% of those eligible voters who vote in a referendum on the Nisga'a Constitution.