

# Maa-nulth First Nations Final Agreement



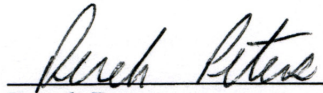
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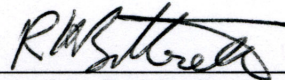


SIGNATORIES TO THE AGREEMENT

SIGNED at Fort Albany on the 9<sup>th</sup> day of April, 2009  
FOR HUU-AY-AHT FIRST NATIONS:



Derek Peters  
Ta'yii Hawilth  
Huu-ay-aht First Nations

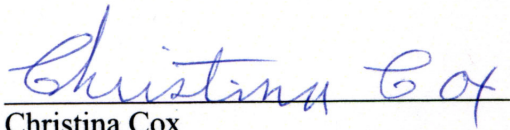


Witnessed by Robert Botterell

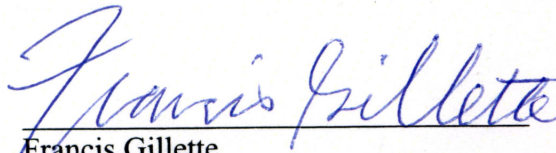


Robert Dennis Sr.  
Chief Councillor  
Huu-ay-aht First Nations

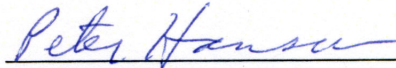
SIGNED at Houpsitas on the 24 day of July, 2008  
FOR KA:'YU:'K'T'H'/CHE:K'TLES7ET'H' FIRST NATIONS:



Christina Cox  
Tyee Ha'wilt'h (Hereditary Chief)  
Ka:'yu:'k't'h' First Nation



Francis Gillette  
Tyee Ha'wilt'h (Hereditary Chief)  
Che:k'tles7et'h' First Nation



Witnessed by:  
Peter Hanson  
Treaty Manager  
Ka:'yu:'k't'h'/Che:k'tles7et'h'  
First Nations

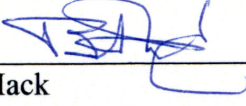


Therese Smith  
Chief Councillor  
Ka:'yu:'k't'h'/Che:k'tles7et'h'  
First Nations

MAA-NULTH FIRST NATIONS FINAL AGREEMENT

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SIGNED at Ittatsoo on the 22 day of July, 2008  
FOR TOQUAHT NATION:

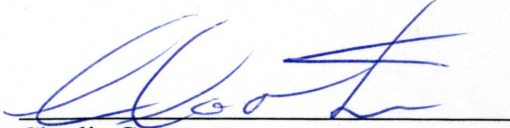
  
\_\_\_\_\_  
Bert Mack  
Hereditary Chief

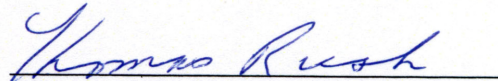
Anne Mack  
\_\_\_\_\_  
Witnessed by:

MAA-NULTH FIRST NATIONS FINAL AGREEMENT

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SIGNED at Ittatsoo on the 22 day of July, 2008  
FOR UCHUCKLESAHT TRIBE:

  
\_\_\_\_\_  
Charlie Cootes  
Chief Councillor

  
\_\_\_\_\_  
Witnessed by:

MAA-NULTH FIRST NATIONS FINAL AGREEMENT

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SIGNED at Ittatsoo on the 22 day of July, 2008  
FOR UCLUELET FIRST NATION:

Vi Mundy  
Vi Mundy  
Chief Councillor

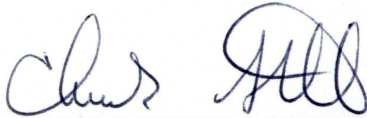
Barbara Jackson  
Witnessed by:

Wilson Jack  
Wilson Jack  
Tyee Ha'wilth (Hereditary Chief)

Theresa Jackson  
Witnessed by:



SIGNED at Port Alberni on the 9<sup>th</sup> day of April, 2009  
FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA:



The Honourable Chuck Strahl, P.C., M.P.,  
Minister of Indian Affairs and Northern  
Development



Witnessed by: Eric Denhoff  
Chief Federal Negotiator

SIGNED at Houpshtas on the 24 day of July, 2008  
FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA:



The Honourable Michael de Jong, Minister,  
Aboriginal Relations and Reconciliation



Witnessed by: Mark Lofthouse  
Chief Provincial Negotiator



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## PREAMBLE

### WHEREAS:

- A. The Maa-nulth First Nations assert that they have used, occupied and governed their traditional territories from time immemorial;
- B. The Maa-nulth First Nations have never entered into a treaty or land claims agreement with the Crown;
- C. The *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, and the courts have stated that aboriginal rights include aboriginal title;
- D. The Maa-nulth First Nations assert that they have an inherent right to self-government, and the Government of Canada has negotiated self-government in this Agreement based on its policy that the inherent right to self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*;
- E. The Maa-nulth First Nations' existing aboriginal rights are recognized and affirmed by the *Constitution Act, 1982*, and the Parties have negotiated this Agreement in accordance with the British Columbia treaty process to provide certainty in respect of those rights and to allow them to continue and to have effect and be exercised as set out in this Agreement;
- F. Canada and British Columbia acknowledge the perspective of the Maa-nulth First Nations that harm and losses in relation to their aboriginal rights have occurred in the past and express regret if any actions or omissions of the Crown have contributed to that perspective, and the Parties rely on this Agreement to move them beyond the difficult circumstances of the past;
- G. Canada and British Columbia acknowledge the aspirations of the Maa-nulth First Nations to preserve, promote and develop the culture, heritage, language and economies of the Maa-nulth First Nations;
- H. Canada and British Columbia acknowledge the aspirations of the Maa-nulth First Nations and the Maa-nulth-aht to participate more fully in the economic, political, cultural and social life of British Columbia in a way that preserves and enhances the collective identity of the Maa-nulth-aht as the Maa-nulth First Nations and to evolve and flourish as self-sufficient and sustainable communities; and

- I. The Parties are committed to the reconciliation of the prior presence of the Maa-nulth First Nations and the sovereignty of the Crown through the negotiation of this Agreement which will establish new government-to-government relationships based on mutual respect.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:



## CHAPTER 1 GENERAL PROVISIONS

### 1.1.0 NATURE OF AGREEMENT

- 1.1.1 This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 1.1.2 This Agreement is binding on the Parties and on all persons.
- 1.1.3 The Parties and all persons are entitled to rely on this Agreement.
- 1.1.4 Canada will recommend to Parliament that Federal Settlement Legislation provides that this Agreement is approved, given effect, declared valid and has the force of law.
- 1.1.5 British Columbia will recommend to the Legislature that Provincial Settlement Legislation provides that this Agreement is approved, given effect, declared valid and has the force of law.
- 1.1.6 Ratification of this Agreement by the Parties in accordance with Chapter 28 Ratification is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement is of no force or effect.

### 1.2.0 REPRESENTATIONS AND WARRANTIES

- 1.2.1 Each Maa-nulth First Nation represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, it represents and has the authority to enter into on behalf of, and enters into this Agreement on behalf of, any and all of those individuals who collectively comprise that Maa-nulth First Nation and who have or may exercise any aboriginal rights, including aboriginal title, or may make any claims to those rights.
- 1.2.2 Canada represents and warrants to each Maa-nulth First Nation that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement within its authorities.
- 1.2.3 British Columbia represents and warrants to each Maa-nulth First Nation that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement within its authorities.

**1.3.0 CONSTITUTION OF CANADA**

- 1.3.1 This Agreement does not alter the Constitution of Canada, including:
- a. the distribution of powers between Canada and British Columbia;
  - b. the identity of Maa-nulth First Nations as aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.
- 1.3.2 The *Canadian Charter of Rights and Freedoms* applies to each Maa-nulth First Nation Government in respect of all matters within its authority.

**1.4.0 CHARACTER OF MAA-NULTH FIRST NATION LANDS AND OTHER MAA-NULTH FIRST NATION LANDS**

- 1.4.1 There are no “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for any Maa-nulth First Nation and there are no “reserves” as defined in the *Indian Act* for any Maa-nulth First Nation and, for greater certainty, Maa-nulth First Nation Lands and Other Maa-nulth First Nation 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*.

**1.5.0 APPLICATION OF FEDERAL LAW AND PROVINCIAL LAW**

- 1.5.1 Federal Law and Provincial Law apply to the Maa-nulth First Nations, Maa-nulth-aht, Maa-nulth First Nation Citizens, Maa-nulth First Nation Public Institutions, Maa-nulth First Nation Corporations, Maa-nulth First Nation Governments, Maa-nulth First Nation Lands and Other Maa-nulth First Nation Lands.

**1.6.0 APPLICATION OF THE *INDIAN ACT***

- 1.6.1 Subject to Chapter 15 *Indian Act* Transition and 19.5.0, the *Indian Act* has no application to any Maa-nulth First Nation, Maa-nulth First Nation Government, Maa-nulth First Nation Public Institution, Maa-nulth First Nation Corporation and Maa-nulth-aht as of the Effective Date, except for the purpose of determining whether an individual is an “Indian”.

**1.7.0 INTERNATIONAL LEGAL OBLIGATIONS**

- 1.7.1 After the Effective Date, before consenting to be bound by a new International Treaty which would give rise to a new International Legal Obligation that may adversely affect a right of a Maa-nulth First Nation Government under this Agreement, Canada will Consult with that Maa-nulth First Nation Government in respect of the International Treaty either separately or through a forum that Canada determines is appropriate.
- 1.7.2 Where Canada informs a Maa-nulth First Nation Government that it considers that a Maa-nulth First Nation Law or exercise of power of that Maa-nulth First Nation Government causes Canada to be unable to perform an International Legal Obligation, that Maa-nulth First Nation Government and Canada will discuss remedial measures to enable Canada to perform the International Legal Obligation. Subject to 1.7.3, the Maa-nulth First Nation Government will remedy the law or other exercise of power to the extent necessary to enable Canada to perform the International Legal Obligation.
- 1.7.3 Subject to 1.7.5, where Canada and a Maa-nulth First Nation Government disagree over whether a Maa-nulth First Nation Law or other exercise of power of that Maa-nulth First Nation Government causes Canada to be unable to perform an International Legal Obligation, the dispute will be resolved in accordance with the provisions in Chapter 25 Dispute Resolution, and if the dispute goes to arbitration and:
- a. if the arbitrator, having taken into account all relevant considerations, including any reservations and exceptions taken by Canada, determines that the Maa-nulth First Nation Law or other exercise of power of the Maa-nulth First Nation Government does not cause Canada to be unable to perform the International Legal Obligation, or that the remedial measures are sufficient to enable Canada to perform the International Legal Obligation, Canada will not take any further action for this reason aimed at changing the Maa-nulth First Nation Law or other exercise of power; or
  - b. if the arbitrator, having taken into account all relevant considerations, including any reservations and exceptions available to Canada, determines that the Maa-nulth First Nation Law or other exercise of power of that Maa-nulth First Nation Government causes Canada to be unable to perform the International Legal Obligation, or that the remedial measures are insufficient to enable Canada to perform the International Legal Obligation, the Maa-nulth First Nation Government will remedy the law or other exercise of power to the extent necessary to enable Canada to perform the International Legal Obligation.
- 1.7.4 Canada will Consult the applicable Maa-nulth First Nation Government in respect of the development of positions taken by Canada before an International Tribunal where its Maa-nulth First Nation Law or other exercise of power of that

Maa-nulth First Nation Government has given rise to an issue concerning the performance of an International Legal Obligation of Canada. Canada's positions before the International Tribunal will take into account the commitment of the Parties to the integrity of this Agreement.

- 1.7.5 If there is a finding of an International Tribunal of non-performance of an International Legal Obligation of Canada attributable to a Maa-nulth First Nation Law or other exercise of power of a Maa-nulth First Nation Government, that Maa-nulth First Nation Government will, at the request of Canada, remedy the law or other exercise of power to enable Canada to perform the International Legal Obligation, unless the law or action is in accordance with this Agreement and equivalent to a relevant Federal Law or Provincial Law, as applicable, consistent with the compliance with Canada or British Columbia in respect of that International Legal Obligation.

#### **1.8.0 RELATIONSHIP OF LAWS**

- 1.8.1 This Agreement prevails to the extent of an inconsistency or a Conflict with Federal Law or Provincial Law.
- 1.8.2 Federal Settlement Legislation prevails over other Federal Law to the extent of a Conflict and Provincial Settlement Legislation prevails over other Provincial Law to the extent of a Conflict.
- 1.8.3 Any licence, permit or other authorization to be issued by Canada or British Columbia as a result of this Agreement will be issued under Federal Law or Provincial Law, as the case may be, and will not be part of this Agreement.
- 1.8.4 This Agreement prevails to the extent of an inconsistency or Conflict with any provision of a licence, permit or other authorization issued by Canada or British Columbia as a result of this Agreement.
- 1.8.5 Notwithstanding any other rule of priority in this Agreement, Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law that has an incidental impact on any federal or provincial legislative jurisdiction for which a Maa-nulth First Nation Government:
- a. does not have any law-making authority; or
  - b. does have law-making authority but in respect of which Federal Law or Provincial Law prevails in the event of a Conflict.

- 1.8.6 Notwithstanding any other rule of priority in this Agreement, Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law that has a double aspect with any federal or provincial legislative jurisdiction for which a Maa-nulth First Nation Government:
- a. does not have any law-making authority; or
  - b. does have law-making authority but in respect of which Federal Law or Provincial Law prevails in the event of a Conflict.
- 1.8.7 Notwithstanding any other rule of priority in this Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance, prevails to the extent of a Conflict with Maa-nulth First Nation Law.
- 1.8.8 Canada will recommend to Parliament that Federal Settlement Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to a Maa-nulth First Nation, Maa-nulth First Nation Government, Maa-nulth First Nation Public Institution, Maa-nulth First Nation Corporation, Maa-nulth-aht, Maa-nulth First Nation Citizen, Maa-nulth First Nation Lands or Other Maa-nulth First Nation Lands, that Provincial Law will, subject to the Federal Settlement Legislation and any other Act of Parliament, apply in accordance with this Agreement to that Maa-nulth First Nation, Maa-nulth First Nation Government, Maa-nulth First Nation Public Institution, Maa-nulth First Nation Corporation, Maa-nulth-aht, Maa-nulth First Nation Citizen, Maa-nulth First Nation Lands or Other Maa-nulth First Nation Lands, as the case may be.
- 1.8.9 Unless otherwise provided in this Agreement, Maa-nulth First Nation Law does not apply to Canada or British Columbia.
- 1.8.10 A Maa-nulth First Nation Law that is inconsistent or in Conflict with this Agreement is of no force or effect to the extent of the inconsistency or Conflict.
- 1.8.11 For greater certainty, the law-making authority of a Maa-nulth First Nation Government does not include criminal law, criminal procedure, Intellectual Property, official languages of Canada, aeronautics, navigation and shipping or labour relations and working conditions.
- 1.9.0 OTHER RIGHTS, BENEFITS AND PROGRAMS**
- 1.9.1 Maa-nulth First Nation Citizens and Maa-nulth-aht 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.

1.9.2 Subject to 1.9.3, nothing in this Agreement affects the ability of a Maa-nulth First Nation, Maa-nulth First Nation Government, Maa-nulth First Nation Public Institution or Maa-nulth First Nation Corporation to participate in, or benefit from, programs established by Canada or British Columbia for aboriginal people, registered Indians or other Indians, in accordance with criteria established for those programs from time to time.

1.9.3 Maa-nulth First Nation Citizens and Maa-nulth-aht of a Maa-nulth First Nation are eligible to participate in programs or services established by Canada or British Columbia and to receive programs or services from Canada or British Columbia, in accordance with criteria established for those programs or services from time to time, to the extent that the applicable Maa-nulth First Nation has not assumed responsibility for those programs or services under a Fiscal Financing Agreement or other funding agreement.

#### **1.10.0 COURT DECISIONS**

1.10.1 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.

1.10.2 No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.

1.10.3 A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

#### **1.11.0 CERTAINTY**

##### **Full and Final Settlement**

1.11.1 This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, of each Maa-nulth First Nation.



**Exhaustively Set Out Rights**

- 1.11.2 This Agreement exhaustively sets out the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation, their attributes, 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, modified as a result of this Agreement, of that Maa-nulth First Nation in and to its Maa-nulth First Nation Lands and other lands and resources;
  - b. the jurisdictions, authorities and rights of its Maa-nulth First Nation Government; and
  - c. the other Maa-nulth First Nation Section 35 Rights of that Maa-nulth First Nation.

**Modification**

- 1.11.3 Notwithstanding the common law, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of each Maa-nulth First Nation, as they existed anywhere before the Effective Date, including their attributes and geographic extent, are modified, and continue as modified, as set out in this Agreement.
- 1.11.4 For greater certainty, the aboriginal title of each Maa-nulth First Nation anywhere that it existed before the Effective Date, including its attributes and geographic extent, is modified and continues as the estates in fee simple to those areas identified in this Agreement as the Maa-nulth First Nation Lands and Other Maa-nulth First Nation Lands of that Maa-nulth First Nation.

**Purpose of Modification**

- 1.11.5 The purpose of the modification referred to in 1.11.3 is to ensure that as of the Effective Date:
- a. each Maa-nulth First Nation has, and can exercise, its Maa-nulth First Nation Section 35 Rights set out in this Agreement, including their attributes, geographic extent, and the limitations to those rights, to which the Parties have agreed;
  - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with this Agreement; and

- c. Canada, British Columbia and all other persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, of each Maa-nulth First Nation to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation set out in this Agreement.

### **Release of Past Claims**

- 1.11.6 Each Maa-nulth First Nation releases Canada, British Columbia and all other persons from all claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that that Maa-nulth First 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, interfered with or infringed any aboriginal right, including aboriginal title, of that Maa-nulth First Nation.

### **Indemnities**

- 1.11.7 Each Maa-nulth First Nation will indemnify and forever save harmless Canada or British Columbia, as the case may be, from any and all damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand initiated or made before or after the Effective Date relating to or arising from:
  - a. the existence of an aboriginal right, including aboriginal title, of that Maa-nulth First Nation that is determined to be other than, or different in attributes or geographical extent from, the Maa-nulth First Nation Section 35 Rights of that Maa-nulth First Nation set out in this Agreement; or
  - b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of that Maa-nulth First Nation.
- 1.11.8 A Party who is the subject of a suit, action, claim, proceeding or demand 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 suit, action, claim, proceeding or demand; and
  - b. will not settle or compromise the suit, action, claim, proceeding or demand except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

**Specific Claims**

- 1.11.9 Notwithstanding any other provision of this Agreement, nothing in this Agreement precludes a Maa-nulth First Nation from pursuing claims in accordance with Canada's Specific Claims Policy.
- 1.11.10 For greater certainty, claims referred to in 1.11.9 will not result in any land being declared to be, or being set aside as "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for a Maa-nulth First Nation, or an Indian Reserve for the use and benefit of a Maa-nulth First Nation.

**1.12.0 OTHER ABORIGINAL PEOPLES**

- 1.12.1 Nothing in this Agreement affects, recognizes or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than Maa-nulth First Nations.
- 1.12.2 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 a Maa-nulth First Nation, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of this Agreement:
- a. that provision will operate and have effect to the extent it does not adversely affect that right; and
  - b. if the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend this Agreement to remedy or replace that provision.
- 1.12.3 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 any other aboriginal people and that treaty or land claims agreement adversely affects Maa-nulth First Nation Section 35 Rights as set out in this Agreement, Canada or British Columbia, or both, as the case may be, will provide the applicable Maa-nulth First Nation with additional or replacement rights or other appropriate remedies.
- 1.12.4 At the request of the applicable Maa-nulth First Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies contemplated by 1.12.3.
- 1.12.5 If the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies as contemplated by 1.12.4, the provision of those additional or replacement rights or remedies will be determined in accordance with Stage Three of Chapter 25 Dispute Resolution.

**1.13.0 PERIODIC REVIEW**

- 1.13.1 The Parties recognize and acknowledge that this Agreement provides a foundation for an ongoing relationship among the Parties and commit to conducting a periodic review of this Agreement in accordance with 1.13.2 through 1.13.8.
- 1.13.2 Sixty days before each Periodic Review Date, each Party will provide the other Parties with notice if it wishes to discuss a matter contemplated by 1.13.3 and if none of the Parties provide notice the Parties will forego engaging in a review for that Review Period.
- 1.13.3 The purpose of the periodic review is to provide an opportunity for the Parties to meet and discuss:
- a. the practicability of the harmonization of each Maa-nulth First Nation legal and administrative systems, including law-making authorities that are being exercised by the applicable Maa-nulth First Nation Government, in accordance with this Agreement, with those of British Columbia and Canada;
  - b. the practicability of processes established by the Parties in accordance with this Agreement; and
  - c. other matters in respect of the implementation of the provisions of this agreement as the Parties may agree in writing.
- 1.13.4 Unless the Parties otherwise agree, the discussions contemplated by 1.13.3 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period, and within 60 days of the end of that discussion each Party will provide the other Parties with its response on any matter discussed during that Review Period.
- 1.13.5 The periodic review contemplated by 1.13.0 and all discussions and information relating to the matters of the periodic review are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done in respect of a periodic review, including the discussions or the responses provided by the Parties, except for the amendments made in accordance with 1.13.7, creates any legally binding rights or obligations.
- 1.13.6 Except for the Parties' commitment to meet and provide responses as described in 1.13.4, neither the periodic review process contemplated by 1.13.0, nor the decisions and actions of the Parties relating in any way to the periodic review process are:
- a. subject to the process described in Chapter 25 Dispute Resolution; or
  - b. reviewable by a court or in any other forum.

1.13.7 For greater certainty, none of the Parties is required to agree to amend this Agreement or any agreement contemplated by this Agreement as a result of the periodic review contemplated by 1.13.0. Where the Parties agree to amend this Agreement, any such amendment will be made in accordance with 1.14.0. Where the Parties agree to amend an agreement contemplated by this Agreement it will be amended in accordance with its terms.

1.13.8 Each of the Parties is responsible for its own costs in relation to the periodic review process.

#### **1.14.0 AMENDMENT PROVISIONS**

1.14.1 Except for any provision of this Agreement that provides that an amendment requires the consent of only the Maa-nulth First Nations and either Canada or British Columbia, all amendments to this Agreement require the consent of all Parties to the Agreement.

1.14.2 Canada will provide consent to an amendment to this Agreement by order of the Governor-in-Council.

1.14.3 British Columbia will provide consent to an amendment to this Agreement by resolution of the Legislative Assembly of British Columbia.

1.14.4 If federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia will recommend to Parliament or the Legislature, as the case may be, that the required legislation be enacted.

1.14.5 The consent of each Maa-nulth First Nation is required for an amendment to this Agreement. Each Maa-nulth First Nation will provide consent to such amendment by a special resolution of its Maa-nulth First Nation Government.

1.14.6 A special resolution, for the purpose of 1.14.5, means a resolution passed by the legislative branch of a Maa-nulth First Nation Government by at least two thirds of its members and will be the same resolution for each Maa-nulth First Nation Government.

1.14.7 Each Maa-nulth First Nation will provide a certified copy of the special resolution to each of Canada and British Columbia and each of Canada and British Columbia is entitled to rely on that resolution as conclusive evidence of compliance with 1.14.5.

1.14.8 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 provides its consent.

- 1.14.9 Notwithstanding 1.14.1 to 1.14.8, if:
- a. this Agreement provides:
    - i. that any of the Parties 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 a Schedule or an Appendix; and
    - ii. that if the Parties are unable to reach agreement, the matter will be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution; and
  - b. those Parties have negotiated an agreement or the matter is determined by arbitration,
- this Agreement is deemed to be amended on the date that agreement or arbitrator's decision takes effect, as the case may be.
- 1.14.10 Notwithstanding 1.14.1 to 1.14.8, if this Agreement provides that a provision of this Agreement is amended upon the happening of an event, this Agreement is deemed to be amended on the happening of that event.
- 1.14.11 In respect of amendments contemplated by 1.14.9 and 1.14.10, the applicable Parties will:
- a. provide notice to the other Parties of any agreement reached or arbitrator's decision contemplated by 1.14.9 or the happening of an event referred to in 1.14.10; and
  - b. agree on the wording or form of the deemed amendment.
- 1.14.12 In the case of an arbitrator's decision contemplated by 1.14.9, if the Parties are unable to agree, the wording or form of the deemed amendment will be finally determined by the arbitrator.
- 1.14.13 Amendments to this Agreement will be published in the Canada Gazette, the British Columbia Gazette and each Maa-nulth First Nation's registry of laws, contemplated by 13.5.0.
- 1.14.14 Before the Parties sign this Agreement, the chief negotiator on behalf of Canada, the chief negotiator on behalf of British Columbia and the lead negotiator of the Maa-nulth First Nations may agree to minor amendments to this Agreement.

**1.15.0 INTERPRETATION**

- 1.15.1 Except where this Agreement provides “notwithstanding any other provision of this Agreement”, a provision of this Chapter prevails to the extent of an inconsistency or Conflict with any other provision of this Agreement.
- 1.15.2 No agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by this Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by this Agreement, is:
- a. part of this Agreement; or
  - b. a treaty or land claims agreement, or recognizes or affirms aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 1.15.3 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 is deemed to be a reference to Canada.
- 1.15.4 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 is deemed to be a reference to British Columbia.
- 1.15.5 The provisions of this Agreement are not presumed to be interpreted in favour of any Party.
- 1.15.6 Nothing in this Agreement will be construed as an admission or recognition by Canada or British Columbia as to the nature, scope or location of any aboriginal rights, including aboriginal title, of any Maa-nulth First Nation before the Effective Date.

- 1.15.7 In this Agreement, unless otherwise expressly provided for or unless otherwise clear from the context:
- a. a reference to a statute or a regulation includes every amendment to it, every regulation made under that statute, any law enacted in substitution for it or in replacement of it;
  - b. the use of the singular includes the plural, and the use of the plural includes the singular;
  - c. “or” is used in its inclusive sense, meaning A or B, or both A and B;
  - d. “and” is used in its joint sense, meaning A and B, but not either alone;
  - e. a reference in a Chapter to a “Schedule” means a Schedule of that Chapter;
  - f. where applicable, a reference to an “Appendix” includes the authoritative version of a map or plan as set out in the Atlas;
  - g. “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;
  - h. “may” is to be construed as permissive, but the use of the words “may not” is to be construed as disempowering;
  - i. “including” means “including, but not limited to”;
  - j. 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;
  - k. where a word is defined in this Agreement or described in 1.15.7, other parts of speech and grammatical forms of the same word have corresponding meanings;
  - l. a reference to a heading number or subheading number is a reference to the paragraphs under that heading or subheading, as applicable;
  - m. “harvest” includes an attempt to harvest; and
  - n. “provincial” refers to the province of British Columbia.
- 1.15.8 This Agreement has been made in English and French, and both versions of this Agreement are equally authoritative, in accordance with the *Official Languages Act*.



- 1.15.9 Notwithstanding 1.1.2, this Agreement is not binding on territories or provinces other than British Columbia on matters within their jurisdiction without their consent.
- 1.15.10 For greater certainty, nothing in this Agreement is intended to affect any aboriginal rights that the Maa-nulth First Nations may have in a foreign state.

#### **1.16.0 CONSULTATION**

- 1.16.1 Neither Canada nor British Columbia has any obligation to consult with any Maa-nulth First Nation except:
- a. as provided for in this Agreement;
  - b. as may be provided for in federal or provincial legislation;
  - c. as may be provided for in an agreement with a Maa-nulth First Nation other than this Agreement; and
  - d. as may be required at common law in relation to an infringement of a Maa-nulth First Nation Section 35 Right.
- 1.16.2 Nothing in this Agreement, nor any action or authority taken, exercised or carried out by Canada or British Columbia in accordance with this Agreement is, or will be interpreted to be, an infringement of a Maa-nulth First Nation Section 35 Right.

#### **1.17.0 INFORMATION AND PRIVACY**

- 1.17.1 For the purposes of federal and provincial access to information and privacy legislation, information that a Maa-nulth First Nation Government provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
- 1.17.2 If a Maa-nulth First Nation 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 that Maa-nulth First Nation Government information that is only available to a particular province or particular provinces or that is not available to any provinces or that is not available to any province.
- 1.17.3 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 in accordance with any applicable legislation, including federal and provincial access to information and privacy.

1.17.4 Canada or British Columbia may provide information to a Maa-nulth First Nation Government in confidence if that Maa-nulth First Nation Government has made a law or the applicable Maa-nulth First Nation 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.

1.17.5 Notwithstanding any other provision of this Agreement:

- a. Canada and British Columbia are not required to disclose any information that they are required to or authorized to withhold under any Federal Law or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
- 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.

#### **1.18.0 OBLIGATION TO NEGOTIATE**

1.18.1 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.

1.18.2 Except as provided in 1.12.5, whenever this Agreement provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as described in Chapter 25 Dispute Resolution, but the Parties, or any of them, are not obliged to proceed to Stage Three of Chapter 25 Dispute Resolution unless, in a particular case, they are required to do so under 25.9.1.

#### **1.19.0 ENTIRE AGREEMENT**

1.19.1 This Agreement is the entire agreement among the Parties in respect of the subject matter of this Agreement and, except as described in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.

1.19.2 The Schedules and Appendices to this Agreement including, for greater certainty, the authoritative version of the maps and plans set out in the Atlas, form part of this Agreement.

**1.20.0 NO IMPLIED WAIVER**

- 1.20.1 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.
- 1.20.2 No written waiver of a provision of this Agreement, or performance by a Party of an obligation under this Agreement, or of default by a Party of an obligation under this Agreement, is a waiver of any other provision, obligation or subsequent default.

**1.21.0 ASSIGNMENT**

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

**1.22.0 ENUREMENT**

- 1.22.1 This Agreement enures to the benefit of and is binding upon the Parties and their respective permitted assigns.

**1.23.0 NOTICE**

- 1.23.1 In 1.23.2 to 1.23.6, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.
- 1.23.2 Unless otherwise described in this Agreement, a communication between or among the Parties under this Agreement will be in writing and will be:
- a. delivered personally or by courier;
  - b. transmitted by fax; or
  - c. mailed by prepaid registered post.
- 1.23.3 A communication is 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.
- 1.23.4 In addition to the provisions of 1.23.2 and 1.23.3, the Parties may agree to give, make or deliver a communication by means other than those provided in 1.23.2.
- 1.23.5 The Parties will provide to each other addresses for delivery of communications under this Agreement and will deliver a communication to the address provided by each Party.
- 1.23.6 If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered to, 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, Ontario  
K1A 0A6  
Fax Number: (819) 953-4941

For: **British Columbia**  
Attention: Minister of Aboriginal Relations and Reconciliation  
Room 310, Parliament Buildings  
PO Box 9052 Stn Prov Govt  
Victoria, British Columbia  
V8W 9E2  
Fax Number: (250) 356-6595

For: **Huu-ay-aht First Nations**  
Attention: Chief Councillor  
Box 70  
Bamfield, British Columbia  
V0R 1B0  
Fax Number: (250) 728-1222

For: **Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations**  
Attention: Chief Councillor  
General Delivery  
Kyuquot, British Columbia  
V0P 1J0  
Fax Number: (250) 332-5210

For: **Toquaht Nation**  
Attention: Chief Councillor  
Box 759  
1316 Pine Street  
Ucluelet, British Columbia  
V0R 3A0  
Fax Number: (250) 726-4403

For: **Uchucklesaht Tribe**  
Attention: Chief Councillor  
Box 1118  
Port Alberni, British Columbia  
V9Y 7L9  
Fax Number: (250) 724-1806

For: **Ucluelet First Nation**  
Attention: Chief Councillor  
Box 699  
Ucluelet, British Columbia  
V0R 3A0  
Fax Number: (250) 726-7552



## CHAPTER 2 LANDS

### 2.1.0 GENERAL

2.1.1 On the Effective Date, Maa-nulth First Nation Lands consist of the following:

- a. for Huu-ay-aht First Nations:
  - i. 1,077 hectares, more or less, of Former Indian Reserves, identified for illustrative purposes in Appendix B-1, Part 1 as “Former Indian Reserves of Huu-ay-aht First Nations”, and legally described in Appendix B-1, Part 1(a); and
  - ii. 7,181 hectares, more or less, of additional lands, identified for illustrative purposes in Appendix B-1, Part 2 as “Additional Lands”, and described as “Subject Lands” in Appendix B-1, Part 2(a);
- b. for Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations:
  - i. 379 hectares, more or less, of Former Indian Reserves, identified for illustrative purposes in Appendix B-2, Part 1 as “Former Indian Reserves of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations”, and legally described in Appendix B-2, Part 1(a); and
  - ii. 5,920 hectares, more or less, of additional lands, identified for illustrative purposes in Appendix B-2, Part 2 as “Additional Lands”, and described as “Subject Lands” in Appendix B-2, Part 2(a);
- c. for Toquaht Nation:
  - i. 196 hectares, more or less, of Former Indian Reserves, identified for illustrative purposes in Appendix B-3, Part 1 as “Former Indian Reserves of Toquaht Nation”, and legally described in Appendix B-3, Part 1(a); and
  - ii. 1,293 hectares, more or less, of additional lands, identified for illustrative purposes in Appendix B-3, Part 2 as “Additional Lands”, and described as “Subject Lands” in Appendix B-3, Part 2(a);

- d. for Uchucklesaht Tribe:
    - i. 233 hectares, more or less, of Former Indian Reserves, identified for illustrative purposes in Appendix B-4, Part 1 as “Former Indian Reserves of Uchucklesaht Tribe”, and legally described in Appendix B-4, Part 1(a); and
    - ii. 2,834 hectares, more or less, of additional lands, identified for illustrative purposes in Appendix B-4, Part 2 as “Additional Lands”, and described as “Subject Lands” in Appendix B-4, Part 2(a); and
  - e. for Ucluelet First Nation:
    - i. 199 hectares, more or less, of Former Indian Reserves, identified for illustrative purposes in Appendix B-5, Part 1 as “Former Indian Reserves of Ucluelet First Nation”, and legally described in Appendix B-5, Part 1(a);
    - ii. 5,147 hectares, more or less, of additional lands, identified for illustrative purposes in Appendix B-5, Part 2 as “Additional Lands”, and described as “Subject Lands” in Appendix B-5, Part 2(a); and
    - iii. 92 hectares, more or less, of lands acquired by Canada and British Columbia, identified for illustrative purposes in Appendix B-5, Part 3, and legally described in Appendix B-5, Part 3(a).
- 2.1.2 On the Effective Date, an indefeasible title to each parcel of Maa-nulth First Nation Lands listed in Part 3 of Appendices B-2 to B-4 and Part 4 of Appendix B-5 will be registered in the name of the applicable Maa-nulth First Nation under the *Land Title Act* and the *Land Title Act* will apply to such parcels in accordance with this Agreement.

### **Grassy Island**

- 2.1.3 The Grassy Island Indian Reserve 17, legally described as Grassy Island IR17, DL 221, Nootka District, Plan BC516, is not included in the Maa-nulth First Nation Lands of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations.
- 2.1.4 Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations releases to Canada all of the rights and Interests that Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations and its members ever had or now have or may have in the future in Grassy Island Indian Reserve 17, and acknowledges that, on the Effective Date, Grassy Island Indian Reserve 17 is no longer set apart for the use and benefit of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations.



2.1.5 In consideration of 2.1.3 and the release described in 2.1.4, Canada will pay to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations the sum of \$200,000, which amount is included in the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations Capital Transfer Payment Plan, and other good valuable consideration, and Grassy Island Indian Reserve 17 is no longer set apart for the use and benefit of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.

2.1.6 Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations acknowledges that nothing in this Agreement is intended to affect any Interest that Ehattesaht First Nation has in Grassy Island Indian Reserve 17.

## **2.2.0 OTHER MAA-NULTH FIRST NATION LANDS**

2.2.1 On the Effective Date, Ucluelet First Nation owns as Other Maa-nulth First Nation Lands the estate in fee simple in those lands identified as "Subject Lands" for illustrative purposes in Appendix C-1, Part 1 and legally described in Appendix C-1, Part 2.

2.2.2 Ucluelet First Nation's ownership of the lands referred to in 2.2.1 is:

- a. subject to the Interests listed in Appendix C-1, Part 3; and
- b. does not include Subsurface Resources.

## **2.3.0 OWNERSHIP OF MAA-NULTH FIRST NATION LANDS**

2.3.1 On the Effective Date, each Maa-nulth First Nation owns the estate in fee simple in its Maa-nulth First Nation Lands and such estate is not subject to any condition, proviso, restriction, exception or reservation under the *Land Act*.

2.3.2 A Maa-nulth First Nation may, in accordance with this Agreement, its Maa-nulth First Nation Constitution and Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government, Dispose of Interests in its Maa-nulth First Nation Lands without the consent of Canada or British Columbia.

2.3.3 Except as provided in 2.11.10 and 2.12.16, or with the consent of Canada and British Columbia in accordance with 2.3.8, a parcel of Maa-nulth First Nation Lands does not cease to be Maa-nulth First Nation Lands as a result of the Disposition of an Interest in such parcel.

2.3.4 If an estate in fee simple in a parcel of Maa-nulth First Nation Lands is acquired through an agreement between the applicable Maa-nulth First Nation and a federal department or agency, those lands are no longer Maa-nulth First Nation Lands and Appendix B is deemed to be amended accordingly.

- 2.3.5 A Maa-nulth First Nation may not transfer the estate in fee simple in a parcel of its Maa-nulth First Nation Lands until indefeasible title to that parcel of land has been registered in accordance with Chapter 3 Land Title.
- 2.3.6 If a Maa-nulth First Nation transfers the estate in fee simple in a parcel of its Maa-nulth First Nation Lands, expropriation by a Federal Expropriating Authority of those lands may occur in accordance with Federal Law and not subject to 2.12.0, except 2.12.16.
- 2.3.7 If a Maa-nulth First Nation transfers the estate in fee simple in a parcel of its Maa-nulth First Nation Lands to any person other than to a:
  - a. Maa-nulth-aht of that Maa-nulth First Nation;
  - b. Maa-nulth First Nation Corporation of that Maa-nulth First Nation; or
  - c. Maa-nulth First Nation Public Institution of that Maa-nulth First Nation,expropriation by a Provincial Expropriating Authority of such land may occur in accordance with Provincial Law and not subject to 2.11.0, except 2.11.8 and 2.11.10.
- 2.3.8 After the Effective Date, before Disposing of the estate in fee simple in a parcel of its Maa-nulth First Nation Lands, a Maa-nulth First Nation may request the consent of Canada and British Columbia to having such land removed from its Maa-nulth First Nation Lands.
- 2.3.9 In considering whether to consent to the removal of a parcel of land from the Maa-nulth First Nation Lands of a Maa-nulth First Nation in accordance with a request under 2.3.8, Canada and British Columbia may consider:
  - a. necessary jurisdictional, administrative and servicing arrangements;
  - b. the views of any affected Local Government or neighbouring First Nation;
  - c. whether the removal of the land will have an impact on fiscal arrangements negotiated between the applicable Maa-nulth First Nation and Canada or British Columbia;
  - d. whether the removal of the land will have any legal or financial implications for Canada or British Columbia; or
  - e. any other matter that Canada or British Columbia considers relevant.
- 2.3.10 If Canada and British Columbia consent to the removal of a parcel of land from Maa-nulth First Nation Lands in accordance with 2.3.8, such parcel ceases to be Maa-nulth First Nation Lands upon receipt by the applicable Maa-nulth First Nation of notice of the consent of each of Canada and British Columbia and

Appendix B is deemed to be amended to reflect such removal of lands from Maa-nulth First Nation Lands.

- 2.3.11 If, at any time, any Interest in Maa-nulth First Nation Lands finally escheats to the Crown, the Crown will transfer, at no cost and without fee, that Interest to the applicable Maa-nulth First Nation.
- 2.3.12 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 Maa-nulth First Nation Lands.
- 2.3.13 No Interest, reservation or exception of a Maa-nulth First Nation in any parcel of its Maa-nulth First Nation Lands, the indefeasible title to which parcel, under the *Land Title Act*, is not registered in fee simple or subject to an application for registration in fee simple, is subject to attachment, charge, seizure, distress, execution or sale, except:
- a. pursuant to:
    - i. a lien, charge or other encumbrance in favour of Canada or British Columbia; or
    - ii. the terms of a security instrument granted by that Maa-nulth First Nation; or
  - b. if allowed under a Maa-nulth First Nation Law made by the applicable Maa-nulth First Nation Government.

#### **2.4.0 SUBMERGED LANDS**

- 2.4.1 Subject to 2.4.5, Submerged Lands do not form part of Maa-nulth First Nation Lands and nothing in this Agreement affects British Columbia's ownership of Submerged Lands.
- 2.4.2 British Columbia will notify a Maa-nulth First Nation of any proposed Disposition of an Interest in, or use or occupation of, Submerged Lands that are wholly contained within its Maa-nulth First Nation Lands.
- 2.4.3 British Columbia will not, in respect of Submerged Lands that are wholly contained within Maa-nulth First Nation 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 Interest in, or authorize the use or occupation of, Submerged Lands if that Disposition, use or occupation would adversely affect those Maa-nulth First Nation Lands or the applicable Maa-nulth First Nation's interests described in this Agreement,

without the consent of that Maa-nulth First Nation.

2.4.4 2.4.2 and 2.4.3 do not affect the riparian rights of the upland owners of Maa-nulth First Nation Lands adjacent to Submerged Lands.

2.4.5 Submerged Lands which are part of Former Indian Reserves form part of the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.

2.4.6 No transfer of Submerged Lands to a Maa-nulth First Nation in accordance with this Agreement includes the exclusive right to fish.

## **2.5.0 INITIAL SURVEYS**

2.5.1 In those cases where adequate surveys do not already exist, before the Effective Date, or as soon as practicable after the Effective Date having regard to the Survey Protocol, the outer boundaries of those Maa-nulth First Nation Lands described in 2.1.1 will be surveyed by:

- a. Canada in respect of Former Indian Reserves; and
- b. British Columbia in respect of those lands described as "Subject Lands" in Part 2(a) of Appendices B-1 to B-5,

all in accordance with instructions to be issued by the Surveyor General of British Columbia and approved by Canada, British Columbia and the applicable Maa-nulth First Nation for that portion of Maa-nulth First Nation Lands being surveyed and otherwise in accordance with the survey procedure described in Schedule 1.

2.5.2 Canada and British Columbia will, as agreed between them, pay the full cost of the initial surveys approved in accordance with 2.5.1.

2.5.3 Upon the registration in the provincial Crown land registry of the survey plan completed in accordance with 2.5.1, Appendix B and, if applicable, Appendix D are deemed to be amended to reflect any adjustments to the boundaries of the Maa-nulth First Nation Lands as a result of such survey.

**2.6.0 BOUNDARY RESOLUTION**

- 2.6.1 If a Party provides the other affected Parties with a proposal to clarify the location of any part of a boundary of Maa-nulth First Nation Lands, the Parties will follow the survey procedure described in Schedule 1.
- 2.6.2 Unless the affected Parties otherwise agree, the cost as between such Parties of any field survey undertaken in accordance with 2.6.1 to clarify the location of a part of a boundary of Maa-nulth First Nation 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.
- 2.6.3 If the Parties affected by a proposal to clarify the location of any part of a boundary of Maa-nulth First Nation Lands in accordance with 2.6.1 do not agree on whether or at whose cost to undertake the proposed boundary clarification, any such Party may refer the matter to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 2.6.4 If the clarification of a boundary of any part of Maa-nulth First Nation Lands in accordance with 2.6.1 results in the adjustment of a boundary of Maa-nulth First Nation Lands, then upon the registration in the provincial Crown land registry of the survey plan completed in accordance with 2.6.1, Appendix B and, if applicable, Appendix D are deemed to be amended to reflect any such adjustment to the boundaries of Maa-nulth First Nation Lands.

**2.7.0 INTERESTS ON MAA-NULTH FIRST NATION LANDS**

- 2.7.1 On the Effective Date, title to Maa-nulth First Nation Lands is free and clear of all Interests, except as listed in:
- a. Appendices E-1 to E-5 in respect of replacement Interests;
  - b. Appendices E-7 to E-9 in respect of Interests on Former Indian Reserves;
  - c. Appendices E-11 to E-15 in respect of Interests that continue after the Effective Date under their existing terms and conditions; and
  - d. Appendices E-16 to E-20 in respect of existing foreshore Interests requiring upland owner consents.

- 2.7.2 Subject to 2.7.1, every Interest that, before the Effective Date, encumbered or applied to Maa-nulth First Nation Lands ceases to exist.
- 2.7.3 On the Effective Date, each Maa-nulth First Nation will grant or issue Interests to those persons who are named in Appendices E-1 to E-5, E-7 to E-9 and E-16 to E-20 relating to its Maa-nulth First Nation Lands.
- 2.7.4 On the Effective Date, each Maa-nulth First Nation will, in relation to its Maa-nulth First Nation Lands, execute documents granting or issuing to each person named in Appendix E-1 to E-5, Parts 2 and 3 of E-7, Part 1 of E-8, Part 2 of E-9 and E-16 to E-20 that person's Interest as described in that Appendix.
- 2.7.5 On the Effective Date, the applicable Maa-nulth First Nation will issue to each individual named in Part 1 of Appendices E-7 and E-9 a form of tenure for the parcel of Maa-nulth First Nation Lands ascribed to that individual and described in Part 1 of Appendices E-7 and E-9.
- 2.7.6 An individual to whom a Maa-nulth First Nation issues a form of tenure in accordance with 2.7.5 has substantially the same right to possess the described parcel of Maa-nulth First Nation Lands as the individual had as the holder of the certificate of possession under the *Indian Act* immediately before the Effective Date, modified to reflect the law-making authority of the applicable Maa-nulth First Nation Government over such lands and ownership of such lands by the applicable Maa-nulth First Nation in accordance with this Agreement.
- 2.7.7 A document executed in accordance with 2.7.4 for an Interest listed in:
- a. Appendices E-1 to E-5 will be in the applicable form described in Appendix E-6 or Part 2 of Appendix E-10;
  - b. Part 2 of Appendices E-7 and E-9 and Part 1 of Appendix E-8 will be in the applicable form described in Part 2 of Appendix E-10;
  - c. Part 3 of Appendix E-7 will be in the applicable form described in Part 1 of Appendix E-10; and
  - d. Appendices E-16 to E-20 will be in the applicable form described in Appendix E-21,

and in all cases will include any modifications agreed upon in writing before the Effective Date by the applicable Maa-nulth Indian Band and the person entitled to the Interest.

- 2.7.8 A document referred to in 2.7.4 and 2.7.5 is deemed to be:
- a. delivered by the applicable Maa-nulth First Nation on the Effective Date; and
  - b. executed and delivered by the applicable person named in Appendix E on the Effective Date.
- 2.7.9 Each Maa-nulth First Nation will physically deliver the applicable document:
- a. to the applicable person named in Appendix E; or
  - b. to any other person who, before the Effective Date, was identified to that Maa-nulth First Nation by Canada or British Columbia, and the Appendix is deemed to be amended on the Effective Date by substituting the name of the applicable Interest holder listed in Appendix E with the name of the person identified in the notice.
- 2.7.10 If, following the Effective Date, Canada or British Columbia notifies a Maa-nulth First Nation that an Interest granted in accordance with 2.7.3:
- a. is in the name of a person who was not entitled to the Interest on the Effective Date; or
  - b. contains a clerical error or a wrong description of a material fact,
- the appropriate Parties will take reasonable measures to rectify the error.
- 2.7.11 Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by a Maa-nulth First Nation under this Agreement is legally binding and enforceable notwithstanding that Maa-nulth First Nation Lands to which the right of way relates are not subject to the *Land Title Act*.
- 2.7.12 The Interests listed in Appendices E-11 to E-15 are retained by the persons who hold those Interests on the Effective Date in accordance with the existing terms and conditions of the Interest on the Effective Date, modified where appropriate to reflect ownership of the land by the applicable Maa-nulth First Nation and Provincial Law. If such an Interest is not renewed or replaced when it expires in accordance with its terms or Provincial Law, that Interest ceases to exist.
- 2.7.13 If, after the Effective Date, BC Hydro or Telus is requested by Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations or Uchucklesaht Tribe, as the case may be, to construct facilities for the provision of electrical or telecommunications services on their respective Maa-nulth First Nations Lands, Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations or Uchucklesaht Tribe, as the case may be, will grant or issue to BC Hydro and Telus an Interest for such facilities on terms substantially the same as those set out in Part 2 of Appendix E-10, “Distribution Right of Way (BC Hydro and Telus)”.

- 2.7.14 If BC Hydro agrees to provide electrical services on the Maa-nulth First Nation Lands of Uchucklesaht Tribe, Uchucklesaht Tribe will grant or issue to BC Hydro an Interest for such facilities on terms substantially the same as those set out in Part 3 of Appendix E-10, "Distribution Right of Way - Uchucklesaht Tribe (BC Hydro)".
- 2.7.15 If BC Hydro determines that it will construct hydro transmission facilities on the Maa-nulth First Nation Lands of Toquaht Nation in the area approximately identified as the "Right of Way Area" in Part 3 of Appendix E-10 "Transmission Right of Way - Toquaht Nation (BC Hydro)", or any portion thereof, Toquaht Nation will grant or issue to BC Hydro an Interest for such facilities substantially the same as set out in Part 3 of Appendix E-10 "Transmission Right of Way - Toquaht Nation (BC Hydro)".
- 2.7.16 If BC Hydro determines that it will construct hydro transmission facilities on the Maa-nulth First Nation Lands of Ucluelet First Nation in the area approximately identified as the "Right of Way Area" in Part 3 of Appendix E-10 "Transmission Right of Way - Ucluelet First Nation (BC Hydro)", or any portion thereof, Ucluelet First Nation will grant or issue to BC Hydro an Interest for such facilities substantially the same as set out in Part 3 of Appendix E-10 "Transmission Right of Way - Ucluelet First Nation (BC Hydro)".

## **2.8.0 INDEMNITY AND CONFIRMATION**

- 2.8.1 British Columbia will indemnify and forever save harmless each Maa-nulth First Nation from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that the Maa-nulth First 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 E of the name of a person who, immediately before the Effective Date, had an Interest in the Maa-nulth First Nation Lands of that Maa-nulth First Nation that had been granted by British Columbia; or
  - b. the incorrect naming of a person in Appendix E as a person entitled to an Interest where another person was actually entitled, immediately before the Effective Date, to the Interest in the Maa-nulth First Nation Lands of that Maa-nulth First Nation that had been granted by British Columbia.



- 2.8.2 For greater certainty, a Maa-nulth First Nation does not release Canada from any damages, losses, liability or costs that Canada may otherwise be liable for before the Effective Date in relation to:
- a. the omission in Appendix E of the name of an individual who, immediately before the Effective Date, had an Interest in or certificate of possession in respect of a Former Indian Reserve of the applicable Maa-nulth First Nation; or
  - b. the incorrect naming of an individual in Appendix E as an individual entitled to an Interest or certificate of possession where another individual was actually entitled, immediately before the Effective Date, to the Interest or the certificate of possession in respect of a Former Indian Reserve of the applicable Maa-nulth First Nation that had been granted by Canada.

## **2.9.0 SITE REMEDIATION ON MAA-NULTH FIRST NATION LANDS**

- 2.9.1 If, after the Effective Date, a Maa-nulth First Nation decides to develop a site described as “Subject Lands” in Appendix B-3, Part 4, it will provide notice of such development to British Columbia.
- 2.9.2 After receiving notice in accordance with 2.9.1, British Columbia will inspect the applicable site and if it is determined that such site is a Contaminated Site, British Columbia will undertake or cause to be undertaken appropriate remediation of the site in accordance with the *Environmental Management Act* and 2.9.3.
- 2.9.3 In determining whether a site referred to in 2.9.1 is a Contaminated Site and in determining the extent of the appropriate remediation of such site, the use of that site is deemed to be the use described in Schedule 2.
- 2.9.4 British Columbia or any person undertaking the inspection or remediation of a site in accordance with 2.9.2, will provide the applicable Maa-nulth First Nation with:
- a. notice before commencing any inspection or remediation; and
  - b. the opportunity to observe any inspection or remediation.
- 2.9.5 Nothing in this Agreement limits the ability of British Columbia to recover the costs incurred in inspecting and remediating a site referred to in 2.9.1 from any third party determined to be a Responsible Person in respect of the Contamination of any such site.
- 2.9.6 British Columbia is not liable in respect of the Contamination of any site referred to in 2.9.1 which occurs after the Effective Date.

2.9.7 The transfer of Former Federal Lands to a Maa-nulth First Nation in accordance with this Agreement does not, in and of itself, result in British Columbia being determined to be a Responsible Person in respect of any potential Contamination of any Former Federal Lands.

2.9.8 British Columbia is not required to prepare and provide a Site Profile for any lands transferred to a Maa-nulth First Nation in accordance with this Agreement.

## **2.10.0 ADDITIONS TO MAA-NULTH FIRST NATION LANDS**

### **General**

2.10.1 A Maa-nulth First Nation may request that Canada and British Columbia consent to a parcel of land being added to its Maa-nulth First Nation Lands.

2.10.2 British Columbia will consider a request by a Maa-nulth First Nation to add a parcel of land to its Maa-nulth First Nation Lands, made in accordance with 2.10.1, if:

- a. the estate in fee simple in that parcel of land is owned by that Maa-nulth First Nation or a Maa-nulth First Nation Corporation, Maa-nulth First Nation Public Institution or Maa-nulth-aht of that Maa-nulth First Nation, and such owner provides written consent;
- b. the parcel of land is within the Maa-nulth First Nation Area of that Maa-nulth First Nation;
- c. the parcel of land is in an area outside of the boundaries of a Municipality or, if within the boundaries of a Municipality, that Municipality provides written consent;
- d. the parcel of land becoming Maa-nulth First Nation Lands will not unreasonably restrict the expansion or development of a Municipality or the community of Bamfield; and
- e. British Columbia will not be required to assume financial or other obligations associated with that parcel of land.

2.10.3 In addition to the matters described in 2.10.2, in determining whether to consent to a request received in accordance with 2.10.1, British Columbia may consider whether the parcel of land is contiguous to the existing Maa-nulth First Nation Lands of that Maa-nulth First Nation and such other matters as British Columbia considers relevant.

- 2.10.4 Canada will consider a request by a Maa-nulth First Nation to add a parcel of land to its Maa-nulth First Nation Lands, made in accordance with 2.10.1, if:
- a. the estate in fee simple in that parcel of land is owned by that Maa-nulth First Nation;
  - b. the parcel of land is located within the Maa-nulth First Nation Area of that Maa-nulth First Nation;
  - c. the parcel of land is in an area free from overlap with another First Nation or, if within an area of overlap with another First Nation, that other First Nation provides written consent; and
  - d. Canada will not be required to assume financial or other obligations associated with that parcel of land.
- 2.10.5 In addition to the matters described in 2.10.4, in determining whether to consent to a request received in accordance with 2.10.1, Canada may take into account such other matters as it considers relevant.
- 2.10.6 If British Columbia and Canada consent to a request made in accordance with 2.10.1, each will provide notice of its consent to the other Parties and that parcel of land will become Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation upon receipt by that Maa-nulth First Nation of notice of the consent of each of British Columbia and Canada and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nations Lands.

#### **Acquisition and Addition of Other Provincial Crown Lands**

- 2.10.7 If a Maa-nulth First Nation wishes to acquire any parcel of land, or any portion thereof, described as “Subject Lands” in Appendix F-1 for that Maa-nulth First Nation it will, within 15 years of the Effective Date, provide notice to British Columbia.
- 2.10.8 Within 180 days of receiving a notice in accordance with 2.10.7, British Columbia will prepare and forward to the applicable Maa-nulth First Nation an offer to sell the parcel of land, setting out:
- a. a description of the parcel of land;
  - b. the purchase price of the parcel of land which, unless British Columbia and the applicable Maa-nulth First Nation otherwise agree, will be equal to the fair market value of the parcel of land;
  - c. any Interests which the parcel of land will be subject to; and
  - d. any other terms and conditions applicable to the purchase and sale of the parcel of land.

- 2.10.9 An offer to sell provincial Crown land made in accordance with paragraph 2.10.8 will be open for acceptance by the applicable Maa-nulth First Nation for a period of one year from the receipt of such offer, after which that Maa-nulth First Nation is deemed to have refused the offer to sell and the offer to sell expires.
- 2.10.10 If a Maa-nulth First Nation acquires provincial Crown land in accordance with 2.10.7 to 2.10.13, such land will be added to its Maa-nulth First Nation Lands upon that Maa-nulth First Nation becoming the owner of such lands and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nation Lands. If Toquaht Nation acquires any land described as “Subject Lands” in Plan 1 of Part 3 of Appendix F-1 in accordance with 2.10.7 to 2.10.13 adjacent to the Provincial Road shown as “Potential Crown Corridor” in Plan 1 of Part 3 of Appendix F-1, that portion of such Provincial Road subsequently bounded by the Maa-nulth First Nation Lands of Toquaht Nation is included within the lands identified as Crown Corridors and Appendix D is deemed to be amended to reflect such addition.
- 2.10.11 If British Columbia and the applicable Maa-nulth First Nation disagree on the fair market value of any provincial Crown land identified in Appendix F-1 offered for sale in accordance with 2.10.8, that Maa-nulth First Nation may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 2.10.12 Subject to 2.10.13, British Columbia will continue to manage and use the provincial Crown lands identified in Appendix F-1 at its sole discretion and, for greater certainty, nothing in this Agreement limits the ability of British Columbia to authorize the use or Disposition of Forest Resources or Subsurface Resources on any lands identified in Appendix F-1 before the acquisition of the estate in fee simple in such lands by a Maa-nulth First Nation.
- 2.10.13 For a period of 15 years after the Effective Date, British Columbia will not, in respect of the provincial Crown lands described as “Subject Lands” in Appendix F-1:
- a. grant an estate in fee simple; or
  - b. grant a lease that, with any rights of renewal, may exceed 15 years,
- without the consent of the applicable Maa-nulth First Nation.

**Malksope**

- 2.10.14 At the request of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, within 15 years of the Effective Date, British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will negotiate and attempt to reach agreement that will:
- a. transfer the parcel of land described in Appendix B-2, Part 1, Plan BC141, known formerly as the Malksope Indian Reserve, from Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations to British Columbia; and
  - b. transfer provincial Crown land of equivalent fair market value, to be identified from "Site 1" or "Site 2" of Plan 2 in Part 2 of Appendix F-1, from British Columbia to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.
- 2.10.15 If British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations are unable to reach agreement on the fair market value of the lands identified in 2.10.14, either Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations or British Columbia may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 2.10.16 Upon the transfer of the lands contemplated in 2.10.14, Appendix B is deemed to be amended to reflect such addition to and removal from the Maa-nulth First Nation Lands of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.

**Acquisition and Addition of Excluded Provincial Crown Lands**

- 2.10.17 If, at any time, British Columbia determines that a parcel of provincial Crown land, or any portion thereof, described as "Subject Lands" in Appendix F-2, is surplus to provincial requirements, British Columbia will offer to sell such parcel by providing notice to the applicable Maa-nulth First Nation setting out:
- a. a description of the parcel of land;
  - b. the purchase price of the parcel of land which, unless British Columbia and the applicable Maa-nulth First Nation otherwise agree, will be equal to the fair market value of the parcel of land;
  - c. any Interests which the parcel of land will be subject to; and
  - d. any other terms and conditions applicable to the purchase and sale of the land.
- 2.10.18 An offer to sell provincial Crown land made in accordance with paragraph 2.10.17 will be open for acceptance by the applicable Maa-nulth First Nation for a period of one year from the receipt of such offer, after which that Maa-nulth First Nation is deemed to have refused the offer to sell, the offer to sell expires and British Columbia may otherwise Dispose of such parcel of land.

- 2.10.19 If a Maa-nulth First Nation acquires provincial Crown land in accordance with 2.10.17 to 2.10.22, such land will be added to its Maa-nulth First Nation Lands upon that Maa-nulth First Nation becoming the owner of such lands and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nation Lands.
- 2.10.20 For greater certainty, in determining which provincial Crown lands described as “Subject Lands” in Appendix F-2 are surplus to provincial requirements, British Columbia may identify requirements for Crown Corridors and exclude such corridors from those lands and Appendix D is deemed to be amended to reflect such Crown Corridors.
- 2.10.21 If British Columbia and the applicable Maa-nulth First Nation disagree on the fair market value of any provincial Crown land identified in Appendix F-2 offered for sale in accordance with 2.10.17, that Maa-nulth First Nation may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 2.10.22 British Columbia will continue to manage and use the provincial Crown lands identified in Appendix F-2 at its sole discretion and, for greater certainty, nothing in this Agreement will limit the ability of British Columbia to authorize the use or Disposition of Forest Resources or Subsurface Resources on any lands identified in Appendix F-2 before the acquisition of an estate in fee simple in such lands by a Maa-nulth First Nation.

#### **Acquisition and Addition of Fee Simple Lands**

- 2.10.23 If, within 15 years after the Effective Date, a Maa-nulth First Nation referred to in Appendix F-3 or F-4, or a Maa-nulth First Nation Corporation, Maa-nulth First Nation Public Institution or Maa-nulth-aht of that Maa-nulth First Nation, becomes the registered owner of the estate in fee simple in a parcel of land, or any portion thereof, identified for illustrative purposes as “Subject Lands” and legally described in the applicable Part of Appendix F-3 or F-4, and:
- a. where the owner of such parcel is a Maa-nulth First Nation Corporation, Maa-nulth First Nation Public Institution or Maa-nulth-aht of that Maa-nulth First Nation, such owner provides written consent; and
  - b. the registered holder of any financial charge or encumbrance provides written consent,

then that Maa-nulth First Nation may provide notice to British Columbia and Canada, that the parcel of land is to be added to the Maa-nulth First Nation Lands of that Maa-nulth First Nation.

- 2.10.24 After receipt of a notice in accordance with 2.10.23, British Columbia and Canada will each, upon satisfactory review of the consents referred to in 2.10.23a. and b., provide confirmation to the other Parties that such parcel of land is to be added to the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 2.10.25 If British Columbia and Canada provide confirmation in accordance with 2.10.24, that parcel of land will become Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation upon receipt by that Maa-nulth First Nation of such confirmation and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nation Lands.

### **Acquisition of Fee Simple Lands through Treaty Related Measures**

- 2.10.26 Before the Effective Date, British Columbia, Canada and a Maa-nulth First Nation may, through a treaty related measure, agree to the acquisition by Canada or British Columbia of the estate in fee simple in a parcel of land described as “Subject Lands” in Appendix F-3 for that Maa-nulth First Nation.
- 2.10.27 If British Columbia or Canada acquires a parcel of land for a Maa-nulth First Nation before the Effective Date in accordance with 2.10.26 and the Capital Transfer Payment Plan is adjusted in accordance with 16.1.2, on the Effective Date that parcel of land becomes Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nation Lands.

### **Continuation of Interests**

- 2.10.28 A parcel of land added to Maa-nulth First Nation Lands in accordance with 2.10.0 continues to be subject to any Interest existing immediately before the parcel of land becomes Maa-nulth First Nation Lands, unless the holder of such Interest otherwise agrees in writing.
- 2.10.29 A Maa-nulth First Nation will own the Subsurface Resources on lands that are added to its Maa-nulth First Nation Lands in accordance with 2.10.0 if:
- a. the estate in fee simple includes ownership of the Subsurface Resources; or
  - b. British Columbia and the applicable Maa-nulth First Nation agree.
- 2.10.30 For greater certainty, a Maa-nulth First Nation’s ownership of Subsurface Resources is subject to any Subsurface Tenures existing immediately before the acquisition of the parcel of land by the Maa-nulth First Nation and those Subsurface Tenures continue to be administered by British Columbia in accordance with 4.2.0.

- 2.10.31 The total amount of the estate in fee simple identified in 2.11.8 for a Maa-nulth First Nation increases by five percent of the area, in hectares, of the estate in fee simple added in accordance with 2.10.0 to the Maa-nulth First Nation Lands of that Maa-nulth First Nation.

**Other Matters**

- 2.10.32 Unless otherwise agreed by the applicable Maa-nulth First Nation, Canada and British Columbia, neither Canada nor British Columbia is responsible for the costs associated with the survey, registration and transfer of any parcel of land acquired by that Maa-nulth First Nation following the Effective Date.
- 2.10.33 For greater certainty, Canada is not required to assume financial or other obligations in respect of any addition to Maa-nulth First Nation Lands made in accordance with 2.10.0.

**2.11.0 PROVINCIAL EXPROPRIATION OF MAA-NULTH FIRST NATION LANDS**

**General**

- 2.11.1 British Columbia acknowledges as a general principle that where it is reasonable to use other means, expropriation of Maa-nulth First Nation Lands will be avoided.
- 2.11.2 Subject to this Chapter, any Interest in Maa-nulth First Nation Lands may be expropriated by and for the use of a Provincial Expropriating Authority in accordance with provincial legislation and with the consent of the Lieutenant Governor-in-Council.
- 2.11.3 Where a Provincial Expropriating Authority has determined that it must use Maa-nulth First Nation Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire the necessary Interest through agreement with the applicable Maa-nulth First Nation.
- 2.11.4 Any expropriation of Maa-nulth First Nation Lands by a Provincial Expropriating Authority will be of the smallest Interest necessary and for the shortest time required.
- 2.11.5 The value of the expropriated Interest will be based on the criteria used to determine compensation under the provincial *Expropriation Act*.
- 2.11.6 If the Provincial Expropriating Authority and the applicable Maa-nulth First Nation disagree on the value of the expropriated Interest, either that Maa-nulth First Nation or British Columbia may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to



proceed through Stages One and Two. A Disagreement regarding the value of the expropriated Interest will not delay the expropriation.

- 2.11.7 The applicable Maa-nulth First Nation will be responsible for providing compensation to the holder of any Interest in its Maa-nulth First Nation Lands that may be expropriated by a Provincial Expropriating Authority in accordance with 2.11.0, and the holder of any such expropriated Interest has no recourse against British Columbia or the Provincial Expropriating Authority for compensation.

### **Expropriation of an Estate in Fee Simple**

- 2.11.8 Subject to 2.10.31 and 2.11.30, the total amount of the estate in fee simple in Maa-nulth First Nation Lands that may be expropriated by Provincial Expropriating Authorities is as follows:
- a. from the Maa-nulth First Nation Lands of Huu-ay-aht First Nations, 410 hectares;
  - b. from the Maa-nulth First Nation Lands of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations, 315 hectares;
  - c. from the Maa-nulth First Nation Lands of Toquaht Nation, 70 hectares;
  - d. from the Maa-nulth First Nation Lands of Uchucklesaht Tribe, 150 hectares; and
  - e. from the Maa-nulth First Nation Lands of Ucluelet First Nation, 270 hectares.
- 2.11.9 Notwithstanding 2.11.4, where an estate in fee simple in Maa-nulth First Nation Lands is expropriated by a Provincial Expropriating Authority, the expropriation will include the estate in fee simple in Subsurface Resources unless British Columbia and the applicable Maa-nulth First Nation otherwise agree.
- 2.11.10 Where a Provincial Expropriating Authority expropriates the estate in fee simple in Maa-nulth First Nation Lands, those lands are no longer Maa-nulth First Nation Lands and Appendix B is deemed to be amended to reflect such removal of lands from Maa-nulth First Nation Lands.
- 2.11.11 Where an estate in fee simple in Maa-nulth First Nation Lands is expropriated by a Provincial Expropriating Authority other than a provincial ministry or Crown corporation, that Provincial Expropriating Authority will provide that Maa-nulth First Nation with compensation under the provincial *Expropriation Act*.

**Provincial Crown Land as Replacement Lands**

- 2.11.12 Where an estate in fee simple in Maa-nulth First Nation Lands is expropriated by a provincial ministry or Crown corporation, that provincial ministry or Crown corporation will make reasonable efforts to identify, acquire and offer provincial Crown land of comparable value within the applicable Maa-nulth First Nation Area to the Maa-nulth First Nation as compensation.
- 2.11.13 If a Maa-nulth First Nation accepts an offer of provincial Crown land as proposed replacement lands made in accordance with 2.11.12, British Columbia will transfer the proposed replacement lands to the applicable Maa-nulth First Nation.
- 2.11.14 A Maa-nulth First Nation may request that British Columbia consent to a parcel of replacement lands transferred to that Maa-nulth First Nation in accordance with 2.11.13 being added to its Maa-nulth First Nation Lands.
- 2.11.15 British Columbia will consent to proposed replacement lands, transferred to the applicable Maa-nulth First Nation in accordance with 2.11.13, being added to the Maa-nulth First Nation Lands of that Maa-nulth First Nation if:
- a. the proposed replacement lands are within the Maa-nulth First Nation Area of that Maa-nulth First Nation;
  - b. the proposed replacement lands are in an area outside of the boundaries of a Municipality or, if within the boundaries of a Municipality, that Municipality provides written consent;
  - c. the proposed replacement lands becoming Maa-nulth First Nation Land will not unreasonably restrict the expansion or development of a Municipality or the community of Bamfield; and
  - d. British Columbia will not be required to assume financial or other obligations associated with that parcel of land.
- 2.11.16 Unless otherwise agreed by British Columbia and the applicable Maa-nulth First Nation, if British Columbia owns the Subsurface Resources under any proposed replacement lands which are transferred to that Maa-nulth First Nation in connection with an expropriation by a Provincial Expropriating Authority of its Maa-nulth First Nation Lands, British Columbia will transfer the estate in fee simple in such Subsurface Resources to that Maa-nulth First Nation.
- 2.11.17 Proposed replacement lands, including any Subsurface Resources, transferred to a Maa-nulth First Nation in accordance with 2.11.13 continue to be subject to any Interest existing immediately before the transfer to the Maa-nulth First Nation, unless the holder of such Interest otherwise agrees in writing.
- 2.11.18 For greater certainty, a Maa-nulth First Nation's ownership of Subsurface Resources is subject to any Subsurface Tenures existing immediately before the

acquisition of the parcel of land by the Maa-nulth First Nation and those Subsurface Tenures continue to be administered by British Columbia in accordance with 4.2.0.

- 2.11.19 If there is no agreement between the provincial ministry or Crown corporation and a Maa-nulth First Nation on the provision of land as compensation in accordance with 2.11.12 and 2.11.13, the provincial ministry or Crown corporation will provide that Maa-nulth First Nation with other compensation under the provincial *Expropriation Act*.
- 2.11.20 If British Columbia has consented to replacement lands becoming Maa-nulth First Nation Lands in accordance with a request under 2.11.14, and Canada has consented to such replacement lands becoming Maa-nulth First Nation Lands in accordance with a request under 2.10.1 then upon receipt by that Maa-nulth First Nation of notice of the consent of each of British Columbia and Canada, Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nations Lands.

#### **Other Replacement Lands**

- 2.11.21 A Maa-nulth First Nation that has received monetary compensation from a Provincial Expropriating Authority in connection with the expropriation of an estate in fee simple in its Maa-nulth First Nation Lands may, within two years after the date of such expropriation, request that British Columbia consent to the proposed replacement lands which that Maa-nulth First Nation intends to acquire being added to its Maa-nulth First Nation Lands.
- 2.11.22 If a Maa-nulth First Nation intends to acquire lands and make a request in accordance with 2.11.21, it will make reasonable efforts to acquire an estate in fee simple in lands that are contiguous to its existing Maa-nulth First Nation Lands.
- 2.11.23 A request by a Maa-nulth First Nation to British Columbia in accordance with 2.11.21 will include:
- a. the legal description and parcel identification description (PID) of the proposed replacement lands;
  - b. a detailed map that identifies the location of the proposed replacement lands;
  - c. the size of the replacement lands parcel in hectares; and
  - d. a description of any Interests that are registered against the title to the proposed replacement lands.

- 2.11.24 Within 60 days of receiving a request prepared in accordance with 2.11.23, British Columbia will review the proposed replacement lands and if:
- a. the proposed replacement lands are within the Maa-nulth First Nation Area of the applicable Maa-nulth First Nation;
  - b. the proposed replacement lands are in an area outside of the boundaries of a Municipality or, if within the boundaries of a Municipality, that Municipality provides written consent;
  - c. the proposed replacement lands becoming Maa-nulth First Nation Lands will not unreasonably restrict the expansion or development of a Municipality or the community of Bamfield;
  - d. the proposed replacement lands, and any replacement land transferred to the Maa-nulth First Nation by the Provincial Expropriating Authority as partial compensation for the expropriation of Maa-nulth First Nation Lands, are of equivalent size and comparable value to the Maa-nulth First Nation Lands which were expropriated; and
  - e. British Columbia will not be required to assume financial or other obligations associated with that parcel of land,

British Columbia will consent to the proposed replacement lands being added to Maa-nulth First Nation Lands upon the Maa-nulth First Nation becoming the registered owner of the estate in fee simple in those replacement lands.

- 2.11.25 If British Columbia has consented to replacement lands becoming Maa-nulth First Nation Lands in accordance with a request under 2.11.21 and Canada has consented to such replacement lands becoming Maa-nulth First Nation Lands in accordance with a request under 2.10.1, then, upon receipt by that Maa-nulth First Nation of notice of the consent of each of British Columbia and Canada, Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nations Lands.
- 2.11.26 Unless otherwise agreed by British Columbia and the applicable Maa-nulth First Nation, if British Columbia owns the Subsurface Resources under any proposed replacement lands which become Maa-nulth First Nation Lands of that Maa-nulth First Nation in accordance with 2.11.25, British Columbia will transfer the estate in fee simple in such Subsurface Resources to that Maa-nulth First Nation.
- 2.11.27 Proposed replacement lands, including any Subsurface Resources, transferred to a Maa-nulth First Nation in accordance with 2.11.26 continue to be subject to any Interest existing immediately before the transfer to the Maa-nulth First Nation, unless otherwise agreed by the Maa-nulth First Nation and British Columbia.

- 2.11.28 For greater certainty, a Maa-nulth First Nation's ownership of Subsurface Resources is subject to any Subsurface Tenures existing immediately before the acquisition of the parcel of land by the Maa-nulth First Nation and those Subsurface Tenures continue to be administered by British Columbia in accordance with 4.2.0.

#### **Return of an Expropriated Interest**

- 2.11.29 Where an expropriated Interest in Maa-nulth First Nation Lands is no longer required by the Provincial Expropriating Authority for the purpose for which it was expropriated, the Interest will be returned to the applicable Maa-nulth First Nation subject to terms to be negotiated at the time of the return of the expropriated Interest.
- 2.11.30 Where an estate in fee simple is returned to a Maa-nulth First Nation in accordance with 2.11.29, the total amount of the estate in fee simple, in hectares, in Maa-nulth First Nation Lands of that Maa-nulth First Nation described in 2.11.8 that may be expropriated will be increased by the total amount of the estate in fee simple, in hectares, returned to that Maa-nulth First Nation.
- 2.11.31 If the Provincial Expropriating Authority and the affected Maa-nulth First Nation disagree as to whether the Interest is no longer required for the purpose for which it was expropriated, either that Maa-nulth First Nation or British Columbia may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution.
- 2.11.32 Where an estate in fee simple in a parcel is returned to a Maa-nulth First Nation in accordance with 2.11.29, such parcel of land will be added to its Maa-nulth First Nations Lands upon that Maa-nulth First Nation becoming the owner of such lands and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nations Lands, unless that Maa-nulth First Nation provides notice to British Columbia and Canada before the date of such transfer that such lands are not to be added to its Maa-nulth First Nation Lands.
- 2.11.33 The Provincial Expropriating Authority, without the consent of the Lieutenant Governor-in-Council, may decide that the expropriated Interest in land is no longer required and may determine the Disposition of any improvements.

#### **Expropriation of Other Interests**

- 2.11.34 Where less than the estate in fee simple in a parcel of Maa-nulth First Nation Lands is expropriated by a Provincial Expropriating Authority:
- a. the parcel of land retains its status as Maa-nulth First Nation Lands;

- b. the parcel of land remains subject to Maa-nulth First Nation Law except to the extent that the Maa-nulth First Nation Law is inconsistent with the use of land for which the expropriation took place; and
- c. the Maa-nulth First Nation may continue to use and occupy the parcel of land, except to the extent that such use or occupation interferes with the use of land for which the expropriation took place.

## **2.12.0 FEDERAL EXPROPRIATION OF MAA-NULTH FIRST NATION LANDS**

- 2.12.1 Canada and the Maa-nulth First Nations acknowledge that as a general principle, and where reasonable and practical, Maa-nulth First Nation Lands are not subject to expropriation, except as described in this Chapter, due to the Maa-nulth First Nations' interest in maintaining the size and integrity of Maa-nulth First Nation Lands.
- 2.12.2 Notwithstanding 2.12.1, any Interest in Maa-nulth First Nation Lands may be expropriated by a Federal Expropriating Authority in accordance with federal legislation and with the consent of the Governor-in-Council.
- 2.12.3 The Governor-in-Council may consent to an expropriation of an Interest in Maa-nulth First Nation Lands only if the expropriation is justifiable and necessary for a public purpose.
- 2.12.4 For the purposes of 2.12.3, an expropriation is justifiable where the Governor-in-Council is satisfied that the following requirements have been met:
  - a. there is no other reasonably feasible alternative land to acquire that is not Maa-nulth First Nation Lands;
  - b. reasonable efforts have been made by the Federal Expropriating Authority to acquire the Interest in Maa-nulth First Nation Lands through agreement with the applicable Maa-nulth First Nation;
  - c. the most limited Interest in Maa-nulth First Nation Lands necessary for the purpose for which the Interest in land is sought is to be expropriated; and
  - d. information relevant to the expropriation, other than documents that would be protected from disclosure under federal legislation, has been provided to the applicable Maa-nulth First Nation.
- 2.12.5 Before the Governor-in-Council issues an order consenting to the expropriation of an Interest in Maa-nulth First Nation Lands, the Federal Expropriating Authority will provide to the applicable Maa-nulth First Nation, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements of 2.12.4.

- 2.12.6 If a Maa-nulth First Nation objects to a proposed expropriation of an Interest in its Maa-nulth First Nation Lands, it may, within 60 days after the report has been provided to that Maa-nulth First Nation in accordance with 2.12.5, while at the same time providing notice in writing to the Federal Expropriating Authority, refer the matter to a neutral evaluator, in accordance with Appendix Y-5, for a review of the steps taken to satisfy the requirements described in 2.12.4.
- 2.12.7 The Federal Expropriating Authority may not seek Governor-in-Council consent to the expropriation of an Interest in Maa-nulth First Nation Lands before the expiration of the period referred to in 2.12.6 or, if the applicable Maa-nulth First Nation has referred the matter to a neutral evaluator in accordance with 2.12.6, before the neutral evaluator has delivered an opinion on the matter, such opinion to be rendered within 60 days of the referral being made or within such additional time as the Federal Expropriating Authority and that Maa-nulth First Nation may agree.
- 2.12.8 For greater certainty, the opinion of the neutral evaluator contemplated by 2.12.7:
- a. is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and the Maa-nulth First Nation in court or in any other forum;
  - b. is not admissible in any legal proceedings, unless otherwise required by law; and
  - c. is not binding on the Governor-in-Council under 2.12.3 and 2.12.4.
- 2.12.9 Where an estate in fee simple in a parcel of Maa-nulth First Nation Lands is expropriated by a Federal Expropriating Authority, the Federal Expropriating Authority will make reasonable efforts to identify replacement lands within the Maa-nulth First Nation Area of the applicable Maa-nulth First Nation, being either federal Crown land or land available on a willing-seller willing-buyer basis, of equivalent or greater size and comparable value and, if acceptable to that Maa-nulth First Nation, to acquire and offer the replacement lands to that Maa-nulth First Nation as partial or full compensation for the expropriation. If the Federal Expropriating Authority and that Maa-nulth First Nation are unable to agree on the provision of replacement lands as compensation, the Federal Expropriating Authority will provide that Maa-nulth First Nation with other compensation in accordance with this Agreement.
- 2.12.10 Subject to 2.12.13, if the replacement lands identified by the Federal Expropriating Authority would result in the total size of the applicable Maa-nulth First Nation's Maa-nulth First Nation Lands being less than at the Effective Date and that Maa-nulth First Nation does not agree that the replacement lands are of comparable value to the Interest in Maa-nulth First Nation Lands being expropriated, that Maa-nulth First Nation may refer the issue of whether the replacement lands are of comparable value to the Interest in Maa-nulth First

Nation Lands being expropriated to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution.

- 2.12.11 The total value of compensation for an Interest in Maa-nulth First Nation Lands expropriated by a Federal Expropriating Authority in accordance with this Chapter will be determined by taking into account the following factors:
- a. the fair market value of the expropriated Interest or of the Maa-nulth First Nation Lands in which an Interest has been expropriated;
  - b. the replacement value of any improvement to the Maa-nulth First Nation Lands in which an Interest has been expropriated;
  - c. any expenses or losses resulting from the disturbance directly attributable to the expropriation;
  - d. any reduction in the value of any Interest in Maa-nulth First Nation Lands that is not expropriated which directly relates to the expropriation;
  - e. any adverse effect on any cultural or other special value of Maa-nulth First Nation Lands in which an Interest has been expropriated to the applicable Maa-nulth First Nation, provided that the cultural or other special value is only applied to an Interest in Maa-nulth First Nation Lands recognized in law and held by that Maa-nulth First Nation, and provided that there will be no increase in the total value of compensation on account of any Aboriginal rights, title or interest; and
  - f. the value of any special economic advantage arising out of or incidental to the occupation or use of Maa-nulth First Nation Lands to the extent that the value is not otherwise compensated.
- 2.12.12 Subject to 2.12.13, if the total value of compensation cannot be agreed upon between the Federal Expropriating Authority and the Maa-nulth First Nation, or where there is Disagreement on whether the combination of replacement lands and cash is equal to the total value of compensation, either Canada acting on behalf of the Federal Expropriating Authority or that Maa-nulth First Nation may refer the issue of the total value of compensation for dispute resolution in accordance with Chapter 25 Dispute Resolution.
- 2.12.13 A dispute on the valuation of replacement lands under 2.12.10, or on the total value of compensation under 2.12.12, or on the terms and conditions of the return of land under 2.12.27, will not delay the expropriation.
- 2.12.14 Any claim or encumbrance in respect of the Interest expropriated may only be made or discharged against the amount of compensation payable in accordance with Federal Law.



- 2.12.15 Interest on compensation is payable from the date the expropriation takes effect, at the prejudgment interest rate payable in accordance with federal legislation.
- 2.12.16 Where a Federal Expropriating Authority expropriates an estate in fee simple in a parcel of Maa-nulth First Nation Lands, that parcel is no longer Maa-nulth First Nation Lands.
- 2.12.17 Where a Federal Expropriating Authority expropriates less than an estate in fee simple in a parcel of Maa-nulth First Nation Lands:
  - a. the parcel of land retains its status as Maa-nulth First Nation Lands;
  - b. the parcel of land remains subject to Maa-nulth First Nation Law that is otherwise applicable, except to the extent that such laws are inconsistent with the use of the parcel of land for which the expropriation took place; and
  - c. the applicable Maa-nulth First Nation may continue to use and occupy the parcel of land, except to the extent the use or occupation is inconsistent with the expropriation in the view of the Federal Expropriating Authority.
- 2.12.18 A Maa-nulth First Nation may request that Canada and British Columbia consent to a parcel of replacement lands transferred to that Maa-nulth First Nation in accordance with 2.12.0 being added to its Maa-nulth First Nation Lands.
- 2.12.19 Canada will consent to replacement lands transferred by a Federal Expropriating Authority to the applicable Maa-nulth First Nation as part of the compensation in accordance with 2.12.9 being added to Maa-nulth First Nation Lands if:
  - a. the replacement lands are located within the Maa-nulth First Nation Area of that Maa-nulth First Nation;
  - b. the replacement lands are located in an area free from overlap with another First Nation or, if within an area of overlap with another First Nation, that First Nation provides written consent; and
  - c. Canada will not be required to assume financial or other obligations associated with the replacement lands.
- 2.12.20 British Columbia will consent to replacement lands transferred by a Federal Expropriating Authority to the Maa-nulth First Nation in accordance with 2.12.9 being added to the Maa-nulth First Nation Lands of that Maa-nulth First Nation if:
  - a. the replacement lands are within the Maa-nulth First Nation Area of that Maa-nulth First Nation;

- b. the replacement lands are in an area outside of the boundaries of a Municipality or, if within the boundaries of a Municipality, that Municipality provides written consent;
  - c. the replacement lands becoming Maa-nulth First Nation Lands will not unreasonably restrict the expansion or development of a Municipality or the community of Bamfield; and
  - d. British Columbia will not be required to assume financial or other obligations associated with that parcel of land.
- 2.12.21 If British Columbia and Canada have consented to replacement lands becoming Maa-nulth First Nation Lands in accordance with a request under 2.12.18, then upon receipt by that Maa-nulth First Nation of notice of the consent of each of British Columbia and Canada, Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nations Lands.
- 2.12.22 Replacement lands, including any Subsurface Resources, transferred to a Maa-nulth First Nation by a Federal Expropriating Authority in accordance with 2.12.9 continue to be subject to any Interests that exist in such lands immediately before the transfer to the Maa-nulth First Nation.
- 2.12.23 Where an Interest in a parcel of Maa-nulth First Nation Lands expropriated by a Federal Expropriating Authority is no longer required for the purpose for which it was expropriated, the federal department, agency or person who holds the expropriated Interest will ensure that the Interest in land is returned to the applicable Maa-nulth First Nation on the terms and conditions negotiated in accordance with 2.12.26.
- 2.12.24 Subject to confirmation by the applicable Maa-nulth First Nation to Canada that it will not be asking Canada to assume financial or other obligations in relation to an estate in fee simple in a parcel of land returned to that Maa-nulth First Nation in accordance with 2.12.23, such parcel of land will be added to its Maa-nulth First Nations Lands upon the Maa-nulth First Nation becoming the owner of such land and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nations Lands, unless the Maa-nulth First Nation provides notice to British Columbia and Canada before the date of such transfer that such land is not to be added to its Maa-nulth First Nation Lands.
- 2.12.25 The federal department, agency or person for whom the land was expropriated may decide, without the consent of the Governor-in-Council, that the expropriated Interest in land is no longer required and may determine the Disposition of any improvements made to the land in a manner consistent with the agreement made in accordance with 2.12.26.
- 2.12.26 The terms and conditions of the return of an expropriated Interest in Maa-nulth First Nation Lands, including requirements relating to financial considerations based on market value principles and the condition of the land to be returned,

including the process for resolving any disputes around the implementation of these terms and conditions, will be negotiated by the applicable Maa-nulth First Nation and the Federal Expropriating Authority at the time of the expropriation.

- 2.12.27 Where the terms and conditions of the return of an expropriated Interest in Maa-nulth First Nation Lands cannot be agreed upon by the applicable Maa-nulth First Nation and the Federal Expropriating Authority at the time of the expropriation, either that Maa-nulth First Nation or Canada, acting on behalf of the Federal Expropriating Authority, may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution.
- 2.12.28 Except as otherwise provided in 2.12.0, no conflict or dispute between the Parties respecting the interpretation, application or implementation of 2.12.0 will be considered a Disagreement for the purpose of Chapter 25 Dispute Resolution.
- 2.12.29 For greater certainty, and subject to 2.12.30, except to the extent that the provisions of this Chapter modify the application of federal legislation relating to an expropriation of Maa-nulth First Nation Lands, all federal legislation relating to expropriation applies to an expropriation of Maa-nulth First Nation Lands under this Chapter.
- 2.12.30 For greater certainty, this Agreement prevails to the extent of an inconsistency with the federal *Expropriation Act* or other federal legislation relating to an expropriation of Maa-nulth First Nation Lands.
- 2.12.31 For greater certainty, nothing in this Agreement affects or limits the application of the federal *Emergencies Act* and the federal *Emergencies Act* will continue to apply in all aspects to Maa-nulth First Nation Lands.

## **2.13.0 COMMERCIAL RECREATION TENURE**

- 2.13.1 The Minister will, on or before the Effective Date, designate up to 12 hectares of provincial Crown land for each Maa-nulth First Nation under section 17(1) of the *Land Act*, for a term of at least 15 years from the date of such designation, for the purpose of providing the applicable Maa-nulth First Nation an opportunity to apply for a commercial recreation tenure in accordance with Provincial Law.
- 2.13.2 Notwithstanding section 17(3) of the *Land Act*, the Minister will not amend or cancel a designation referred to in 2.13.1 without the consent of the applicable Maa-nulth First Nation unless the designated lands are required by British Columbia for regional infrastructure and British Columbia has made reasonable attempts to secure other provincial Crown lands that would not impact the designated lands.
- 2.13.3 Subject to 2.13.2, British Columbia will continue to manage and use provincial Crown lands designated in accordance with 2.13.1.

- 2.13.4 Each Maa-nulth First Nation may apply to British Columbia for a commercial recreation tenure in respect of the lands within its Maa-nulth First Nation Area that are designated for that Maa-nulth First Nation in accordance with 2.13.1.

**SCHEDULE 1 – SURVEY PROCEDURE**

1. If any Party undertakes a field survey of a part of a Maa-nulth First Nation Lands boundary in accordance with either 2.5.0 or 2.6.0, the Party instigating or in charge of the survey will provide notice to the Surveyor General of British Columbia of the intention to undertake such field survey.
2. Following receipt of a notice in accordance with paragraph 1, the Surveyor General of British Columbia will prepare survey instructions and, once approved by the affected Parties, issue survey instructions to the Land Surveyor designated to undertake the survey.
3. The Land Surveyor will provide copies of any survey returns, prepared in accordance with a designation contemplated by paragraph 2, to the Surveyor General of British Columbia and to the affected Parties.
4. Within 30 days after a Party receives a copy of a survey return from the Land Surveyor, the Party will provide, in writing, to the Surveyor General of British Columbia, its approval of the survey return or any recommendation of that Party.
5. If the affected Parties approve a survey return, the Surveyor General of British Columbia will request the Land Surveyor to submit the final plan to the Surveyor General of British Columbia for confirmation.
6. If the affected Parties recommend the issuance of further instructions to the Land Surveyor, the Surveyor General of British Columbia will compile any recommendations received in respect of the survey return and submit the further instructions to the affected Parties for approval.
7. Upon receipt of the approval referred to in paragraph 6, the Surveyor General of British Columbia will then issue further instructions to the Land Surveyor to amend the survey return.
8. Upon receipt of the amended survey return, the Surveyor General of British Columbia will seek written consent to the amendments from the affected Parties.
9. Upon receipt of the consent contemplated by paragraph 8, the Surveyor General of British Columbia will request the Land Surveyor to submit the final plan to the Surveyor General of British Columbia for confirmation.
10. Upon confirmation of the final plan, the Surveyor General of British Columbia will file one copy of the plan in the Crown land registry and will forward one copy to each of the affected Parties.

**SCHEDULE 2 – CONTAMINATED SITE REMEDIATION**

<b>SITE DESCRIPTION</b>	<b>DEEMED USE OF SITE AS PER <i>ENVIRONMENTAL MANAGEMENT ACT</i></b>
The Maa-nulth First Nation Lands of Toquaht Nation described as “Subject Lands” in Appendix B-3, Part 4, Plan 1.	industrial land use
The Maa-nulth First Nation Lands of Toquaht Nation described as “Subject Lands” in Appendix B-3, Part 4, Plan 2.	commercial land use

## CHAPTER 3 LAND TITLE

### 3.1.0 FEDERAL TITLE REGISTRATION

- 3.1.1 Federal Law relating to land title and land registry does not apply to any parcel of Maa-nulth First Nation Lands other than Federal Law in respect of the survey and recording of estates that are owned by Canada and are in Maa-nulth First Nation Lands.

### 3.2.0 LAND TITLES SYSTEM

- 3.2.1 The *Land Title Act* does not apply to a parcel of Maa-nulth First Nation Lands for which:

- a. no application has been made under that Act, in accordance with this Agreement, for the registration of an indefeasible title;
- b. an application has been made under that 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 that Act has been cancelled under that Act, in accordance with this Agreement.

- 3.2.2 If a Maa-nulth First Nation applies under the *Land Title Act*, in accordance with this Agreement, for the registration of an indefeasible title to a parcel of its Maa-nulth First Nation Lands, then, effective from the time of application and until the application has been withdrawn or rejected, or the indefeasible title for that parcel is cancelled, the *Land Title Act* applies to the parcel.

- 3.2.3 Notwithstanding 13.14.2, if the *Land Title Act* applies to a parcel of Maa-nulth First Nation Lands, the *Land Title Act* prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.14.1 in respect of that parcel.

### 3.3.0 APPLICATION FOR REGISTRATION OF INDEFEASIBLE TITLE

- 3.3.1 Each Maa-nulth First Nation, but no other person, may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of its Maa-nulth First Nation Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of that Maa-nulth First Nation or on behalf of another person.

**3.4.0 LAND TITLE FEES**

- 3.4.1 If a Maa-nulth First Nation applies for the registration of an indefeasible title to a parcel of its Maa-nulth First Nation Lands for which no indefeasible title has been registered after the Effective Date, and the proposed registered owner of the estate in fee simple is that Maa-nulth First Nation, or a Maa-nulth First Nation Corporation or Maa-nulth First Nation Public Institution of that Maa-nulth First Nation, no land title fees are payable in respect of the application by which the proposed registered owner is to become the registered owner.

**3.5.0 MAA-NULTH FIRST NATION CERTIFICATE**

- 3.5.1 A Maa-nulth First Nation, when applying for the registration of an indefeasible title to a parcel of its Maa-nulth First Nation Lands in accordance with 3.3.1, will provide to the Registrar:
- a. a description or plan of the boundaries of the parcel;
  - b. a certificate of the Maa-nulth First Nation Government of that Maa-nulth First Nation certifying that, on the date of the Maa-nulth First Nation Certificate, the person named as the owner of the estate in fee simple in the Maa-nulth First Nation Certificate is the owner of the estate in fee simple in the parcel, and certifying that the Maa-nulth First Nation Certificate sets out all:
    - i. subsisting conditions, provisos, restrictions, exceptions, and reservations contained in the original or any other conveyance or Disposition from the Maa-nulth First Nation that are in favour of the Maa-nulth First Nation, or that are in favour of another person;
    - ii. estates or Interests; and
    - iii. charges in respect of a debt owed to that Maa-nulth First Nation, to which the estate in fee simple in the parcel is subject; and
  - c. registrable copies of all documents necessary to register all of the items referred to in 3.5.1b.
- 3.5.2 A Maa-nulth First Nation Certificate expires if:
- a. within seven days of the date of the Maa-nulth First Nation Certificate, the Maa-nulth First Nation has not applied for registration of an indefeasible title to the parcel referred to in the Maa-nulth First Nation Certificate; or
  - b. an application in accordance with 3.3.1 has been made but that application has been withdrawn or rejected.



**3.6.0 REGISTRATION OF INDEFEASIBLE TITLE**

3.6.1 If a Maa-nulth First Nation makes an application for the registration of indefeasible title to a parcel of its Maa-nulth First Nation Lands in accordance with 3.3.1, on being satisfied that:

- a. a good, safe holding and marketable title to an estate in fee simple in the parcel has been established by that Maa-nulth First Nation;
- b. the boundaries of the parcel are sufficiently defined by the description or plan provided by that Maa-nulth First Nation;
- c. all of the estates, Interests and other charges described in the Maa-nulth First Nation Certificate are registrable under the *Land Title Act*; and
- d. the Maa-nulth First Nation Certificate has not expired in accordance with 3.5.2,

the Registrar will:

- e. register the indefeasible title to the parcel;
- f. make a notation on the indefeasible title that the parcel is Maa-nulth First Nation Lands of that Maa-nulth First Nation and may be subject to conditions, provisos, restrictions, exceptions and reservations in favour of that Maa-nulth First Nation;
- g. register as charges the estates and Interests described in 3.5.1b.ii. and the other charges described in 3.5.1b.iii; and
- h. provide a copy of the indefeasible title to that Maa-nulth First Nation.

3.6.2 The Registrar is entitled to rely on, and is not required to make any inquiries in respect of, the matters certified in the Maa-nulth First Nation Certificate and a person deprived of an estate, Interest, condition, proviso, restriction, exception or reservation, in or to a parcel of Maa-nulth First Nation Lands as a result of the reliance by the Registrar on a Maa-nulth First Nation Certificate and the issuance by the Registrar of an indefeasible title based on the Maa-nulth First Nation Certificate, has no recourse, at law or in equity, against the Registrar, the Assurance Fund, British Columbia or Canada.

3.6.3 For greater certainty, no title adverse to, or in derogation of, the indefeasible title of the registered owner of a parcel of Maa-nulth First Nation Lands under the *Land Title Act* may be acquired by length of possession and subsection 23(4) of the *Land Title Act* does not apply in respect of Maa-nulth First Nation Lands.

**3.7.0 CANCELLATION OF INDEFEASIBLE TITLE**

3.7.1 Each Maa-nulth First 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 its Maa-nulth First Nation Lands.

3.7.2 Each Maa-nulth First 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 its Maa-nulth First Nation 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.

3.7.3 Upon receiving an application from a Maa-nulth First Nation for cancellation of the registration of an indefeasible title to a parcel of its Maa-nulth First Nation Lands in accordance with 3.7.1 and 3.7.2, and if:

- a. the registered owner of the estate in fee simple in the parcel is that Maa-nulth First Nation, or a Maa-nulth First Nation Corporation of that Maa-nulth First Nation, and that Maa-nulth First Nation Corporation provides written consent; and
- b. the indefeasible title to the parcel is free and clear of all charges, except those in favour of the Maa-nulth First Nation,

the Registrar will cancel the registration of the indefeasible title.

**3.8.0 AMENDMENTS TO *LAND TITLE ACT***

3.8.1 Provincial Settlement Legislation will amend the *Land Title Act*:

- a. to give effect to this Agreement;
- b. so that, under that Act, the position of a Maa-nulth First Nation and its Maa-nulth First Nation Government in relation to its Maa-nulth First Nation Lands is analogous to:
  - i. the provincial Crown and the provincial government in relation to provincial Crown land, or
  - ii. a Municipality and its council, a Regional District and its board or an improvement district and its board of trustees, in relation to lands in a Municipality, Regional District or improvement district, as applicable; and
- c. to provide for the appointment of an approving officer by each Maa-nulth First Nation for its Maa-nulth First Nation Lands.

## CHAPTER 4 SUBSURFACE RESOURCES

### 4.1.0 GENERAL

- 4.1.1 On the Effective Date, each Maa-nulth First Nation owns Subsurface Resources on or under its Maa-nulth First Nation Lands, except for the Subsurface Resources legally described in Appendix G, Part 2 located on or under the Maa-nulth First Nation Lands of Uchucklesaht Tribe identified for illustrative purposes as “Subject Lands” in Appendix G, Part 1.
- 4.1.2 Subject to 4.2.7, each Maa-nulth First Nation, as owner of Subsurface Resources, has the authority to set fees, rents, royalties and other charges, except taxes, for exploration, development, extraction and production of Subsurface Resources owned by that Maa-nulth First Nation.
- 4.1.3 For greater certainty, nothing in this Agreement confers authority on a Maa-nulth First Nation Government to make laws in respect of the exploration for, development, production, use or application of, nuclear energy and atomic energy or the production, possession or use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment and prescribed information.
- 4.1.4 Nothing in this Agreement confers authority on a Maa-nulth First Nation Government to make laws in respect of:
- a. spacing and target areas related to Petroleum and Natural Gas, or conservation or allocation of Petroleum and Natural Gas among parties having interests in the same reservoir; or
  - b. Subsurface Tenures or Tenured Subsurface Resources.
- 4.1.5 Notwithstanding 13.14.2, Federal Law or Provincial Law prevails to the extent of a Conflict with a Maa-nulth First Nation Law relating to Subsurface Resources.

### 4.2.0 TENURED SUBSURFACE RESOURCES

- 4.2.1 For greater certainty, each Maa-nulth First Nation’s ownership of Subsurface Resources described in 4.1.1 is subject to the applicable Subsurface Tenures listed in Appendices E-12, E-13 and E-15.
- 4.2.2 The Subsurface Tenures:
- a. continue, as contemplated in 2.7.1 c., in accordance with Provincial Law and this Agreement; and

- b. are administered by British Columbia in accordance with Provincial Law and this Agreement.
- 4.2.3 Provincial Law applies to the exploration, development, extraction and production of Tenured Subsurface Resources as if the Tenured Subsurface Resources were owned by British Columbia.
- 4.2.4 In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia may grant, as necessary, any related extensions, renewals, continuations or replacements and issue any further rights as the Tenured Subsurface Resources are developed.
- 4.2.5 British Columbia will:
  - a. ensure that any rents or royalties applicable to Tenured Subsurface Resources that British Columbia would have been entitled to receive after the Effective Date if those Tenured Subsurface Resources were owned by British Columbia, and any interest earned on those rents and royalties, will be paid to the applicable Maa-nulth First Nation; and
  - b. retain any fees, charges or other payments for administrative purposes applicable to Subsurface Tenures and Tenured Subsurface Resources under Provincial Law.
- 4.2.6 In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia will notify the applicable Maa-nulth First Nation before changing or eliminating any rents or royalties applicable to the Tenured Subsurface Resources.
- 4.2.7 A Maa-nulth First Nation does not have the authority to establish fees, rents, royalties or other charges in relation to Subsurface Tenures or the exploration, development, extraction or production of Tenured Subsurface Resources.
- 4.2.8 Maa-nulth First Nation Lands are treated as private lands under Provincial Law respecting Subsurface Resources for the purposes of determining access rights and compensation rights associated with any proposed entrance, occupation or use of the surface by holders of Subsurface Tenures. For greater certainty, any disagreements between holders of Subsurface Tenures and owners of Maa-nulth First Nation Lands respecting entrance, occupation or use of an area of Maa-nulth First Nation Lands may be resolved under Provincial Law relating to entrance and compensation disputes involving Subsurface Resources.
- 4.2.9 If a Subsurface Tenure forfeits, is abandoned or surrendered to British Columbia under Provincial Law, the Tenured Subsurface Resources and the Maa-nulth First Nation Lands are no longer subject to that Subsurface Tenure.

## CHAPTER 5 ACCESS

### 5.1.0 MAA-NULTH FIRST NATIONS' RIGHTS AND OBLIGATIONS

5.1.1 Except as modified by this Agreement, each Maa-nulth First Nation has the same rights and obligations in respect of public access to its Maa-nulth First Nation Lands as other owners of estates in fee simple have in respect of public access to their land.

5.1.2 Each Maa-nulth First Nation's liability for public access to its Maa-nulth First Nation Lands, other than Maa-nulth First Nation Private Lands, is comparable to the liability of the provincial Crown for public access to unoccupied provincial Crown lands.

### 5.2.0 DESIGNATION OF MAA-NULTH FIRST NATION PRIVATE LANDS

5.2.1 On the Effective Date, the Maa-nulth First Nation Lands identified for illustrative purposes as "Subject Lands" in Appendix H and legally described in Part 1(a) of the applicable Appendices B-2 to B-5 are designated as Maa-nulth First Nation Private Lands.

5.2.2 After the Effective Date, each Maa-nulth First Nation may designate portions of its Maa-nulth First Nation Lands as Maa-nulth First Nation Private Lands if:

- a. that Maa-nulth First Nation has granted an Interest comparable to an Interest granted by British Columbia on provincial Crown lands that excludes public access; or
- b. the Maa-nulth First Nation Lands are used for commercial, cultural, resource development or other uses that are incompatible with public access.

5.2.3 If a Maa-nulth First Nation intends to designate its Maa-nulth First Nation Lands as Maa-nulth First Nation Private Lands in accordance with 5.2.2, that Maa-nulth First Nation will:

- a. provide reasonable notice to British Columbia, Canada and the public of the proposed designation; and
- b. consider any views advanced by British Columbia, Canada or the public in respect of the proposed designation.

- 5.2.4 If a Maa-nulth First Nation intends to change the locations or boundaries of Maa-nulth First Nation Private Lands, it will:
- a. provide reasonable notice to British Columbia, Canada and the public of the proposed changes; and
  - b. consider any views advanced by British Columbia, Canada or the public in respect of the proposed changes.
- 5.2.5 If the designation of Maa-nulth First Nation Public Lands as Maa-nulth First Nation 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 Law or Provincial Law such as navigable waters or Crown roads, the applicable Maa-nulth First Nation will provide reasonable alternative means of public access to that area or location.
- 5.2.6 Maa-nulth First Nation Lands described as “Subject Lands” in Appendix I may not be designated by the applicable Maa-nulth First Nation as Maa-nulth First Nation Private Lands without the consent of British Columbia.

**Designation and Use of Former Provincial Park Land**

- 5.2.7 Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations acknowledges that the public continues to have an interest in being able to access, for recreational purposes, the Maa-nulth First Nation Public Lands of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations described as “Subject Lands” in Plans 1, 2, 4, 6 and 19 of Appendix B-2, Part 2 (a).
- 5.2.8 Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations will Consult with British Columbia before Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations designates any portion of those lands identified in 5.2.7 as its Maa-nulth First Nation Private Lands.
- 5.2.9 Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations will manage its Maa-nulth First Nation Lands identified in 5.2.7 to:
- a. protect and maintain the biological diversity and natural environments in the area; and
  - b. prohibit commercial logging, mineral activities, hydro power generation, other than local run-of-the-river projects, or any other activity that is inconsistent with the recreational values of the area.

**5.3.0 LAW-MAKING**

- 5.3.1 Each Maa-nulth First Nation Government may make laws regulating public access on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation for the purpose of:
- a. prevention of harvesting or extracting of resources owned by that Maa-nulth First Nation; and
  - b. protection of that Maa-nulth First Nation's Heritage Sites.
- 5.3.2 Maa-nulth First Nation Law under 5.3.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.
- 5.3.3 Each Maa-nulth First Nation Government may make laws regulating public access on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation for the purpose of:
- a. public safety;
  - b. prevention of nuisance or damage, including forest fire prevention; and
  - c. protection of sensitive habitat.
- 5.3.4 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 5.3.3.
- 5.3.5 Each Maa-nulth First Nation Government will Consult with British Columbia and Canada in respect of a Maa-nulth First Nation Law proposed by it that would significantly affect public access on the Maa-nulth First Nation Public Lands of the applicable Maa-nulth First Nation.

**5.4.0 PUBLIC ACCESS ON MAA-NULTH FIRST NATION LANDS**

- 5.4.1 Each Maa-nulth First Nation will allow reasonable public access on its Maa-nulth First Nation Public Lands for temporary recreational uses and temporary non-commercial purposes, including reasonable opportunities for the public to hunt and fish on its Maa-nulth First Nation Public Lands, but public access does not include:
- a. harvesting or extracting resources unless authorized by that Maa-nulth First Nation or as in accordance with this Agreement;
  - b. causing damage to Maa-nulth First Nation Lands or resources on Maa-nulth First Nation Lands;

- c. causing nuisance; or
  - d. interfering with other uses authorized by that Maa-nulth First Nation or interfering with the ability of that Maa-nulth First Nation to authorize uses or Dispose of its Maa-nulth First Nation Lands.
- 5.4.2 For greater certainty, public access contemplated by 5.4.1 will be in accordance with applicable Maa-nulth First Nation Law regulating public access to Maa-nulth First Nation Lands.
- 5.4.3 Each Maa-nulth First Nation will take reasonable measures to notify the public of the terms and conditions respecting public access to its Maa-nulth First Nation Public Lands.
- 5.5.0 CROWN ACCESS TO MAA-NULTH FIRST NATION LANDS**
- 5.5.1 Members of the Canadian Armed Forces, peace officers and agents, employees, contractors, subcontractors and other representatives of Canada, British Columbia and Public Utilities have access, in accordance with Federal Law or Provincial Law, at no cost, to Maa-nulth First Nation Lands in order to:
  - a. enforce laws;
  - b. carry out duties under Federal Law or Provincial Law;
  - c. respond to emergencies;
  - d. deliver programs and services; or
  - e. carry out other specified purposes as described in this Agreement.
- 5.5.2 Any person exercising a right of access in accordance with 5.5.1 will act in accordance with Federal Law or Provincial Law, including the payment of compensation for any damage to Maa-nulth First Nation Lands if required by Federal Law or Provincial Law.
- 5.5.3 Nothing in this Agreement limits the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security on Maa-nulth First Nation Lands, without payment of any fees or other charges to the applicable Maa-nulth First Nation except as provided for under Federal Law.



**5.6.0 MAA-NULTH FIRST NATION ACCESS TO CROWN LANDS**

5.6.1 Each Maa-nulth First Nation's agents, employees, contractors, subcontractors and other representatives have access, in accordance with Federal Law or Provincial Law, at no cost, to provincial Crown lands in order to:

- a. enforce Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government;
- b. carry out duties under Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government;
- c. respond to emergencies;
- d. deliver programs and services; or
- e. carry out other specified purposes as described in this Agreement.

5.6.2 Any person exercising a right of access in accordance with 5.6.1 will act in accordance with Federal Law or Provincial Law, including the payment of compensation for any damage to provincial Crown lands if required by Federal Law or Provincial Law.

5.6.3 Maa-nulth-aht have reasonable access to provincial Crown lands to allow for the exercise of the Maa-nulth First Nation Section 35 Rights of the applicable Maa-nulth First Nation, including use of resources for purposes incidental to the normal exercise of those rights, provided that such access and incidental use of resources are in accordance with Federal Law or Provincial Law and do not interfere with authorized uses or the ability of British Columbia to authorize uses or Dispose of provincial Crown lands.

5.6.4 If an authorized use or Disposition of provincial Crown land would deny Maa-nulth-aht reasonable access to Maa-nulth First Nation Lands, British Columbia will provide Maa-nulth-aht with reasonable alternative means of access to Maa-nulth First Nation Lands.

**5.7.0 ACCESS TO INTERESTS AND ESTATES IN FEE SIMPLE**

5.7.1 The applicable Maa-nulth First Nation will allow reasonable access across its Maa-nulth First Nation Lands, at no cost, to the Interests listed in Appendices E-1 to E-5, E-7 to E-9 and E-16 to E-20, consistent with the terms and conditions of those Interests.

- 5.7.2 If no other reasonable access exists across Crown land, each Maa-nulth First Nation will allow reasonable access across its Maa-nulth First Nation Lands to any Interest located on or beneath lands adjacent or in close proximity to such Maa-nulth First Nation Lands, consistent with the terms and conditions of those Interests.
- 5.7.3 The applicable Maa-nulth First Nation will allow reasonable access at least as favourable as that which exists immediately before the Effective Date across its Maa-nulth First Nation Lands, at no cost, to the lands described in Appendix J or any subdivided portions thereof.
- 5.7.4 If the owner of a parcel of land identified in Appendix K requires a right of access to that parcel other than that access provided in accordance with 5.7.3, the applicable Maa-nulth First Nation will not withhold its consent to that right of access if:
- a. the owner of the parcel offers fair compensation; and
  - b. the owner of the parcel and that Maa-nulth First Nation agree on the terms of access.
- 5.7.5 If no other reasonable access exists across Crown land, each Maa-nulth First Nation will allow reasonable access across its Maa-nulth First Nation Lands to an estate in fee simple located in close proximity to such Maa-nulth First Nation Lands.
- 5.7.6 British Columbia or the applicable Maa-nulth First Nation may refer any Disagreement in respect of 5.7.0 to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 5.8.0 NAVIGABLE WATERS**
- 5.8.1 Nothing in this Agreement affects the public right of navigation.

## **CHAPTER 6 ROLE OF MAA-NULTH FIRST NATIONS WITHIN MAA-NULTH FIRST NATION AREAS**

### **6.1.0 GENERAL**

- 6.1.1 Each Maa-nulth First Nation has a role related to economic activities, governance activities and cultural activities within its Maa-nulth First Nation Area in accordance with the specific provisions of this Agreement identified in this Chapter.

### **6.2.0 ECONOMIC ACTIVITIES**

- 6.2.1 Nothing in this Agreement precludes each Maa-nulth First Nation from participating in or benefiting from provincial benefits-sharing programs in accordance with the general criteria established for those programs from time to time.
- 6.2.2 Nothing in this Agreement precludes each Maa-nulth First Nation from entering into arrangements for economic opportunities with third parties, providing those arrangements are consistent with this Agreement.
- 6.2.3 Resource revenue payments are provided to each Maa-nulth First Nation by Canada and British Columbia in accordance with 17.1.3.
- 6.2.4 Commercial fishing opportunities are provided to the Maa-nulth First Nations through licences issued to the Maa-nulth First Nations in accordance with the Maa-nulth Harvest Agreement negotiated in accordance with 10.2.1.
- 6.2.5 The opportunity to add land to its Maa-nulth First Nation Lands is provided to each Maa-nulth First Nation in accordance with 2.10.0.
- 6.2.6 The opportunity to apply for commercial recreation tenures on provincial Crown land is provided to each Maa-nulth First Nation in accordance with 2.13.0.
- 6.2.7 The opportunity to apply for shellfish aquaculture tenures is provided to each Maa-nulth First Nation in accordance with 10.2.10.

### **6.3.0 GOVERNANCE ACTIVITIES**

- 6.3.1 Nothing in this Agreement precludes any Maa-nulth First Nation from participating in processes or institutions, including processes or institutions that may address matters of shared decision-making, or benefits from future provincial programs, policies or initiatives of general application to First Nations as British Columbia develops a new relationship with First Nations.

- 6.3.2 The opportunity to participate in fisheries related management activities in the Domestic Fishing Area through the Joint Fisheries Committee is provided to the Maa-nulth First Nations in accordance with 10.4.3 and 10.4.8.
- 6.3.3 The opportunity to participate in any regional fisheries committee with respect to an area that includes all or part of the Domestic Fishing Area is provided to the Maa-nulth First Nations in accordance with 10.4.17.
- 6.3.4 The opportunity to participate in any public fisheries management advisory process that encompasses all or a portion of the Domestic Fishing Area is provided to the Maa-nulth First Nations in accordance with 10.4.27.
- 6.3.5 The opportunity to be Consulted on the proposed establishment of a public fisheries management advisory process for the west coast of Vancouver Island is provided to the Maa-nulth First Nations in accordance with 10.4.28.
- 6.3.6 The opportunity to be Consulted by Canada on a process for participants to enter a new emerging commercial fishery off the west coast of Vancouver Island and how the fishery should be allocated among participants is provided to the Maa-nulth First Nations in accordance with 10.2.6.
- 6.3.7 The opportunity to participate in any public Wildlife advisory committee in respect of the Wildlife Harvest Area is provided to each Maa-nulth First Nation in accordance with 11.10.1.
- 6.3.8 The opportunity to negotiate an agreement with British Columbia on a process to evaluate uses and Dispositions of provincial Crown land that may impact a Maa-nulth First Nation's reasonable opportunity to harvest Wildlife is provided to that Maa-nulth First Nation in accordance with 11.1.6.
- 6.3.9 The opportunity to negotiate an agreement with British Columbia on a process to evaluate uses and Dispositions of provincial Crown land that may impact a Maa-nulth First Nation's reasonable opportunity to harvest Migratory Birds is provided to that Maa-nulth First Nation in accordance with 12.1.6.
- 6.3.10 The opportunity to negotiate an agreement with British Columbia on a process to evaluate uses and Dispositions of provincial Crown land that may impact a Maa-nulth First Nation's reasonable opportunity to harvest Fish and Aquatic Plants is provided to that Maa-nulth First Nation in accordance with 10.1.11.
- 6.3.11 The opportunity to be Consulted by Canada and to request negotiation of an agreement regarding certain matters relating to any National Park or National Marine Conservation Area wholly or partially within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 23.10.1 and 23.10.2.

- 6.3.12 The opportunity to participate in any public management planning process with respect to any Provincial Protected Area in its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 24.5.1.
- 6.3.13 The opportunity to be Consulted by British Columbia regarding certain matters relating to the preparation or modification of any management plan for a Provincial Protected Area wholly or partially within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 24.5.6.
- 6.3.14 The opportunity to be Consulted by Canada before the establishment of any National Park or National Marine Conservation Area that is wholly or partially within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 23.9.1.
- 6.3.15 The opportunity to consent or withhold consent to the removal of a part of a National Park or National Marine Conservation Area that is within its Maa-nulth First Nation Area, except where it is a part of Pacific Rim National Park Reserve, is provided to each Maa-nulth First Nation in accordance with 23.9.2.
- 6.3.16 The opportunity to participate in the design and conduct and receive the results of studies in relation to enlarging a National Park or National Marine Conservation Area within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 23.9.3.
- 6.3.17 The opportunity to be Consulted by British Columbia regarding the creation of any new Provincial Protected Area in its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 24.1.3.
- 6.3.18 The opportunity to be involved in an Environmental Assessment in respect of a Federal Project or a Provincial Project located within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 22.2.1 and 22.3.1, respectively.
- 6.3.19 The opportunity to negotiate an agreement with British Columbia that will provide each Maa-nulth First Nation Government with law-making authority in relation to the applicable Foreshore Area is provided to each Maa-nulth First Nation in accordance with 14.5.1.
- 6.3.20 The opportunity to participate in the applicable Regional District Board is provided to each Maa-nulth First Nation in accordance with 14.2.0 and 14.3.0.
- 6.3.21 The ability to make laws in respect of the adoption of Maa-nulth First Nation Children residing in British Columbia is provided to each Maa-nulth First Nation Government in accordance with 13.15.3.
- 6.3.22 The opportunity to negotiate an agreement with British Columbia regarding Child Protection Services for Maa-nulth-aht who reside in British Columbia is provided to each Maa-nulth First Nation in accordance with 13.16.8a.

6.3.23 The opportunity to negotiate an agreement with British Columbia regarding the provision of kindergarten to grade 12 education for its Maa-nulth-aht who reside in British Columbia is provided to each Maa-nulth First Nation in accordance with 13.20.5b.

#### **6.4.0 CULTURAL ACTIVITIES**

6.4.1 The ability to practice the Nuuchah-nulth culture and to use the Nuuchah-nulth language in a manner consistent with this Agreement is provided to Maa-nulth-aht in accordance with the right described in 21.1.1.

6.4.2 The ability to exercise its Maa-nulth First Nation Renewable Resource Harvesting Right in its Renewable Resource Harvesting Area is provided to the applicable Maa-nulth First Nation in accordance with 23.1.1.

6.4.3 The ability to exercise its right to Trade and Barter renewable resources harvested under its Maa-nulth First Nation Renewable Resource Harvesting Right, among themselves or with other aboriginal people of Canada resident in British Columbia, is provided to each Maa-nulth First Nation in accordance with 23.2.1.

6.4.4 The ability to have access to a National Park or National Marine Conservation Area that is wholly or partially within the Maa-nulth First Nation Areas, without a fee being charged is provided to Maa-nulth-aht in accordance with 23.9.4.

6.4.5 The opportunity to provide names for key geographic features in the Maa-nulth First Nation Areas is provided to the Maa-nulth First Nations in accordance with 20.7.0.

6.4.6 The ability to exercise its Maa-nulth First Nation Right to Gather Plants in Provincial Protected Areas wholly or partially within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 24.6.1.

6.4.7 The ability to exercise its right to Trade and Barter Plants, and the boughs, burls and roots of Timber gathered under its Maa-nulth First Nation Right to Gather Plants, among themselves or with other aboriginal people of Canada resident in British Columbia, is provided to each Maa-nulth First Nation in accordance with 24.6.11.

6.4.8 The ability to exercise its Maa-nulth First Nation Fishing Right in its Domestic Fishing Area is provided to each Maa-nulth First Nation in accordance with 10.1.1.

6.4.9 The ability to exercise its right to Trade and Barter Fish and Aquatic Plants harvested under its Maa-nulth First Nation Fishing Right, among themselves or with other aboriginal people of Canada, is provided to each Maa-nulth First Nation in accordance with 10.1.4.

- 6.4.10 The ability to exercise its Maa-nulth First Nation Right to Harvest Wildlife in the Wildlife Harvest Area is provided to each Maa-nulth First Nation in accordance with 11.1.1.
- 6.4.11 The ability to exercise its right to Trade and Barter Wildlife, Wildlife parts, including meats and furs, harvested under its Maa-nulth First Nation Right to Harvest Wildlife, among themselves or with other aboriginal people of Canada resident in British Columbia, is provided to each Maa-nulth First Nation in accordance with 11.12.1.
- 6.4.12 The ability to exercise its Maa-nulth First Nation Right to Harvest Migratory Birds in the Migratory Birds Harvest Area is provided to each Maa-nulth First Nation in accordance with 12.1.1.
- 6.4.13 The ability to exercise its right to Trade and Barter Migratory Birds harvested under its Maa-nulth First Nation Right to Harvest Migratory Birds, among themselves or with other aboriginal people of Canada resident in British Columbia, is provided to each Maa-nulth First Nation in accordance with 12.2.1.
- 6.4.14 The opportunity to enter into an agreement with British Columbia regarding the harvest of Monumental Cedar and Cypress for Cultural Purposes on provincial Crown land is provided to each Maa-nulth First Nation in accordance with 21.3.0.
- 6.4.15 The opportunity for Toquaht Nation to negotiate an agreement regarding the Stopper Islands with British Columbia concerning measures to protect cultural, recreational and environmental values and Toquaht Nation's participation in the management planning of those islands, is provided to Toquaht Nation in accordance with 21.4.1.
- 6.4.16 The opportunity for Huu-ay-aht First Nations to negotiate an agreement regarding Diana Island with British Columbia concerning measures to protect cultural, recreational and environmental values and Huu-ay-aht First Nations' participation in the management planning of that island, is provided to Huu-ay-aht First Nations in accordance with 21.5.1.
- 6.4.17 The commitment of British Columbia to establish Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area and the opportunity for Uchucklesaht Tribe to negotiate and attempt to reach agreement with British Columbia regarding arrangements for the participation of Uchucklesaht Tribe in the management planning of Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area is provided to Uchucklesaht Tribe in accordance with 24.3.1 and 24.1.5 respectively.
- 6.4.18 The commitment of British Columbia to establish the Power River Watershed Protected Area and the opportunity for Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations to negotiate and attempt to reach agreement with British Columbia regarding arrangements for Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations' participation in the management planning of Artlish Caves Provincial Park,

Big Bunsby Marine Provincial Park, Brooks Peninsula Provincial Park, Dixie Cove Marine Provincial Park, Rugged Point Marine Provincial Park, Tahsish-Kwois Provincial Park, Checleset Bay Ecological Reserve, Clanninick Creek Ecological Reserve, Solander Island Ecological Reserve, Tahsish River Ecological Reserve and Power River Watershed Protected Area is provided to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations in accordance with 24.2.1 and 24.1.4 respectively.

- 6.4.19 The opportunity to negotiate and attempt to reach agreement with British Columbia regarding arrangements for the participation in the management planning of any new Provincial Protected Area established within its Maa-nulth First Nation Area is provided to each Maa-nulth First Nation in accordance with 24.1.6.



## CHAPTER 7 CROWN CORRIDORS AND ROADS

### 7.1.0 CROWN CORRIDORS

- 7.1.1 For greater certainty, Crown Corridors are not part of Maa-nulth First Nation Lands and are owned by British Columbia. The width of Crown Corridors is 30 metres unless otherwise described in Appendix D.
- 7.1.2 British Columbia will Consult with a Maa-nulth First Nation regarding new uses or major road construction within Crown Corridors adjacent to its Maa-nulth First Nation Lands.

### 7.2.0 CROWN CORRIDORS AND PUBLIC UTILITIES

- 7.2.1 In addition to the provisions of Chapter 5 Access, British Columbia or a Public Utility and its respective employees, agents, contractors or representatives may enter, cross and stay temporarily on Maa-nulth First Nation Lands at no cost for the purpose of undertaking works, including:
- a. constructing drainage works;
  - b. constructing or extending transmission or distribution works;
  - c. maintaining slope stability;
  - d. removing dangerous Timber or other hazards; or
  - e. carrying out vegetation management,
- as required for the protection, care, maintenance or construction of Provincial Roads, or Public Utility works on or adjacent to Maa-nulth First Nation Lands.
- 7.2.2 Unless otherwise agreed to by a Maa-nulth First Nation, Timber removed from its Maa-nulth First Nation Lands in accordance with 7.2.1 remains the property of that Maa-nulth First Nation.
- 7.2.3 Before British Columbia or a Public Utility commences any work referred to in 7.2.1 on the Maa-nulth First Nation Lands of a Maa-nulth First Nation, British Columbia or the Public Utility will:
- a. provide notice to that Maa-nulth First Nation of its intention to carry out work; and

- b. if requested by that Maa-nulth First Nation, deliver a work plan to that Maa-nulth First Nation describing the effect and extent of the proposed work on those Maa-nulth First Nation Lands for approval, which will not be unreasonably withheld.
- 7.2.4 If, within 30 days of the delivery of a work plan delivered in accordance with 7.2.3, a Maa-nulth First Nation does not approve the content of the work plan, either British Columbia or that Maa-nulth First Nation may refer the Disagreement to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 7.2.5 Notwithstanding any other provision of this Agreement, British Columbia or a Public Utility may undertake works and take steps on Maa-nulth First Nation Lands that are urgently required in order to protect works constructed on Crown Corridors, or to protect individuals or vehicles using Crown Corridors.
- 7.2.6 British Columbia or a Public Utility will notify the applicable Maa-nulth First Nation that it has undertaken works on its Maa-nulth First Nation Lands in accordance with 7.2.5.
- 7.2.7 In undertaking works referred to in 7.2.1, the person undertaking the work will minimize the damage to and time spent on Maa-nulth First Nation Lands, and will pay compensation for any interference with or damage to Maa-nulth First Nation Lands that results from work undertaken by or on behalf of the person.
- 7.2.8 British Columbia or the applicable Maa-nulth First Nation may refer a Disagreement in respect of compensation to be paid in accordance with 7.2.7 to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 7.2.9 Any Interest granted or issued by a Maa-nulth First Nation in accordance with 2.7.0 prevails to the extent of an inconsistency with 7.2.1 to 7.2.4, 7.2.7 or 7.2.8.
- 7.3.0 CROWN CORRIDORS NO LONGER REQUIRED**
- 7.3.1 If British Columbia determines that it no longer requires any portion of a Crown Corridor it will transfer the estate in fee simple, including the Subsurface Resources, in that portion of the Crown Corridor to the applicable Maa-nulth First Nation.
- 7.3.2 If a Maa-nulth First Nation acquires a portion of a Crown Corridor in accordance with 7.3.1, such parcel of land will be added to its Maa-nulth First Nation Lands upon that Maa-nulth First Nation becoming the owner of such parcel of land and Appendix B is deemed to be amended to reflect such addition to Maa-nulth First Nation Lands, unless that Maa-nulth First Nation provides notice to

British Columbia and Canada before it becomes the owner of such parcel of land that such lands are not to be added to its Maa-nulth First Nation Lands.

- 7.3.3 When a Maa-nulth First Nation becomes the owner of an estate in fee simple in accordance with 7.3.1, the total amount of the estate in fee simple identified in 2.11.8 for that Maa-nulth First Nation increases by five percent of the area, in hectares, of the estate in fee simple transferred in accordance with 7.3.1 to that Maa-nulth First Nation.

#### **7.4.0 RELOCATION OF CROWN CORRIDORS**

- 7.4.1 British Columbia may request that a portion of a Crown Corridor be relocated onto the Maa-nulth First Nation Lands of a Maa-nulth First Nation and if:

- a. the new location is reasonably suitable for use as a corridor;
- b. British Columbia pays all reasonable costs associated with decommissioning that portion of the Crown Corridor; and
- c. British Columbia and that Maa-nulth First Nation reach agreement on the value of the land exchange,

that Maa-nulth First Nation will not unreasonably refuse to provide its consent to the relocation.

- 7.4.2 If a Maa-nulth First Nation requires a portion of a Crown Corridor for another purpose, that Maa-nulth First Nation may request that a portion of a Crown Corridor be relocated, and if:

- a. the new location is reasonably suitable for use as a corridor of a comparable standard considering construction, maintenance, operation, and costs;
- b. British Columbia and that Maa-nulth First Nation reach agreement on the value of the land exchange; and
- c. that Maa-nulth First Nation pays all reasonable costs, including costs of design, planning, supervision, land, and construction,

British Columbia will not unreasonably refuse to undertake the relocation.

- 7.4.3 If a Crown Corridor is relocated as a result of a consent provided by a Maa-nulth First Nation or British Columbia in accordance with 7.4.1 or 7.4.2:

- a. any portion of a Crown Corridor transferred to that Maa-nulth First Nation will cease to be a Crown Corridor and will become Maa-nulth First Nation Lands of that Maa-nulth First Nation; and

- b. any Maa-nulth First Nation Lands transferred to British Columbia will cease to be Maa-nulth First Nation Lands and will become a Crown Corridor,

and, upon any such transfer, Appendices B and D are deemed to be amended to reflect such relocation.

#### **7.5.0 CONSULTATION REGARDING TRAFFIC REGULATION**

- 7.5.1 Upon request of a Maa-nulth First Nation, British Columbia will Consult with that Maa-nulth First Nation in respect of the regulation by British Columbia of traffic and transportation on a Crown Corridor adjacent to a developed area on its Maa-nulth First Nation Lands.

#### **7.6.0 ACCESS AND SAFETY REGULATION**

- 7.6.1 Nothing in this Agreement limits the authority of British Columbia to regulate all matters relating to:

- a. the location and design of intersecting Maa-nulth First Nation Roads giving access to Crown Corridors from Maa-nulth First Nation Lands, including:
  - i. regulating or requiring signs, signals, or other traffic control devices;
  - ii. regulating or requiring merging lanes, on ramps and off ramps; or
  - iii. requiring contributions to the cost of the matters referred to in 7.6.1a.i. and 7.6.1a.ii.; and
- b. the height and location of structures on Maa-nulth First Nation Lands immediately adjacent to Crown Corridors, but only to the extent reasonably required to protect the safety of the users of Crown Corridors.

- 7.6.2 British Columbia will provide the applicable Maa-nulth First Nation with any licence, permit or approval required under Provincial Law to join or cross a Provincial Road with a Maa-nulth First Nation Road if:

- a. the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and
- b. the intersecting Maa-nulth First Nation Road complies with standards established under Provincial Law for equivalent Provincial Roads.

- 7.6.3 Each Maa-nulth First Nation will Consult with British Columbia on any access or public safety issue associated with land use decisions relating to the development of its Maa-nulth First Nation Lands adjacent to Crown Corridors.

#### **7.7.0 ROADS**

- 7.7.1 Maa-nulth First Nation Roads are administered, controlled and maintained by the applicable Maa-nulth First Nation.

- 7.7.2 Subject to 5.2.5, 5.4.0, 5.5.0, and 5.7.0, for greater certainty 7.7.1 includes the ability of each Maa-nulth First Nation Government to authorize:

- a. the closure of a Maa-nulth First Nation Road, or a portion of it, to public use; or
- b. the reopening of a Maa-nulth First Nation Road or portion of it that has been closed to public use.

#### **7.8.0 USE OF EXISTING GRAVEL PITS ON MAA-NULTH FIRST NATION LANDS**

- 7.8.1 British Columbia and its employees, agents, contractors or representatives may enter onto Maa-nulth First Nation Lands and extract, refine and transport, without charge, sufficient quantities of Gravel from Gravel pits existing on the Effective Date to fulfil any obligations British Columbia may have to construct, maintain, repair or upgrade Provincial Roads and public rights of way in the vicinity of the applicable Maa-nulth First Nation Lands.

- 7.8.2 Subject to 7.8.4, where a Gravel Pit Development Plan does not exist for a Gravel pit on Maa-nulth First Nation Lands, before commencing any extraction, refinement or transportation of Gravel in that Gravel pit, British Columbia will prepare a Gravel Pit Development Plan for that Gravel pit and submit it to the applicable Maa-nulth First Nation for approval, which approval will not be unreasonably withheld.

- 7.8.3 British Columbia and the applicable Maa-nulth First Nation will comply with the provisions of an approved Gravel Pit Development Plan.

- 7.8.4 Without preparing a Gravel Pit Development Plan, British Columbia and its employees, agents, contractors, or representatives may continue to enter onto Maa-nulth First Nation Lands and extract and transport, without charge, Gravel from a Gravel pit which before the Effective Date British Columbia had been using intermittently as a source of Gravel to maintain Provincial Roads and public rights of way in the vicinity of Maa-nulth First Nation Lands.

7.8.5 Before materially increasing the rate of extraction of Gravel from any Gravel pit British Columbia may use in accordance with 7.8.4, British Columbia will prepare a Gravel Pit Development Plan for that pit.

**7.9.0 DEVELOPMENT OF NEW GRAVEL PITS ON MAA-NULTH FIRST NATION LANDS**

7.9.1 Subject to 7.9.2 and 7.9.4, British Columbia and its employees, agents, contractors, or representatives may enter onto Maa-nulth First Nation Lands to locate, extract, refine and transport, without charge, sufficient quantities of Gravel from natural deposits as may exist on Maa-nulth First Nation Lands for use by British Columbia to fulfil any obligations it may have to construct, maintain, repair and upgrade Provincial Roads and public rights of way in the vicinity of the applicable Maa-nulth First Nation Lands.

7.9.2 Before undertaking any excavation for Gravel samples or other exploration work on Maa-nulth First Nation Lands in accordance with 7.9.1, British Columbia will prepare an exploration plan, indicating generally the proposed location of exploration and the method and extent of proposed work, for approval by that Maa-nulth First Nation, which approval will not be unreasonably withheld.

7.9.3 In preparing an exploration plan in accordance with 7.9.2:

- a. British Columbia will select a proposed location to explore for a Gravel 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, that Maa-nulth First Nation will take account of the cost efficiencies of the proposed location in relation to alternate locations.

7.9.4 Before commencing any extraction, refinement or transportation of Gravel from any Gravel pit identified in an exploration plan approved by a Maa-nulth First Nation in accordance with 7.9.2, British Columbia will prepare a Gravel Pit Development Plan for that Gravel pit and submit it to that Maa-nulth First Nation for approval which approval will not be unreasonably withheld.

**7.10.0 USE OF GRAVEL PITS AND DEPOSITS ON PROVINCIAL CROWN LAND**

- 7.10.1 Subject to 7.10.4 and 7.10.5, each Maa-nulth First Nation may enter onto provincial Crown lands and extract, refine and transport, without charge, sufficient quantities of Gravel from Gravel pits existing on the Effective Date on provincial Crown lands in the vicinity of its Maa-nulth First Nation Lands, to fulfil any obligations it may have to construct, maintain, repair and upgrade its Maa-nulth First Nation Roads and rights of way on its Maa-nulth First Nation Lands.
- 7.10.2 Subject to 7.10.5, each Maa-nulth First Nation may enter onto provincial Crown lands to locate, extract, refine and transport, without charge, sufficient quantities of Gravel from natural deposits as may exist on provincial Crown lands for use by that Maa-nulth First Nation to fulfil any obligations it may have to construct, maintain, repair and upgrade its Maa-nulth First Nation Roads and rights of way on its Maa-nulth First Nation Lands.
- 7.10.3 Without preparing a Gravel Pit Development Plan, a Maa-nulth First Nation may enter onto provincial Crown lands and extract and transport, without charge, Gravel from a Gravel pit that, before the Effective Date, that Maa-nulth First Nation had been using intermittently as a source of Gravel to maintain its Maa-nulth First Nation Roads and rights of way on its Maa-nulth First Nation Lands.
- 7.10.4 Before materially increasing the rate of extraction of Gravel from any Gravel pit a Maa-nulth First Nation may use in accordance with 7.10.1, that Maa-nulth First Nation will prepare a Gravel Pit Development Plan for that pit in accordance with Provincial Law.
- 7.10.5 For greater certainty, entry onto provincial Crown lands and the location, development, extraction, refinement and transportation of Gravel on provincial Crown lands by a Maa-nulth First Nation will be in accordance with Provincial Law.
- 7.10.6 British Columbia will not unreasonably withhold approval for any Gravel Pit Development Plan prepared and submitted by a Maa-nulth First Nation in accordance with 7.10.4.





## CHAPTER 8 WATER

### 8.1.0 GENERAL

- 8.1.1 Storage, diversion, extraction or use of water and Groundwater will be in accordance with Federal Law and Provincial Law.
- 8.1.2 A Maa-nulth First Nation may only sell water in accordance with Federal Law and Provincial Law that permit the sale of water.
- 8.1.3 Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in water.
- 8.1.4 The *Water Utility Act* does not apply to Maa-nulth-aht, Maa-nulth First Nations, Maa-nulth First Nation Public Institutions or Maa-nulth First Nation Corporations that are providing water services on Maa-nulth First Nation Lands.

### 8.2.0 WATER RESERVATION

- 8.2.1 On the Effective Date, British Columbia will establish a water reservation for domestic, industrial, and agricultural purposes, in favour of:
- a. Huu-ay-aht First Nations, of 75,000 cubic decametres of water per year from those Streams listed in Schedule 1;
  - b. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, of 50,000 cubic decametres of water per year from those Streams listed in Schedule 2;
  - c. Toquaht Nation of 15,000 cubic decametres of water per year from those Streams listed in Schedule 3;
  - d. Uchucklesaht Tribe of 50,000 cubic decametres of water per year from those Streams listed in Schedule 4; and
  - e. Ucluelet First Nation of 57,000 cubic decametres of water per year from those Streams listed in Schedule 5.

### 8.3.0 LAW-MAKING

- 8.3.1 Each Maa-nulth First Nation Government may make laws in respect of:
- a. the consent of the applicable Maa-nulth First Nation contemplated by 8.4.2a. to applications for Water Licences to be applied against that Maa-nulth First Nation's water reservation established in accordance with 8.2.1; and

- b. the supply and use of water from a Water Licence issued in accordance with 8.4.2.

8.3.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 8.3.1.

#### **8.4.0 WATER LICENCES**

8.4.1 A Maa-nulth First Nation, or a Maa-nulth-aht of that Maa-nulth First Nation with the consent of that Maa-nulth First Nation, may apply to British Columbia for Water Licences to be applied against that Maa-nulth First Nation's water reservation established in accordance with 8.2.1.

8.4.2 If a Maa-nulth First Nation or a Maa-nulth-aht applies to British Columbia for a Water Licence in accordance with 8.4.1 and:

- a. that Maa-nulth First Nation has consented to the application;
- b. the application conforms to provincial regulatory requirements;
- c. there is sufficient unrecorded volume of flow in that Maa-nulth First Nation's water reservation established in accordance with 8.2.1;
- d. the application includes provision for storage where the monthly available flow is insufficient to meet proposed consumption; and
- e. the application is for a volume of flow that, together with the total volumes of flow licensed for that Stream listed in the applicable Schedule, does not exceed the monthly percentage of Available Flow for that Stream listed in the applicable Schedule,

British Columbia will approve the application and issue the Water Licence.

8.4.3 The volume of flow approved in a Water Licence issued in accordance with 8.4.2 will be deducted from the unrecorded volume of flow in that Maa-nulth First Nation's water reservation established in accordance with 8.2.1.

8.4.4 If a Water Licence issued in accordance with 8.4.2 is cancelled, expires, or otherwise terminates, the volume of flow in that Water Licence will be added to the unrecorded volume of flow in that Maa-nulth First Nation's water reservation established in accordance with 8.2.1.

8.4.5 The total volumes of flow under the Water Licences applied against a Maa-nulth First Nation's water reservation established in accordance with 8.2.1 will not exceed the monthly percentage of the Available Flow of each Stream as listed in Schedules 1 to 5.

- 8.4.6 A Water Licence issued to a Maa-nulth First Nation or a Maa-nulth-aht for use on the Maa-nulth First Nation Lands of that Maa-nulth First Nation in accordance with 8.4.2 is not subject to any rentals, fees, or other charges, except taxes, by British Columbia.
- 8.4.7 A Maa-nulth First Nation may apply for Water Licences in accordance with Federal Law or Provincial Law, if there is insufficient unrecorded volume of flow in that Maa-nulth First Nation's water reservation established in accordance with 8.2.1 to issue a Water Licence.
- 8.4.8 A water reservation established in accordance with 8.2.1 has priority over all Water Licences on the Streams to which the water reservation established in accordance with 8.2.1 applies other than:
- a. Water Licences issued before October 3, 2003;
  - b. Water Licences issued pursuant to an application made before October 3, 2003; and
  - c. Water Licences issued pursuant to water reservations established before October 3, 2003.
- 8.4.9 British Columbia will Consult with a Maa-nulth First Nation respecting applications for Water Licences where the applicant may reasonably require access across or an Interest in its Maa-nulth First Nation Lands.
- 8.4.10 British Columbia will provide notice to a Maa-nulth First Nation concerning applications for Water Licences in respect of Streams wholly or partially within its Maa-nulth First Nation Lands, which may be in the form of a notice under the *Water Act*.
- 8.4.11 If a person other than a Maa-nulth First Nation or a Maa-nulth-aht of that Maa-nulth First Nation has a Water Licence and reasonably requires access across, or an Interest in, the Maa-nulth First Nation Lands of that Maa-nulth First Nation for the construction, maintenance, improvement or operation of works authorized under that Water Licence, that Maa-nulth First Nation may not unreasonably withhold consent to, and will take reasonable steps to ensure, that access or the granting of that Interest, if that Water Licence holder offers fair compensation to the owner of the estate or Interest affected.
- 8.4.12 If a Maa-nulth First Nation or a Maa-nulth-aht has a Water Licence approved in accordance with 8.4.2 or 8.4.7 and reasonably requires access across, or an Interest in, provincial Crown land for the construction, maintenance, improvement or operation of works authorized under that Water Licence, British Columbia will grant the access or Interest on reasonable terms in accordance with Provincial Law.

- 8.4.13 Upon the request of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will negotiate and attempt to reach agreement on amendments to the boundaries of Brooks Peninsula Provincial Park or Tahsish-Kwois Provincial Park, as applicable, to enable Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations to reasonably access water from Amos Creek, Quin-E-Ex Creek (unofficial name), Battle River (unofficial name), Power River, Tahsish River, or Tsauk Creek (unofficial name) in accordance with 8.4.1 and 8.4.2, if:
- a. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations is unable to reasonably access water from such Streams from its Maa-nulth First Nation Lands, and Groundwater is also not reasonably available on its Maa-nulth First Nation Lands;
  - b. water from such Streams is for use on the Maa-nulth First Nation Lands of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations described in Plans 1, 2, 4, 6 and 19 of Appendix B-2, Part 2(a), which lands are surrounded by Provincial Protected Areas; and
  - c. the Minister is not able, under Provincial Law:
    - i. to grant a Water Licence to divert, use or store water from a point of diversion within Brooks Peninsula Provincial Park or Tahsish-Kwois Provincial Park on those Streams if such point of diversion within those parks is reasonably required to access water from those Streams; or
    - ii. to grant access to, or an Interest in, provincial Crown land located within Brooks Peninsula Provincial Park or Tahsish-Kwois Provincial Park if such access to, or an Interest in, provincial Crown land is reasonably required for the construction, maintenance, use or operation of licensed works or for the flooding of provincial Crown land within those parks,
 without an amendment to the boundaries of Brooks Peninsula Provincial Park or Tahsish-Kwois Provincial Park.
- 8.4.14 If Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations and British Columbia are unable to reach agreement on the amendments to the boundaries of Brooks Peninsula Provincial Park or Tahsish-Kwois Provincial Park, as applicable, in accordance with 8.4.13, either British Columbia or Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations may refer the issue to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.

**8.5.0 GROUNDWATER**

8.5.1 If British Columbia brings into force Provincial Law regulating the volume of Groundwater under Maa-nulth First Nation Lands which may be extracted and used and if Groundwater is reasonably available, British Columbia will negotiate and attempt to reach agreement with the applicable Maa-nulth First Nation on the volume of Groundwater which may be extracted and used for domestic, agricultural and industrial purposes by that Maa-nulth First Nation on its Maa-nulth First Nation Lands for as long as such Provincial Law is in effect.

8.5.2 For the purposes of 8.5.1, British Columbia and the Maa-nulth First Nation will determine the:

- a. volume of flow of Groundwater which can reasonably be withdrawn from the Groundwater aquifer under consideration while maintaining the sustainability and quality of the Groundwater from the aquifer; and
- b. existing and reasonable future needs for Groundwater of the Maa-nulth First Nation and its Maa-nulth-aht on its Maa-nulth First Nation Lands, as well as the existing and future needs of other users in the area,

and take into account any applicable requirement under Federal Law or Provincial Law.

8.5.3 If British Columbia and the Maa-nulth First Nation are unable to reach agreement in accordance with 8.5.1 on the volume of Groundwater which may be extracted and used by that Maa-nulth First Nation, British Columbia or that Maa-nulth First Nation may refer the matter to be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.

8.5.4 Access to extract Groundwater on Maa-nulth First Nation Lands requires the consent of the applicable Maa-nulth First Nation.

**8.6.0 HYDRO POWER RESERVATIONS**

8.6.1 In addition to the Maa-nulth First Nation water reservations established in accordance with 8.2.1, on the Effective Date, British Columbia will establish water reservations of the unrecorded water of the Streams specified in this paragraph, to enable each Maa-nulth First Nation to investigate the suitability of those Streams for hydro power purposes including related storage purposes, as follows:

- a. in favour of Huu-ay-aht First Nations, for five years after the Effective Date, for the Sarita River;

- b. in favour of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, for five years after the Effective Date, for the Tahsish River;
  - c. in favour of Toquaht Nation, for two years after the Effective Date, for Draw Creek;
  - d. in favour of Uchucklesaht Tribe, for two years after the Effective Date for Handy Creek and five years after the Effective Date for Uchuck Creek; and
  - e. in favour of Ucluelet First Nation, for two years after the Effective Date, for the Nahmint River.
- 8.6.2 If a Maa-nulth First Nation applies for a Water Licence for hydro power purposes and any related storage purposes in relation to a water reservation established for that Maa-nulth First Nation in accordance with 8.6.1, British Columbia will grant the Water Licence if the proposed hydro power project conforms with Federal Law or Provincial Law and there is sufficient Available Flow in the applicable specified Stream subject to that water reservation.
- 8.6.3 If British Columbia issues a Water Licence in accordance with 8.6.2, the water reservation established in accordance with 8.6.1 will terminate in respect of that Stream.

**SCHEDULE 1 – HUU-AY-AHT FIRST NATIONS WATER VOLUMES**

Streams partially within the Maa-nulth First Nation Lands of Huu-ay-aht First Nations for which a monthly percentage of Available Flow has been specified:

<b>Stream Name</b>	<b>Monthly Percentage of Available Flow</b>	<b>National Topographic System - Series Map References</b>
Carnation Creek	35%	92 C/14
Poett Creek	30%	92 C/14
Sarita River	25%	92 C/14
Pachena River	10%	92 C/14
Consinka Creek	10%	92 C/15

## SCHEDULE 2 – KA:’YU:’K’T’H’/CHE:K’TLES7ET’H’ FIRST NATIONS WATER VOLUMES

Streams partially within the Maa-nulth First Nation Lands of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations for which a monthly percentage of Available Flow has been specified:

<b>Stream Name</b>	<b>Monthly Percentage of Available Flow</b>	<b>National Topographic System - Series Map References</b>
Kayouk Creek	50%	92 L/3
Ououkinsh River	13%	92 L/3
Malksope River	11%	92 L/3
St. Pauls Dome Creek	9%	92 L/3
Amai Creek	8%	92 L/3
Narrowgut Creek	8%	92 E/14
Kauwinch River	1.7%	92 L/3
Kaouk River	1.6%	92 L/3
Artlish River	0.4%	92 L/3
Kashutl River	0.3%	92 L/3
Amos Creek	0.2%	92 L/4
Quin-E-Ex Creek (unofficial name)	14%	92 L/4
Battle River (unofficial name)	2.5%	92 L/4
Power River	0.6%	92 L/3
Tahsish River	0.1%	92 L/3
Tsauk Creek (unofficial name)	21%	92 L/3



**SCHEDULE 3 – TOQUAHT NATION WATER VOLUMES**

Streams partially within the Maa-nulth First Nation Lands of Toquaht Nation for which a monthly percentage of Available Flow has been specified:

<b>Stream Name</b>	<b>Monthly Percentage of Available Flow</b>	<b>National Topographic System - Series Map References</b>
Maggie River	12%	92 C/14
Itatsoo Creek	8%	92 C/13
Toquart River	5%	92 F/3
Lucky Creek	5%	92 F/3
Cataract Creek	5%	92 F/3
Remaining Streams wholly or partially within the Maa-nulth First Nation Lands of Toquaht Nation	10%	

**SCHEDULE 4 – UCHUCKLESAHT TRIBE WATER VOLUMES**

Streams partially within the Maa-nulth First Nation Lands of Uchucklesaht Tribe for which a monthly percentage of Available Flow has been specified:

<b>Stream Name</b>	<b>Monthly Percentage of Available Flow</b>	<b>National Topographic System - Series Map References</b>
Uchuck Creek	50%	92 F/3
Henderson Lake	20%	92 F/3
Handy Creek	10%	92 C/15
Cass Creek	5%	92 F/3
Remaining Streams wholly or partially within the Maa-nulth First Nation Lands of Uchucklesaht Tribe	10%	

**SCHEDULE 5 – UCLUELET FIRST NATION WATER VOLUMES**

Streams partially within the Maa-nulth First Nation Lands of Ucluelet First Nation for which a monthly percentage of Available Flow has been specified:

<b>Stream Name</b>	<b>Monthly Percentage of Available Flow</b>	<b>National Topographic System - Series Map References</b>
Itatsoo Creek	50%	92 C/13
Thornton Creek	50%	92 C/13
Smith Creek	40%	92 C/13
Mercantile Creek	25%	92 C/13
Lost Shoe Creek	15%	92 F/4
Nahmint River	15%	92 F/2
Remaining Streams wholly or partially within the Maa-nulth First Nation Lands of Ucluelet First Nation	10%	



## CHAPTER 9 FOREST RESOURCES

### 9.1.0 FOREST AND RANGE RESOURCES ON MAA-NULTH FIRST NATION LANDS

- 9.1.1 Each Maa-nulth First Nation owns the Forest Resources and Range Resources on its Maa-nulth First Nation Lands.
- 9.1.2 Each Maa-nulth First Nation, as owner, has exclusive authority to determine, collect and administer any fees, rents or other charges, except taxes, relating to the harvesting of Forest Resources or Range Resources on its Maa-nulth First Nation Lands.

### 9.2.0 LAW-MAKING

- 9.2.1 Each Maa-nulth First Nation Government may make laws in respect of Forest Resources, Forest Practices and Range Practices on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 9.2.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 9.2.1.

### 9.3.0 MANUFACTURE AND EXPORT OF TIMBER RESOURCES

- 9.3.1 Timber Resources harvested from Maa-nulth First Nation Lands are not subject to any requirement under Provincial Law for use or manufacturing in British Columbia.
- 9.3.2 Logs from Maa-nulth First Nation Lands may be proposed for export under Federal Law and policy as if the logs had been harvested from an Indian Reserve in British Columbia.

### 9.4.0 TIMBER MARKING AND SCALING

- 9.4.1 For greater certainty:
- a. nothing in this Agreement confers authority on a Maa-nulth First Nation Government to make laws in respect of Timber marking and scaling; and
  - b. Provincial Law in respect of Timber marking and scaling applies to Timber harvested on and transported off Maa-nulth First Nation Lands.

**9.5.0 FOREST AND RANGE HEALTH**

- 9.5.1 Each Maa-nulth First Nation is responsible for the control of insects, diseases, invasive plants, animals or abiotic factors on its Maa-nulth First Nation Lands which may affect the health of Forest Resources or Range Resources on its Maa-nulth First Nation Lands.
- 9.5.2 If Canada or British Columbia becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Crown lands that may threaten the health of Forest Resources or Range Resources on adjacent Maa-nulth First Nation Lands, British Columbia or Canada, as the case may be, will notify the applicable Maa-nulth First Nation and:
- a. in the case of British Columbia, British Columbia and that Maa-nulth First Nation will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources or Range Resources on the Maa-nulth First Nation Lands of that Maa-nulth First Nation and on provincial Crown lands, in accordance with Federal Law or Provincial Law; and
  - b. in the case of Canada, Canada and that Maa-nulth First Nation will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources or Range Resources on the Maa-nulth First Nation Lands of that Maa-nulth First Nation and on federal Crown lands, in accordance with Federal Law or Provincial Law.
- 9.5.3 If a Maa-nulth First Nation becomes aware of insects, diseases, invasive plants, animals or abiotic factors on its Maa-nulth First Nation Lands that may threaten the health of Forest Resources or Range Resources on adjacent provincial or federal Crown lands, it will notify British Columbia or Canada, as the case may be, and:
- a. in the case of British Columbia, that Maa-nulth First Nation and British Columbia will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources or Range Resources on the Maa-nulth First Nation Lands of that Maa-nulth First Nation and on provincial Crown lands, in accordance with Federal Law or Provincial Law; and

- b. in the case of Canada, that Maa-nulth First Nation and Canada will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources or Range Resources on the Maa-nulth First Nation Lands of that Maa-nulth First Nation and on federal Crown lands, in accordance with Federal Law or Provincial Law.

9.5.4 For greater certainty, nothing in this Agreement limits the application of Federal Law or Provincial Law in relation to the health of Forest Resources or Range Resources.

#### **9.6.0 WILDFIRE SUPPRESSION AND CONTROL**

9.6.1 Subject to the Wildfire Suppression Agreements entered into in accordance with 9.6.2, and subject to 9.6.3 and 9.6.5, Provincial Law in respect of the protection of resources from wildfire and for wildfire prevention and control applies to Maa-nulth First Nation Lands as Private Lands.

9.6.2 On the Effective Date, British Columbia and Canada will enter into a Wildfire Suppression Agreement with each Maa-nulth First Nation, which will set out how the costs incurred by British Columbia for wildfire control on the Maa-nulth First Nation Lands of that Maa-nulth First Nation for wildfires that originate on such lands, will be shared by British Columbia, Canada and that Maa-nulth First Nation.

9.6.3 Subject to the limitations on the scope of a Maa-nulth First Nation's responsibility to pay wildfire control costs set out in the applicable Wildfire Suppression Agreement, that Maa-nulth First Nation is responsible for one third of the costs incurred by British Columbia for wildfire control on its Maa-nulth First Nation Lands for wildfires which originate on such lands.

9.6.4 For greater certainty, the responsibility of a Maa-nulth First Nation in accordance with 9.6.3 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off its Maa-nulth First Nation Lands.

9.6.5 British Columbia will respond to a wildfire originating on Maa-nulth First Nation Lands on the same priority basis as for provincial Crown lands and in accordance with any priorities as set by the Minister.

9.6.6 For the purposes of the Wildfire Suppression Agreement contemplated by 9.6.2:

- a. each Wildfire Suppression Agreement remains in effect between that Maa-nulth First Nation and British Columbia unless terminated at the request of that Maa-nulth First Nation, on the same terms, subject to those terms which that Maa-nulth First Nation and British Columbia negotiate on a periodic basis; and

- b. Canada's participation in each Wildfire Suppression Agreement is limited to assuming a share of costs under that agreement for a period of ten years commencing on the Effective Date.
- 9.6.7 Subject to any cost-sharing arrangement which may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided under land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time in respect of Canada's continuing participation in a Wildfire Suppression Agreement following the ten year period referred to in 9.6.6b.
- 9.6.8 Nothing in 9.6.2 or 9.6.3 limits the ability of any Party to pursue legal action against third parties.
- 9.6.9 At the request of a Maa-nulth First Nation, or in accordance with Provincial Law, British Columbia may enter on the Maa-nulth First Nation Lands of that Maa-nulth First Nation and assist in the provision of, or carry out, wildfire control.
- 9.6.10 A Maa-nulth First Nation is not responsible for any costs associated with wildfire control incurred by British Columbia or Canada on its Maa-nulth First Nation Lands if the wildfires originate off such lands unless that Maa-nulth First Nation is responsible for the wildfire under Provincial Law.
- 9.7.0 TIMBER HARVESTING RIGHTS EXISTING BEFORE EFFECTIVE DATE**
- 9.7.1 British Columbia will ensure that on the Effective Date any right to harvest Timber granted under Provincial Law that applies to Maa-nulth First Nation Lands ceases to be valid.
- 9.8.0 OBLIGATIONS EXISTING BEFORE EFFECTIVE DATE**
- 9.8.1 Unless otherwise requested by a Maa-nulth First Nation, British Columbia will ensure that any obligation that applies on its Maa-nulth First Nation Lands in respect of Forest Practices and Range Practices will be fulfilled in accordance with Provincial Law.
- 9.8.2 Each Maa-nulth First Nation will provide access to its Maa-nulth First Nation Lands, at no cost, to British Columbia and to any Interest holder whose rights to Forest Resources and Range Resources cease to be valid in accordance with 9.7.1, and to their respective employees, agents, contractors, successors or assigns, in order to fulfill the obligations referred to in 9.8.1.



**9.9.0 FOREST RESEARCH PLOTS**

- 9.9.1 On the Effective Date, the applicable Maa-nulth First Nation will grant to British Columbia licences in the applicable form in Appendix L, to enter onto its Maa-nulth First Nation Lands for the purpose of conducting forestry related studies, tests and experiments, for those research installations and growth and yield sites respectively identified for illustrative purposes as “Research Installations” and “Growth and Yield Sites” in Appendix M.



## CHAPTER 10 FISHERIES

### 10.1.0 FISHING RIGHTS

#### **Maa-nulth First Nation Fishing Rights**

- 10.1.1 Each Maa-nulth First Nation has the right to harvest, in accordance with this Agreement, Fish and Aquatic Plants for Domestic Purposes in the Domestic Fishing Area.
- 10.1.2 Each Maa-nulth First Nation Fishing Right is limited by measures necessary for conservation, public health or public safety.
- 10.1.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Fishing Right.
- 10.1.4 Each Maa-nulth First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Fish and Aquatic Plants harvested under its Maa-nulth First Nation Fishing Right. A Maa-nulth First Nation may not Dispose of its right to Trade and Barter.
- 10.1.5 A Maa-nulth First Nation right to Trade and Barter in accordance with 10.1.4 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 10.1.41c.
- 10.1.6 Each Maa-nulth First Nation Fishing Right will be exercised in respect of:
- a. Inter-tidal Bivalves, within the Domestic Fishing Area for Inter-tidal Bivalves; and
  - b. all species of Fish and Aquatic Plants other than Inter-tidal Bivalves, within the Domestic Fishing Area unless otherwise provided for in a Maa-nulth Harvest Document.
- 10.1.7 Nothing in this Agreement precludes a:
- a. Maa-nulth-aht from harvesting Fish and Aquatic Plants under a licence, permit, or other document issued under Federal Law or Provincial Law;
  - b. Maa-nulth First Nation from concluding agreements, that are in accordance with Federal Law and Provincial Law, with other aboriginal groups relating to harvesting Fish and Aquatic Plants; and

- c. Maa-nulth-aht from being designated by another aboriginal group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that aboriginal group.
- 10.1.8 The Minister retains authority for managing and conserving Fish, Aquatic Plants and Fish habitat.
- 10.1.9 Fish and Aquatic Plants harvested under a Maa-nulth First Nation Fishing Right cannot be sold.
- 10.1.10 British Columbia may authorize uses of or Dispose of provincial Crown land and any authorized use or Disposition may affect the methods, times and locations of harvesting Fish and Aquatic Plants under this Agreement, provided that British Columbia ensures that those authorized uses or Dispositions do not deny a Maa-nulth First Nation the reasonable opportunity to harvest Fish and Aquatic Plants under its Maa-nulth First Nation Fishing Right.
- 10.1.11 For the purpose of 10.1.10, British Columbia and the Maa-nulth First Nation will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or Dispositions of provincial Crown land on that Maa-nulth First Nation's reasonable opportunity to harvest Fish and Aquatic Plants.
- 10.1.12 Each Maa-nulth First Nation will exercise its Maa-nulth First Nation Fishing Right in a manner that does not interfere with other authorized uses or Dispositions of provincial Crown land existing on the Effective Date or authorized in accordance with 10.1.10.
- 10.1.13 Each Maa-nulth First Nation has reasonable access to and over federal Crown lands to allow for the exercise of its Maa-nulth First Nation Fishing Right.
- 10.1.14 The Maa-nulth First Nation access in accordance with 10.1.13 will be exercised in a manner that does not interfere with the use, grant, creation or Disposition of an interest in federal Crown land from time to time.
- 10.1.15 If the use, grant, creation or Disposition of an Interest in federal Crown land would deny a Maa-nulth First Nation access in accordance with 10.1.13, Canada will ensure that alternate reasonable access is provided.
- 10.1.16 Notwithstanding 10.1.13, access to and on an Indian Reserve is subject to the applicable Maa-nulth First Nation obtaining the consent of the Indian Band for whom the Indian Reserve is set aside.
- 10.1.17 Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in Fish or Aquatic Plants.

- 10.1.18 For Fish and Aquatic Plants harvested under its Maa-nulth First Nation Fishing Right, the applicable Maa-nulth First Nation will provide catch data and other information as required by Maa-nulth Harvest Documents, Federal Law or Provincial Law.

**Maa-nulth Fish Allocations**

- 10.1.19 The Maa-nulth Fish Allocation for:
- a. chinook salmon is described in Schedule 1;
  - b. chum salmon is described in Schedule 2;
  - c. coho salmon is described in Schedule 3;
  - d. pink salmon is described in Schedule 4;
  - e. sockeye salmon is described in Schedule 5;
  - f. each of herring, halibut, Rockfish, Groundfish and sablefish, is described in Schedule 6; and
  - g. Inter-tidal Bivalves is described in Schedule 7.
- 10.1.20 Harvesting from the areas described in Schedule 7 is subject to the continuation of Interests described in Part 2 of Appendix P.
- 10.1.21 Except as described in 2.9.0, nothing in this Agreement creates a responsibility on the part of any Party to remediate contamination within the Domestic Fishing Area.
- 10.1.22 In any year where the Minister determines, in respect of a species or stock of Fish or Aquatic Plants for which there is a Maa-nulth Fish Allocation that:
- a. is a fixed amount; or
  - b. has a minimum amount,
- that the quantity of a species or stock of Fish or Aquatic Plant that is available for harvest is not sufficient to meet all quantities anticipated for allocations from the species or stock to the Maa-nulth First Nations and other aboriginal groups for Domestic Purposes, the Minister will take into account any written recommendations from the Joint Fisheries Committee and may reduce the Maa-nulth Fish Allocation for the species or stock for that year.
- 10.1.23 If the Minister does not follow the recommendations from the Joint Fisheries Committee referred to in 10.1.22 the Minister will provide written reasons for any reduction in the Maa-nulth Fish Allocation.

**Unallocated Species**

- 10.1.24 Where a Maa-nulth Fish Allocation for a species of Fish or Aquatic Plant is not established under this Agreement, that species of Fish or Aquatic Plant may be harvested under a Maa-nulth First Nation Fishing Right in accordance with a Maa-nulth Harvest Document.
- 10.1.25 Where a Maa-nulth Fish Allocation for a species of Fish or Aquatic Plant has not been established under this Agreement, Canada, British Columbia or the Maa-nulth First Nations may propose the establishment of a Maa-nulth Fish Allocation for that species by providing the other Parties with a written proposal and providing a copy of the proposal to the Joint Fisheries Committee.
- 10.1.26 Following receipt of a proposal made in accordance with 10.1.25, the Joint Fisheries Committee will consider the proposal and, where all of the members agree, provide a recommendation to the Parties in respect of a basic harvest entitlement for the species and a Maa-nulth Fish Allocation for the species, taking into account:
- a. base period information on harvesting by Maa-nulth First Nations of that species for Domestic Purposes;
  - b. harvesting by other aboriginal groups of that species for Domestic Purposes;
  - c. measures necessary for conservation;
  - d. harvesting of the species required for:
    - i. the management of that species; and
    - ii. enhancement of that species;
  - e. the impact of harvesting by others on a Maa-nulth First Nation Fishing Right; and
  - f. other relevant information.
- 10.1.27 Where, six months after receipt of a proposal made in accordance with 10.1.25, all of the members of the Joint Fisheries Committee have not agreed on a recommendation, the Joint Fisheries Committee will notify the Parties that they are unable to agree on a recommendation.
- 10.1.28 Following receipt of a recommendation contemplated by 10.1.26 or the notice contemplated by 10.1.27, the Parties will negotiate and attempt to reach agreement on a Maa-nulth Fish Allocation for the species taking into account the recommendations, if any, provided by the Joint Fisheries Committee and any other relevant information.

- 10.1.29 Where the Parties agree on a Maa-nulth Fish Allocation for the species, the Parties will confirm their agreement in writing and Schedule 6 and 10.1.19 are deemed to be amended upon completion of the written confirmation.
- 10.1.30 For the purposes of 10.1.26, 10.1.33 and 10.1.34, the basic harvest entitlement for a species of Fish or Aquatic Plant is the average annual harvest by the Maa-nulth First Nations of that species for Domestic Purposes over the base period for that species.
- 10.1.31 For the purposes of 10.1.26 and 10.1.30, a base period is a period of ten calendar years immediately preceding the date of the proposal made in accordance with 10.1.25 or such other period agreed to by the Parties.
- 10.1.32 Where all members of the Joint Fisheries Committee agree, the Joint Fisheries Committee may recommend to the Parties that studies, in respect of the matters described in 10.1.26, be conducted to assist the members in reaching agreement on a recommendation. Where the Parties agree with the recommendation of the Joint Fisheries Committee for studies, the Parties may agree to extend the time period contemplated by 10.1.27 or 10.1.33.
- 10.1.33 If the Parties are unable to reach agreement on a Maa-nulth Fish Allocation for the species within one year of a proposal being made in accordance with 10.1.25 or a shorter time period if the Parties agree, the basic harvest entitlement for the species will be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two. The arbitrator will determine the Maa-nulth First Nations' basic harvest entitlement for the species of Fish or Aquatic Plant within a period of not more than one year and then the arbitrator will provide a decision to the Parties.
- 10.1.34 In an arbitration referred to in 10.1.33, Canada, British Columbia or the Maa-nulth First Nations may request an arbitrator to describe a basic harvest entitlement for a species as a share of an abundance of the species.
- 10.1.35 In an arbitration referred to in 10.1.33, the arbitrator will take into account the matters described in 10.1.26.
- 10.1.36 Once the arbitrator provides the decision to the Parties as contemplated by 10.1.33, the Parties will negotiate and attempt to reach agreement on the Maa-nulth Fish Allocation for the species, taking into account the decision of the arbitrator.
- 10.1.37 If the Parties agree on a Maa-nulth Fish Allocation for the species in accordance with 10.1.36, the Parties will confirm their agreement and Schedule 6 and 10.1.19 are deemed to be amended on the date the last Party provides its confirmation.

- 10.1.38 If, six months after the arbitrator provides a decision to the Parties as contemplated by 10.1.33, the Parties are unable to reach agreement on the Maa-nulth Fish Allocation for the species, the Maa-nulth Fish Allocation for the species is 125% of the basic harvest entitlement determined by the arbitrator in accordance with 10.1.33.

**Law-Making**

- 10.1.39 Each Maa-nulth First Nation Government may make laws for:
- a. the distribution of the Fish and Aquatic Plants harvested under the Maa-nulth First Nation Fishing Right of the applicable Maa-nulth First Nation among the Maa-nulth-aht of that Maa-nulth First Nation; and
  - b. the designation of individuals or vessels used to harvest under the Maa-nulth First Nation Fishing Right of that Maa-nulth First Nation.
- 10.1.40 Maa-nulth First Nation Law under 10.1.39 prevails to the extent of a Conflict with Federal Law or Provincial Law.
- 10.1.41 Each Maa-nulth First Nation Government may make laws for:
- a. the documentation of individuals designated by the applicable Maa-nulth First Nation to harvest under its Maa-nulth First Nation Fishing Right;
  - b. the documentation of vessels designated by that Maa-nulth First Nation to be used to harvest under its Maa-nulth First Nation Fishing Right; and
  - c. the Trade and Barter of Fish and Aquatic Plants harvested under the Maa-nulth First Nation Fishing Right of that Maa-nulth First Nation.
- 10.1.42 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 10.1.41.

**Designation**

- 10.1.43 Each Maa-nulth First Nation Fishing Right may be exercised by those Maa-nulth-aht or other individuals designated by the applicable Maa-nulth First Nation to harvest Fish and Aquatic Plants under its Maa-nulth First Nation Fishing Right.
- 10.1.44 Where a Maa-nulth Fish Allocation has been established for a species of Fish or Aquatic Plant, each Maa-nulth First Nation may designate its Maa-nulth-aht or other individuals to harvest the species under its Maa-nulth First Nation Fishing Right.



- 10.1.45 Where a Maa-nulth Fish Allocation has not been established for a species of Fish or Aquatic Plant, each Maa-nulth First Nation may designate its Maa-nulth-aht to harvest the species under its Maa-nulth First Nation Fishing Right.
- 10.1.46 Where a Maa-nulth-aht harvests Fish or Aquatic Plants under a Maa-nulth First Nation Fishing Right, that Maa-nulth-aht is not required to have a federal or provincial fishing licence.
- 10.1.47 Subject to 10.1.50 and in addition to what is provided for in 10.1.45, where a Maa-nulth Fish Allocation for a species of Fish or Aquatic Plants has not been established, a Maa-nulth First Nation may designate an individual to harvest the species on behalf of a Maa-nulth-aht of that Maa-nulth First Nation for a year if:
- a. the Maa-nulth-aht is unable to harvest the species due to health reasons;
  - b. the individual is a family member of the Maa-nulth-aht; and
  - c. the individual is identified in the written notice for that year contemplated in 10.1.48.
- 10.1.48 Subject to 10.1.50, each year the Maa-nulth First Nations may identify, by written notice to the Minister, individuals who are family members of a Maa-nulth-aht, but who are not a Maa-nulth-aht themselves, who have been designated in accordance with 10.1.47.
- 10.1.49 A Maa-nulth First Nation may not designate a non-Maa-nulth-aht to harvest, on behalf of a Maa-nulth-aht, Fish or Aquatic Plants managed by British Columbia.
- 10.1.50 An individual designated in accordance with 10.1.47 may not use a vessel to harvest under a Maa-nulth First Nation Fishing Right if that vessel is authorized, by licence, to be used for commercial fishing.
- 10.1.51 Before a vessel is used to harvest Fish or Aquatic Plants under a Maa-nulth First Nation Fishing Right, the vessel will be designated by the applicable Maa-nulth First Nation. This provision does not alter the application of Federal Law or Provincial Law in respect of foreign fishing vessels in Canadian waters.
- 10.1.52 When a Maa-nulth First Nation designates a Maa-nulth-aht, other individual or vessel, that Maa-nulth First Nation will issue written documentation to the Maa-nulth-aht, other individual or vessel to indicate the designation.
- 10.1.53 Documentation issued by a Maa-nulth First Nation to a Maa-nulth-aht, other individual or vessel to indicate a designation:
- a. will be in the English language, which version is authoritative, and, at the discretion of the Maa-nulth First Nation, in the Nuu-chah-nulth language;

- b. will, in the case of an individual, include the name and address of the individual;
- c. will meet any requirements described in the applicable Maa-nulth Harvest Document and the Maa-nulth Fisheries Operational Guidelines; and
- d. may set out methods, timing, location of harvesting and individual allocations consistent with the applicable Maa-nulth Harvest Document.

## **10.2.0 COMMERCIAL FISHERIES**

### **Harvest Agreement**

- 10.2.1 Canada, British Columbia and the Maa-nulth First Nations will enter into a Maa-nulth Harvest Agreement which will come into effect on the Effective Date.
- 10.2.2 In accordance with the terms of the Maa-nulth Harvest Agreement, a Party may terminate the Maa-nulth Harvest Agreement and it will compensate the Maa-nulth First Nations.
- 10.2.3 If the highest domestic court that considers the Litigation determines that one or more of the plaintiffs has an aboriginal right to fish for salmon, halibut, Rockfish, roe herring, sablefish, prawn or crab and to sell the fish caught under that right on a commercial basis, upon the written request of the Maa-nulth First Nations provided within eight years of such determination, the Parties will amend this Agreement and the Maa-nulth Harvest Agreement as described in the Maa-nulth Harvest Agreement.
- 10.2.4 No compensation is payable under this Agreement or the Maa-nulth Harvest Agreement as a result of amendments made in accordance with 10.2.3.

### **New Emerging Fisheries**

- 10.2.5 Where the Minister proposes to establish a new emerging commercial fishery in the Pacific region, the Minister will advise the Maa-nulth First Nations of the proposal, and any participation by the Maa-nulth First Nations in any new emerging commercial fishery authorized by the Minister will be determined in accordance with the process established by the Minister.
- 10.2.6 Where the Minister proposes to establish a new emerging commercial fishery off the west coast of Vancouver Island, the Minister will advise the Maa-nulth First Nations of the proposal and Consult with the Maa-nulth First Nations on a process for participants to enter the fishery and on how the fishery should be allocated among participants.

**Aquaculture Tenures**

- 10.2.7 On the Effective Date the Minister will designate, under section 17(1) of the *Land Act*, for the applicable Maa-nulth First Nation, those lands described as “Designated Shellfish Aquaculture Site – Reserve File Number” in the applicable Appendix O for a term of 25 years, for the purpose of providing that Maa-nulth First Nation with an opportunity to apply for shellfish aquaculture tenures.
- 10.2.8 Notwithstanding section 17(3) of the *Land Act*, the Minister will not amend or cancel a designation referred to in 10.2.7 without the consent of the applicable Maa-nulth First Nation.
- 10.2.9 Subject to 10.2.8, British Columbia will continue to manage and use lands designated in accordance with 10.2.7.
- 10.2.10 A Maa-nulth First Nation may apply to British Columbia for shellfish aquaculture tenures in respect of the lands that have been designated for that Maa-nulth First Nation in accordance with 10.2.7.
- 10.2.11 A Maa-nulth First Nation may not Dispose of any shellfish aquaculture tenure established on or after the Effective Date on an Inter-tidal Bivalve beach described in Schedule 7.

**Commercial Fishing Licences**

- 10.2.12 On the Effective Date, Canada will issue to the Maa-nulth First Nations the general commercial fishing licences described in Schedule 8. The description of the licences is based on the fisheries management and licensing system at the time this Agreement was initialled by the chief negotiators for Canada and British Columbia and by the lead negotiator for the Maa-nulth First Nations. If the fisheries management or licensing system changes before the Effective Date, the licences described in Schedule 8 will be changed to the new system on the same basis as licences in the general commercial fishery.

**10.3.0 HARVEST OF SURPLUS SALMON**

- 10.3.1 Each year the Minister may determine whether there is a surplus of a species of salmon that returns to spawn in the Domestic Fishing Area, the size of the surplus, and access to that surplus.
- 10.3.2 The Joint Fisheries Committee may recommend to the Minister procedures for the identification of a surplus and terms and conditions for the harvest of the surplus.

10.3.3 The Minister may permit the Maa-nulth First Nations to harvest some or all of the surplus salmon that return to spawn in the Domestic Fishing Area on reaching agreement with the Maa-nulth First Nations 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 in accordance with the Maa-nulth Fisheries Operational Guidelines.

#### **10.4.0 FISHERIES MANAGEMENT**

##### **Joint Fisheries Committee**

10.4.1 The Joint Fisheries Committee operates to facilitate, in accordance with this Agreement, the co-operative planning and management of:

- a. the exercise of each Maa-nulth First Nation Fishing Right;
- b. activities of the Maa-nulth First Nations related to stock assessment, Enhancement Initiatives, Stewardship Activities and Fish habitat;
- c. activities of the Maa-nulth First Nations related to fisheries monitoring and enforcement;
- d. activities of the Maa-nulth First Nations related to environmental protection and ocean management activities; and
- e. other matters as Canada and the Maa-nulth First Nations may agree.

10.4.2 In facilitating cooperative activities and functions in accordance with 10.4.1, the Joint Fisheries Committee may:

- a. discuss publicly available information for proposed new emerging fisheries and other fisheries that may be conducted in the Domestic Fishing Area or could significantly affect a Maa-nulth First Nation Fishing Right;
- b. discuss publicly available information that is related to measures necessary for conservation, public health or public safety that could significantly affect a Maa-nulth First Nation Fishing Right;
- c. discuss publicly available information that relates to proposed Enhancement Initiatives in the Domestic Fishing Area;
- d. arrange for the collection and exchange of publicly available data on fisheries;

- e. discuss possible provisions for an Annual Fishing Plan before the Maa-nulth First Nations develop an Annual Fishing Plan and possible provisions for Maa-nulth Harvest Documents;
  - f. discuss an Annual Fishing Plan;
  - g. discuss a proposal by a Maa-nulth First Nation for Enhancement Initiatives;
  - h. communicate with other advisory bodies in respect of matters of mutual interest;
  - i. discuss publicly available information on issues related to international arrangements that could significantly affect a Maa-nulth First Nation Fishing Right; and
  - j. carry out other functions and activities as Canada and the Maa-nulth First Nations may agree.
- 10.4.3 Canada and the Maa-nulth First Nations will establish the Joint Fisheries Committee on the Effective Date. Canada and each Maa-nulth First Nation will appoint one member to the Joint Fisheries Committee.
- 10.4.4 British Columbia may appoint one member to the Joint Fisheries Committee. If British Columbia appoints a member to the Joint Fisheries Committee, references to Canada and the Maa-nulth First Nations in 10.4.1, 10.4.2, 10.4.6, 10.4.8, 10.4.14, 10.4.17, 10.4.18, 10.4.20, 10.4.21, 10.4.22, 10.4.23 and 10.4.26 include British Columbia and references to Canada in 10.4.16 include Canada or British Columbia.
- 10.4.5 Each year, the Maa-nulth First Nations will submit an Annual Fishing Plan to the Joint Fisheries Committee.
- 10.4.6 Canada and the Maa-nulth First Nations will provide each other with such publicly available information as may reasonably be necessary to enable the Joint Fisheries Committee to carry out its functions.
- 10.4.7 Any catch data or other information provided in accordance with 10.1.18 may, on the request of any Party, be reviewed by the Joint Fisheries Committee and, as appropriate, used by the Joint Fisheries Committee in making any recommendation.
- 10.4.8 The Joint Fisheries Committee will, from time to time as appropriate, discuss and make recommendations to Canada and the Maa-nulth First Nations in respect of:
- a. Maa-nulth First Nations fisheries for unallocated species and Maa-nulth Fish Allocations;

- b. relevant fisheries-related data;
- c. conservation, public health and public safety considerations that could affect harvesting under a Maa-nulth First Nation Fishing Right;
- d. other fisheries that could significantly affect harvesting under a Maa-nulth First Nation Fishing Right;
- e. the management and harvesting of Fish in the Domestic Fishing Area;
- f. recommendations to the Minister on the harvesting of Fish and Aquatic Plants in a National Park or National Marine Conservation Area that are developed by an advisory structure and other issues related to Maa-nulth First Nation harvesting of Fish and Aquatic Plants in National Parks or National Marine Conservation Areas;
- g. the coordination of harvesting under the Maa-nulth First Nation Fishing Right with other fisheries;
- h. measures for the monitoring and enforcement of harvesting under a Maa-nulth First Nation Fishing Right;
- i. enhancement activities conducted by Maa-nulth First Nations in the Maa-nulth First Nation Areas;
- j. overages and underages;
- k. in-season amendments to Maa-nulth Harvest Documents;
- l. the provisions for Maa-nulth Harvest Documents, taking into account, among other things, provisions related to:
  - i. matters included in an Annual Fishing Plan, where the Maa-nulth First Nations provide the Annual Fishing Plan to the Joint Fisheries Committee in a timely fashion;
  - ii. measures for establishing harvest amounts for an unallocated species in any given year;
  - iii. access to a specific stock; and
  - iv. other measures for harvest and management of Fish;
- m. other matters that could significantly affect harvesting under a Maa-nulth First Nation Fishing Right;
- n. the management of fisheries outside the Domestic Fishing Area that could significantly affect harvesting under a Maa-nulth First Nation Fishing Right;

- o. the management, conservation and protection of Fish, Fish habitat and Aquatic Plants in the Domestic Fishing Area; and
  - p. any other matters agreed to by Canada and the Maa-nulth First Nations.
- 10.4.9 On receipt of an Annual Fishing Plan, the Joint Fisheries Committee and an advisory structure will:
- a. review and, as appropriate, discuss the Annual Fishing Plan with one another, and make recommendations to the Minister and the Maa-nulth First Nations in respect of provisions that the Minister should put in a Maa-nulth Harvest Document;
  - b. discuss the coordination of harvesting under the Maa-nulth First Nation Fishing Rights with other fisheries; and
  - c. provide each other with any recommendations they make to the Minister.
- 10.4.10 For purposes of 10.4.8 and 10.4.9, an “advisory structure” is the advisory structure, if any, established in accordance with 23.10.4.
- 10.4.11 The Joint Fisheries Committee will conduct a post-season review of the harvesting under each Maa-nulth First Nation Fishing Right and other matters contemplated by 10.4.1, and may make recommendations to the Parties.
- 10.4.12 The Joint Fisheries Committee will:
- a. establish its own procedures; and
  - b. seek to operate on a consensus basis.
- 10.4.13 The Parties will include the procedures of the Joint Fisheries Committee in the Maa-nulth Fisheries Operational Guidelines.
- 10.4.14 Where all the members of the Joint Fisheries Committee do not agree on a recommendation contemplated by this Chapter, each of Canada and the Maa-nulth First Nations may submit written recommendations to the Minister.
- 10.4.15 A reference in this Chapter to a Joint Fisheries Committee recommendation includes a recommendation made to the Minister contemplated by 10.4.14.

- 10.4.16 Where the Maa-nulth First Nations believe that a recommendation made in accordance with 10.4.8 or 10.4.14 has not been acted upon by Canada, the Maa-nulth First Nations may discuss it at a meeting of the Joint Fisheries Committee. Following a discussion at the Joint Fisheries Committee, where the Maa-nulth First Nations still believe a recommendation made in accordance with 10.4.8 or 10.4.14 has not been acted upon by Canada, the Maa-nulth First Nations may, in writing, request the Minister to respond and the Minister will respond in writing.

**Regional First Nations Fisheries Management Advisory Process**

- 10.4.17 Where a regional fisheries committee is proposed or established for aboriginal fisheries in an area that includes all or part of the Domestic Fishing Area and that committee has functions and activities similar to the Joint Fisheries Committee, Canada and the Maa-nulth First Nations will determine which functions and activities of the Joint Fisheries Committee can be more effectively undertaken by a regional fisheries committee and discuss the mechanism for the Maa-nulth First Nations' participation in the regional fisheries committee.
- 10.4.18 Either Canada or the Maa-nulth First Nations may request that any function or activity of the Joint Fisheries Committee be undertaken by the regional fisheries committee.
- 10.4.19 In considering a request made in accordance with 10.4.18, in respect of those functions and activities of the Joint Fisheries Committee undertaken in accordance with 10.4.2 no Party will unreasonably withhold consent to the request.
- 10.4.20 Where Canada and the Maa-nulth First Nations agree, other functions and activities undertaken in accordance with 10.4.8 may be undertaken by a regional fisheries committee.
- 10.4.21 Where Canada and the Maa-nulth First Nations agree that a function or activity of the Joint Fisheries Committee will be undertaken by a regional fisheries committee:
- a. the Parties will update the Maa-nulth Fisheries Operational Guidelines, as required, to reflect the agreement; and
  - b. a reference in this Agreement to the Joint Fisheries Committee will be read as a reference to the regional fisheries committee for that function or activity.
- 10.4.22 Where a regional fisheries committee undertakes a function or activity of the Joint Fisheries Committee either Canada or the Maa-nulth First Nations may request that a function or activity that is not effectively addressed or efficiently coordinated by the regional fisheries committee be resumed by the Joint Fisheries Committee.



- 10.4.23 Where Canada and the Maa-nulth First Nations agree that a function or activity will be resumed by the Joint Fisheries Committee, the Parties will update the Maa-nulth Fisheries Operational Guidelines, as required, to reflect the change.
- 10.4.24 In considering a request made in accordance with 10.4.22, in respect of those functions or activities of the regional fisheries committee undertaken in accordance with 10.4.17 no Party will unreasonably withhold consent to the request.
- 10.4.25 If a regional fisheries committee contemplated by 10.4.17 is terminated and not replaced by another process, the Joint Fisheries Committee, as necessary, will resume its original functions or activities.
- 10.4.26 Canada and the Maa-nulth First Nations will, from time to time, review and discuss the effectiveness of the Joint Fisheries Committee and regional fisheries committee.

#### **Public Fisheries Management Advisory Processes**

- 10.4.27 Where Canada or British Columbia has or establishes a public fisheries management advisory process that encompasses all or a portion of the Domestic Fishing Area, or is for a species or stock of Fish or Aquatic Plants in the Pacific Region, the Maa-nulth First Nations may participate in that process on the same basis as other aboriginal groups. For greater certainty, the public fisheries management advisory processes contemplated by this paragraph do not include international fisheries advisory processes and the design, establishment and termination of the public fisheries management advisory processes is at the discretion of the Minister.
- 10.4.28 Where in accordance with 10.4.27, Canada or British Columbia proposes to establish a public fisheries management advisory process for the west coast of Vancouver Island, Canada or British Columbia will Consult with the Maa-nulth First Nations in developing that public fisheries management advisory process.

#### **Annual Fishing Plans**

- 10.4.29 Each year, the Maa-nulth First Nations will develop an Annual Fishing Plan in respect of allocated and unallocated species of Fish and Aquatic Plants. That plan will set out the preferences of the Maa-nulth First Nations, in respect of Maa-nulth First Nation Fishing Rights, as to:
- a. what stocks and species would be harvested and, where appropriate, in what amounts;
  - b. the description of Fish and Aquatic Plants to be harvested;
  - c. the location and timing of harvest;

- d. the method of harvest, including the size, type, identification, marking, and quantity of gear to be used and the manner in which it may be used;
- e. the monitoring of harvest, including notification, catch monitoring, identification and reporting of harvest;
- f. the transportation of harvested Fish and Aquatic Plants;
- g. enforcement measures;
- h. the provisions of a Maa-nulth Harvest Document; and
- i. other matters.

**Maa-nulth Harvest Document**

- 10.4.30 Each year, the Minister will issue one or more Maa-nulth Harvest Documents to the Maa-nulth First Nations in respect of the Maa-nulth First Nation Fishing Rights. Each Maa-nulth Harvest Document will be consistent with this Agreement.
- 10.4.31 Where the Minister issues a Maa-nulth Harvest Document, the Minister will take into account:
- a. conservation measures and the availability of fisheries resources;
  - b. the recommendations that the Minister has received in a timely manner from the Joint Fisheries Committee on the provisions of Maa-nulth Harvest Documents;
  - c. utilization of the fisheries resources;
  - d. efficient and effective harvesting of fisheries resources;
  - e. requirements for integration and efficient management of all resources;
  - f. accepted scientific procedures for management for fisheries resources; and
  - g. any other matters that the Minister considers relevant.
- 10.4.32 Harvesting under a Maa-nulth First Nation Fishing Right will be conducted in accordance with the provisions of a Maa-nulth Harvest Document.
- 10.4.33 The Maa-nulth First Nations are not required by Canada or British Columbia to pay any fee or charge for a Maa-nulth Harvest Document.
- 10.4.34 Each Maa-nulth First Nation will make the applicable Maa-nulth Harvest Documents available for inspection by its Maa-nulth-aht and other individuals designated to harvest under its Maa-nulth First Nation Fishing Right.

- 10.4.35 The Minister will provide written reasons to the Maa-nulth First Nations, the Joint Fisheries Committee and the advisory structure if the Maa-nulth Harvest Document has significant differences from the licence provisions recommended by the Joint Fisheries Committee or the advisory structure.
- 10.4.36 Where the Minister amends a Maa-nulth Harvest Document, the Minister will provide notice to and, where practicable, discuss the amendment and reasons in advance with:
- a. the Maa-nulth First Nations;
  - b. the Joint Fisheries Committee; and
  - c. an advisory structure, where harvesting of Fish and Aquatic Plants may occur in a National Park or a National Marine Conservation Area.
- 10.4.37 If special circumstances make it impracticable to discuss an amendment in accordance with 10.4.36 with the Maa-nulth First Nations, the Joint Fisheries Committee or an advisory structure, the Minister:
- a. may make the decision or take the action that the Minister considers necessary; and
  - b. will notify the Maa-nulth First Nations, the Joint Fisheries Committee and an advisory structure of the special circumstances and the decision made or action taken.
- 10.4.38 For purposes of 10.4.35, 10.4.36 and 10.4.37 an “advisory structure” is an advisory structure, if any, established in accordance with 23.10.4.

#### **Maa-nulth Fisheries Operational Guidelines**

- 10.4.39 The Parties will prepare the Maa-nulth Fisheries Operational Guidelines that set out the operational principles, procedures, and guidelines regarding the implementation of the provisions of this Chapter. The Parties will update and maintain the Maa-nulth Fisheries Operational Guidelines as required.
- 10.4.40 The Maa-nulth Fisheries Operational Guidelines describe when and how an adjustment is made to a Maa-nulth Fish Allocation to account for harvests that exceed or fail to meet a Maa-nulth Fish Allocation in a year.
- 10.4.41 Any adjustment in accordance with 10.4.40 will take into account the actions of the Minister and the Maa-nulth First Nations in the conduct of the fishery in question.
- 10.4.42 The Minister and the Maa-nulth First Nations will endeavour to minimize any overages and underages in each year and to minimize any overages and underages in successive years.

**10.5.0 STEWARDSHIP AND ENHANCEMENT**

- 10.5.1 The Maa-nulth First Nations may conduct, with the approval of the Minister and in accordance with Federal Law or Provincial Law, Enhancement Initiatives and Stewardship Activities in the Domestic Fishing Area.
- 10.5.2 Canada and the Maa-nulth First Nations may negotiate agreements concerning the Maa-nulth First Nations' activities related to Enhancement Initiatives and Stewardship Activities.
- 10.5.3 The Parties may enter into agreements concerning the harvest of surpluses of a species of salmon in the terminal area that result from an approved Enhancement Initiative in which the Maa-nulth First Nations invested. One of the factors that the Minister will take into account concerning the agreement is the amount of the investment that the Maa-nulth First Nations have made in the approved enhancement facility. An enhancement facility is a fish hatchery (including an incubation box) or other facility that the Parties agree is an enhancement facility.

**SCHEDULE 1 – CHINOOK SALMON ALLOCATION**

1. In this Schedule:

**“Ocean Chinook Salmon”** means chinook salmon taken into account in the calculation of Ocean Chinook Salmon Canadian Total Allowable Catch;

**“Ocean Chinook Salmon Canadian Total Allowable Catch”** means the amount established by the Minister as available for harvest in Canadian waters off the west coast of Vancouver Island by aboriginal, commercial and recreational fisheries of chinook salmon that are predominantly of non-west coast of Vancouver Island stocks; and

**“Terminal Chinook Salmon”** means chinook salmon in those parts of Areas 23, 26, 123 and 126 as defined in the *Pacific Fishery Management Area Regulations, 2007* that are landward of a line that is one nautical mile seaward from the surfline, but does not include Ocean Chinook Salmon.

**Allocation**

2. Each year, the Maa-nulth Fish Allocation for chinook salmon is:
- a. an amount of Ocean Chinook Salmon equal to 1,875 pieces plus 1.78% of the Ocean Chinook Salmon Canadian Total Allowable Catch; and
  - b. an amount of Terminal Chinook Salmon equal to:
    - i. 200 pieces, when the return of Terminal Chinook Salmon is critical;
    - ii. 1,500 pieces, when the return of Terminal Chinook Salmon is low;
    - iii. 2,000 pieces, when the return of Terminal Chinook Salmon is moderate; and
    - iv. 2,600 pieces, when the return of Terminal Chinook Salmon is abundant.
3. For the purpose of paragraph 2, the terms “critical”, “low”, “moderate” and “abundant” are determined by the Minister in accordance with the Maa-nulth Fisheries Operational Guidelines.

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4. Where a Maa-nulth First Nation harvests chinook salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of:
    - c. Ocean Chinook Salmon is authorized by the Minister, those chinook salmon are counted as Ocean Chinook Salmon; and
    - d. Terminal Chinook Salmon is authorized by the Minister, those chinook salmon are counted as Terminal Chinook Salmon.
  5. Within the Domestic Fishing Area, the time and location for the harvest of:
    - a. Ocean Chinook Salmon under the Maa-nulth First Nation Fishing Rights; and
    - b. Terminal Chinook Salmon under the Maa-nulth First Nation Fishing Rights;will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

**SCHEDULE 2 – CHUM SALMON ALLOCATION**

1. In this Schedule:

**“Terminal Chum Salmon”** means chum salmon in those parts of Areas 23, 26, 123 and 126 as defined in the *Pacific Fishery Management Area Regulations, 2007* that are landward of a line that is one nautical mile seaward from the surfline.

**Allocation**

2. Each year, the Maa-nulth Fish Allocation for chum salmon is:
  - a. 3,000 pieces, when the return of Terminal Chum Salmon is critical;
  - b. 6,500 pieces, when the return of Terminal Chum Salmon is low;
  - c. 10,000 pieces, when the return of Terminal Chum Salmon is moderate;
  - d. 14,000 pieces, when the return of Terminal Chum Salmon is abundant; and
  - e. 17,500 pieces, when the return of Terminal Chum Salmon is very abundant.
3. For purposes of paragraph 2, the terms “critical”, “low”, “moderate”, “abundant” and “very abundant” are determined by the Minister in accordance with the Maa-nulth Fisheries Operational Guidelines.

**SCHEDULE 3 – COHO SALMON ALLOCATION**

1. In this Schedule:

**“Ocean Coho Salmon”** means coho salmon harvested in those parts of Areas 123 and 126 as defined in the *Pacific Fisheries Management Area Regulations, 2007* seaward of a line that is one nautical mile seaward from the surfline; and

**“Terminal Coho Salmon”** means coho salmon in those parts of Areas 23, 26, 123 and 126 as defined in the *Pacific Fishery Management Area Regulations, 2007* that are landward of a line that is one nautical mile seaward from the surfline, but does not include Ocean Coho Salmon.

**Allocations**

2. Each year, the Maa-nulth Fish Allocation for coho salmon is:
- a. an amount of Ocean Coho Salmon equal to 7,000 pieces; and
  - b. an amount of Terminal Coho Salmon equal to,
    - i. 1,200 pieces, when the return of Terminal Coho Salmon is critical;
    - ii. 1,850 pieces, when the return of Terminal Coho Salmon is low;
    - iii. 3,050 pieces, when the return of Terminal Coho Salmon is moderate; and
    - iv. 3,630 pieces, when the return of Terminal Coho Salmon is abundant.
3. For purposes of paragraph 2, the terms “critical”, “low”, “moderate” and “abundant” are determined by the Minister in accordance with the Maa-nulth Fisheries Operational Guidelines.
4. Where a Maa-nulth First Nation harvests coho salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of:
- a. Ocean Coho Salmon is authorized by the Minister, those coho salmon are counted as Ocean Coho Salmon; and
  - b. Terminal Coho Salmon is authorized by the Minister, those coho salmon are counted as Terminal Coho Salmon.



5. Within the Domestic Fishing Area, the time and location for the harvest of:
  - a. Ocean Coho Salmon under the Maa-nulth First Nation Fishing Rights; and
  - b. Terminal Coho Salmon under the Maa-nulth First Nation Fishing Rights;will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.
6. During the ten year period immediately following the Effective Date, Canada will gather information on coho salmon that return to spawn in the Malksope River.
7. At the end of the ten year period referred to in paragraph 6, the Parties will review and discuss the information referred to in paragraph 6 to determine whether the information is representative of coho salmon stocks in Area 26.
8. In making the determination in accordance with paragraph 7, the Parties will take into account:
  - a. the information referred to in paragraph 6;
  - b. the information about coho salmon in streams in Area 26, other than the Malksope River; and
  - c. other relevant information.
9. If the Parties determine that the information referred to in paragraph 6 is representative of coho salmon stocks in Area 26, upon the request of any Party, the Parties will negotiate and attempt to reach agreement on amendments to paragraph 2 that result in an average allocation of 4,300 pieces, based on the information referred to in paragraph 6.
10. The Parties may request that the Joint Fisheries Committee consider and provide recommendations regarding the matters described in paragraphs 8 and 9.

**SCHEDULE 4 – PINK SALMON ALLOCATION****Allocation**

1. In the first two year period following the Effective Date, and in each subsequent two year period, the Maa-nulth Fish Allocation for pink salmon is 7,250 pieces.
2. The time, location and amount of harvests of west coast of Vancouver Island pink salmon under the Maa-nulth First Nation Fishing Rights will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

**SCHEDULE 5 – SOCKEYE SALMON ALLOCATION**

1. In this Schedule:

**“Fraser River Sockeye Salmon Canadian Total Allowable Catch”** means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Fraser River watershed;

**“Henderson Lake Sockeye Total Allowable Catch”** means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Henderson Lake watershed;

**“Somass Sockeye Canadian Total Allowable Catch”** means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Somass River watershed;

**“Terminal Jansen Lake Sockeye Salmon”** means sockeye salmon that originate in the Jansen River and Lake watershed and are present in the area landward of a line one nautical mile seaward from the mouth of the Jansen River; and

**“Terminal Power Lake Sockeye Salmon”** means sockeye salmon that originate in the Power River and Lake watershed and are present in the area landward of a line one nautical mile seaward from the mouth of the Power River.

**Allocation**

2. Each year, the Maa-nulth Fish Allocation for sockeye salmon is:
- a. an amount of Somass sockeye salmon equal to:
    - i. when the Somass Sockeye Canadian Total Allowable Catch is 50,000 or less, 20% of the Somass Sockeye Canadian Total Allowable Catch;
    - ii. when the Somass Sockeye Canadian Total Allowable Catch is greater than 50,000 and less than or equal to 85,000, then 10,000 plus 10% of that portion of the Somass Sockeye Canadian Total Allowable Catch that is greater than 50,000 and less than or equal to 85,000;

- iii. when the Somass Sockeye Canadian Total Allowable Catch is greater than 85,000 and less than or equal to 412,421, then 13,500 plus 2.87% of that portion of the Somass Sockeye Canadian Total Allowable Catch that is greater than 85,000 and less than or equal to 412,421; and
    - iv. when the Somass Sockeye Canadian Total Allowable Catch is greater than 412,421, then 22,886;
  - b. an amount of Fraser River sockeye salmon equal to 0.13366% of the Fraser River Sockeye Salmon Canadian Total Allowable Catch;
  - c. an amount of Henderson Lake sockeye salmon equal to 26.85% of the Henderson Lake Total Allowable Catch up to a maximum of 17,055 pieces;
  - d. an amount of Terminal Jansen Lake Sockeye Salmon equal to 50% of the amount of Terminal Jansen Lake Sockeye Salmon that the Minister determines is available for harvest; and
  - e. an amount of Terminal Power Lake Sockeye Salmon equal to 50% of the amount of Terminal Power Lake Sockeye Salmon that the Minister determines is available for harvest.
- 3. Where a Maa-nulth First Nation harvests sockeye salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of:
  - a. Somass sockeye salmon is authorized by the Minister, those sockeye salmon are counted as Somass sockeye salmon;
  - b. Fraser River sockeye salmon is authorized by the Minister, those sockeye salmon are counted as Fraser River sockeye salmon;
  - c. Terminal Jansen Lake Sockeye Salmon is authorized by the Minister, those sockeye salmon are counted as Terminal Jansen Lake Sockeye Salmon;
  - d. Terminal Power Lake Sockeye Salmon is authorized by the Minister, those sockeye salmon are counted as Terminal Power Lake Sockeye Salmon; and
  - e. Henderson Lake sockeye salmon is authorized by the Minister, those sockeye salmon are counted as Henderson Lake sockeye salmon.
- 4. Within the Domestic Fishing Area, the time and location for the harvest of:
  - a. Somass sockeye salmon under the Maa-nulth First Nation Fishing Rights;
  - b. Fraser River sockeye salmon under the Maa-nulth First Nation Fishing Rights;
  - c. Terminal Jansen Lake Sockeye Salmon under the Maa-nulth First Nation Fishing Rights;

- d. Terminal Power Lake Sockeye Salmon under the Maa-nulth First Nation Fishing Rights; and
- e. Henderson Lake sockeye salmon under the Maa-nulth First Nation Fishing Rights,

will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

## SCHEDULE 6 – NON - SALMON ALLOCATIONS

### General

1. The time and location for harvest of non-salmon under the Maa-nulth First Nation Fishing Rights will be consistent with the description in the Maa-nulth Fisheries Operational Guidelines.

### Herring Allocation

2. Each year the Maa-nulth Fish Allocation for whole herring is 90 short tons or a corresponding amount of herring spawn on kelp or herring spawn on boughs in accordance with the conversion rates for whole herring to herring spawn on kelp or herring spawn on bough as described in the Maa-nulth Fisheries Operational Guidelines.

### Halibut Allocation

3. In paragraph 4:  
  
“**Halibut Canadian Total Allowable Catch**” means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of Pacific halibut.
4. Each year, the Maa-nulth Fish Allocation for halibut is 26,000 pounds (net weight, dressed, head off) plus 0.39% of the Halibut Canadian Total Allowable Catch (net weight, dressed, head off).

### Groundfish and Rockfish Allocations

5. In paragraph 6:  
  
“**Rockfish Commercial Total Allowable Catch**” means the amount, established by the Minister that is calculated to be available for the harvest in Canadian waters by commercial fisheries described as the outside rockfish category ZN Total Allowable Catch for west coast of Vancouver Island Yelloweye, Quillback, Copper, China and Tiger.
6. Each year, the Maa-nulth Fish Allocation of Rockfish is 11,250 pounds of whole fish, plus 2.46% of the Rockfish Commercial Total Allowable Catch.
7. Each year, the Maa-nulth Fish Allocation of Groundfish is 13,000 pounds of whole fish.

**Sablefish Allocation**

8. In paragraph 9:

**“Sablefish Canadian Total Allowable Catch”** means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of Pacific sablefish.

9. Each year the Maa-nulth Fish Allocation for sablefish is 0.082% of the Sablefish Canadian Total Allowable Catch.

**SCHEDULE 7 – INTER-TIDAL BIVALVE ALLOCATION**

1. Each year the Maa-nulth Fish Allocation of Inter-tidal Bivalves is the harvestable surplus from the beaches between the high water mark and the low water mark in the area described as “Inter-tidal Bivalve Harvest Areas” in:
  - a. Part 1, Plan 1 of Appendix P for Toquart Bay;
  - b. Part 1, Plan 2 of Appendix P for Effingham Inlet;
  - c. Part 1, Plan 3 of Appendix P for Tzartus Island;
  - d. Part 1, Plan 4 of Appendix P for Sarita River;
  - e. Part 1, Plan 5 of Appendix P for Big Bunsby;
  - f. Part 1, Plan 6 of Appendix P for Kauwinch River;
  - g. Part 1, Plan 7 of Appendix P for Artlish River; and
  - h. Part 1, Plan 8 of Appendix P for Amai Inlet.



**SCHEDULE 8 – COMMERCIAL FISHING LICENCES****Salmon**

1. One Category A licence for Area D gill net issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 11.25 metres.
2. One Category A licence for Area G troll issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 14.74 metres.
3. One Category A licence for Area G troll issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 11.58 metres.

**Halibut**

4. One Category L licence issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 21.23 metres and an amount equivalent to the quota of 0.147686 percent of the Canadian commercial total allowable catch for Pacific halibut.
5. One Category L licence issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 20.35 metres and an amount equivalent to the quota of 0.097124 percent of the Canadian commercial total allowable catch for Pacific halibut.
6. One Category L licence issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 20.48 metres and an amount equivalent to the quota of 0.1058376 percent of the Canadian commercial total allowable catch for Pacific halibut.

**Rockfish**

7. One Category ZN licence for the outside area issued under the *Pacific Fishery Regulations, 1993* with a maximum vessel length of 12.90 metres and an amount equivalent to the quota of 1/191<sup>st</sup> of the Rockfish Canadian commercial total allowable catch for the Category ZN licences for the outside area fishery.



## CHAPTER 11 WILDLIFE

### 11.1.0 GENERAL

- 11.1.1 Each Maa-nulth First Nation has the right to harvest Wildlife for Domestic Purposes in the Wildlife Harvest Area in accordance with this Agreement.
- 11.1.2 Each Maa-nulth First Nation Right to Harvest Wildlife is limited by measures necessary for conservation, public health or public safety.
- 11.1.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Right to Harvest Wildlife.
- 11.1.4 A Maa-nulth First Nation Right to Harvest Wildlife may be exercised by every Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided under a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.
- 11.1.5 British Columbia may authorize uses of or Dispose of provincial Crown land and any authorized use or Disposition may affect the methods, times and locations of harvesting Wildlife under this Agreement, provided that British Columbia ensures that those authorized uses or Dispositions do not deny a Maa-nulth First Nation the reasonable opportunity to harvest Wildlife under its Maa-nulth First Nation Right to Harvest Wildlife.
- 11.1.6 For the purposes of 11.1.5, British Columbia and that Maa-nulth First Nation will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or Dispositions of provincial Crown land on that Maa-nulth First Nation's reasonable opportunity to harvest Wildlife.
- 11.1.7 Each Maa-nulth First Nation will exercise its Maa-nulth First Nation Right to Harvest Wildlife in a manner that does not interfere with other authorized uses or Dispositions of provincial Crown land existing on the Effective Date or authorized in accordance with 11.1.5.
- 11.1.8 A Maa-nulth First Nation or a Maa-nulth-aht may enter into an agreement with a federal department or agency to authorize the harvest of Wildlife by that Maa-nulth First Nation or that Maa-nulth-aht on land owned by that federal department or agency in accordance with Federal Law or Provincial Law.
- 11.1.9 Each Maa-nulth First Nation may exercise its Maa-nulth First Nation Right to Harvest Wildlife on fee simple lands within the Wildlife Harvest Area, other than Maa-nulth First Nation Lands, but that harvesting is subject to Federal Law or Provincial Law in respect of access to fee simple lands.

- 11.1.10 Subject to 11.1.11 and 11.14.2, no Maa-nulth-aht is required to have any federal or provincial licence or pay any fee or royalty to Canada or British Columbia relating to the exercise of a Maa-nulth First Nation Right to Harvest Wildlife.
- 11.1.11 Nothing in this Agreement affects Canada's ability to require any Maa-nulth-aht to obtain licences for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
- 11.1.12 Nothing in this Agreement precludes a Maa-nulth-aht from harvesting Wildlife throughout Canada in accordance with:
- a. Federal Law or Provincial Law;
  - b. any agreements that are in accordance with Federal Law or Provincial Law as between a Maa-nulth First Nation and other aboriginal people; or
  - c. any arrangements between other aboriginal people and Canada or British Columbia.
- 11.1.13 Nothing in this Agreement precludes a Maa-nulth First Nation from concluding agreements, that are in accordance with Federal Law or Provincial Law, with other aboriginal groups relating to harvesting of Wildlife.
- 11.1.14 A Maa-nulth First Nation may enter into an agreement with another First Nation to allow that other First Nation to exercise that Maa-nulth First Nation's Maa-nulth First Nation Right to Harvest Wildlife.
- 11.1.15 A Wildlife Sharing Agreement will provide that any Wildlife species harvested in accordance with the agreement:
- a. is for Domestic Purposes only; and
  - b. will be harvested in accordance with this Agreement and any applicable Wildlife Harvest Plan.
- 11.1.16 A Maa-nulth First Nation Right to Harvest Wildlife exercisable under a Wildlife Sharing Agreement may only be exercised by members of the First Nation party to the Wildlife Sharing Agreement who are aboriginal people of Canada resident in British Columbia.
- 11.1.17 Any individual who harvests Wildlife in accordance with a Wildlife Sharing Agreement will report the harvest to British Columbia.
- 11.1.18 A Maa-nulth First Nation will provide British Columbia with a copy of any Wildlife Sharing Agreement it enters into.

- 11.1.19 No fee or royalty will be paid to a Maa-nulth First Nation, Maa-nulth First Nation Government or any other person in connection with the exercise of a Maa-nulth First Nation Right to Harvest Wildlife in accordance with a Wildlife Sharing Agreement.
- 11.1.20 Harvest in accordance with a Wildlife Sharing Agreement is intended to be taken from the harvest that would otherwise be available for the Maa-nulth-aht of that Maa-nulth First Nation and is not intended to increase the overall harvest level.
- 11.1.21 For greater certainty, any individual harvesting Wildlife in accordance with a Wildlife Sharing Agreement is exercising the Maa-nulth First Nation Right to Harvest Wildlife of the applicable Maa-nulth First Nation and the harvest may only occur in accordance with this Agreement and the Wildlife Sharing Agreement.
- 11.1.22 Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in Wildlife.
- 11.1.23 The Minister retains authority for Wildlife, their management, conservation and habitat.

#### **11.2.0 DOCUMENTATION**

- 11.2.1 Each Maa-nulth First Nation Government will issue documentation to harvest Wildlife under the Maa-nulth First Nation Right to Harvest Wildlife of the applicable Maa-nulth First Nation to:
- a. the Maa-nulth-aht of the applicable Maa-nulth First Nation; and
  - b. any individual authorized to harvest Wildlife in accordance with a Wildlife Sharing Agreement.
- 11.2.2 Any individual who harvests Wildlife under a Maa-nulth First Nation Right to Harvest Wildlife is required to carry documentation issued by the Maa-nulth First Nation Government of the applicable Maa-nulth First Nation and to produce that documentation on request by an authorized individual.
- 11.2.3 Documentation issued by a Maa-nulth First Nation Government in accordance with 11.2.1 will:
- a. be in the English language, which version is authoritative, and, at the discretion of that Maa-nulth First Nation Government, in the Nuu-chah-nulth language;
  - b. include the name and address of the individual harvester; and
  - c. meet any other requirements in the Wildlife Harvest Plan.

**11.3.0 WILDLIFE HARVEST AREA**

- 11.3.1 If after the Effective Date, Canada and British Columbia enter into a treaty within the meaning of section 35 of the *Constitution Act, 1982* with a Nuu-chah-nulth First Nation, other than a Maa-nulth First Nation, the Parties will review the boundaries of the Wildlife Harvest Area and consider amendments, if any, to this Agreement.

**11.4.0 WILDLIFE COUNCIL**

- 11.4.1 Before the Effective Date the Maa-nulth First Nations will establish a Wildlife Council, composed of no more than ten members, and will maintain the Wildlife Council after the Effective Date. The Wildlife Council will, on behalf of the Maa-nulth First Nations:
- a. develop a plan to be proposed to the Minister as a Wildlife Harvest Plan in accordance with 11.9.2 and 11.9.3;
  - b. make recommendations to the Minister as to whether a Wildlife species should be, or continue to be, a Designated Wildlife Species as contemplated by 11.5.2;
  - c. make recommendations to the Minister regarding the establishment of a Total Allowable Wildlife Harvest as contemplated by 11.6.2;
  - d. negotiate and attempt to reach agreement with British Columbia on the Maa-nulth Wildlife Allocation of a Designated Wildlife Species as contemplated by 11.7.1;
  - e. request that British Columbia vary a Maa-nulth Wildlife Allocation in accordance with 11.7.4 to 11.7.7;
  - f. submit a Wildlife Harvest Plan to the Minister as contemplated by 11.9.4;
  - g. review with British Columbia a Wildlife Harvest Plan as contemplated by 11.9.8; and
  - h. perform such other functions as British Columbia and the Maa-nulth First Nations may agree to in writing.
- 11.4.2 The Maa-nulth First Nations will provide notice to British Columbia of the names and addresses of the members on the Wildlife Council.
- 11.4.3 The Maa-nulth First Nations may, from time to time, change the members on the Wildlife Council and will provide notice to British Columbia of any such change.

- 11.4.4 Unless otherwise agreed by the Maa-nulth First Nations, each Maa-nulth First Nation who appoints a member to the Wildlife Council is responsible for the costs of the participation of such member on the Wildlife Council.

#### **11.5.0 DESIGNATION OF A WILDLIFE SPECIES**

- 11.5.1 The Minister may establish a Designated Wildlife Species if the Minister determines that in order to address a conservation risk to that Wildlife species within the Wildlife Harvest Area there should be a Total Allowable Wildlife Harvest of that Wildlife species.
- 11.5.2 The Wildlife Council or British Columbia may recommend to the Minister whether a Wildlife species should be, or continue to be, a Designated Wildlife Species.
- 11.5.3 The Minister may determine that a Wildlife species is no longer a Designated Wildlife Species if the Minister determines that the conservation risk to the species within the Wildlife Harvest Area no longer exists.

#### **11.6.0 TOTAL ALLOWABLE WILDLIFE HARVEST**

- 11.6.1 The Minister may establish a Total Allowable Wildlife Harvest for a Designated Wildlife Species.
- 11.6.2 The Minister will request and consider recommendations from the Wildlife Council before establishing the Total Allowable Wildlife Harvest for a Designated Wildlife Species.
- 11.6.3 In establishing the Total Allowable Wildlife Harvest for a Designated Wildlife Species, the Minister will, in accordance with proper Wildlife management, take into account:
- a. the population of the Wildlife species within the Wildlife Harvest Area; and
  - b. the population of the Wildlife species within its normal range or area of movement outside the Wildlife Harvest Area.

#### **11.7.0 MAA-NULTH WILDLIFE ALLOCATIONS**

- 11.7.1 If the Minister establishes a Designated Wildlife Species and establishes a Total Allowable Wildlife Harvest for that species, British Columbia and the Wildlife Council will negotiate and attempt to reach agreement on the Maa-nulth Wildlife Allocation for that species.

- 11.7.2 If British Columbia and the Wildlife Council are unable to reach agreement on the Maa-nulth Wildlife Allocation in accordance with 11.7.1, the Maa-nulth Wildlife Allocation will be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 11.7.3 A negotiation of a Maa-nulth Wildlife Allocation in accordance with 11.7.1, or a determination of a Maa-nulth Wildlife Allocation by an arbitrator in accordance with 11.7.2, will take into account all relevant information presented by British Columbia and the Wildlife Council and in particular information presented in respect of the Designated Wildlife Species including:
- a. its status;
  - b. conservation requirements;
  - c. current and past Maa-nulth First Nations harvest by Maa-nulth-aht for Domestic Purposes;
  - d. harvest under a Wildlife Sharing Agreement;
  - e. changes in Maa-nulth First Nations harvesting effort; and
  - f. harvest by non-Maa-nulth-aht.
- 11.7.4 British Columbia or the Wildlife Council may, at any time, request a review to vary a Maa-nulth Wildlife Allocation.
- 11.7.5 After receiving a request to review a Maa-nulth Wildlife Allocation in accordance with 11.7.4, British Columbia and the Wildlife Council will negotiate and attempt to reach agreement on a variation of that Maa-nulth Wildlife Allocation.
- 11.7.6 The person requesting a review of a Maa-nulth Wildlife Allocation has the onus of establishing that the Maa-nulth Wildlife Allocation should be varied. If British Columbia and the Wildlife Council are unable to reach agreement on a variation of a Maa-nulth Wildlife Allocation in accordance with 11.7.5, the variation of that Maa-nulth Wildlife Allocation will be finally determined by arbitration in accordance with Chapter 25 Dispute Resolution without having to proceed through Stages One and Two.
- 11.7.7 A negotiation to vary a Maa-nulth Wildlife Allocation in accordance with 11.7.5, or a determination by an arbitrator to vary a Maa-nulth Wildlife Allocation in accordance with 11.7.6, will take into account all relevant information presented by British Columbia and the Wildlife Council and in particular information in respect of the Designated Wildlife Species including:
- a. its Total Allowable Wildlife Harvest;
  - b. changes in its status;



- c. changes in conservation requirements;
  - d. changes in Maa-nulth First Nations harvesting effort;
  - e. current and past Maa-nulth First Nations harvest by Maa-nulth-aht for Domestic Purposes;
  - f. harvest under a Wildlife Sharing Agreement; and
  - g. harvest by non-Maa-nulth-aht.
- 11.7.8 The harvest of a Designated Wildlife Species by hunters, other than hunters exercising a Maa-nulth First Nation Right to Harvest Wildlife, may be authorized by British Columbia to occur at any time in a given year, including before or concurrent with the harvest by the Maa-nulth First Nations of their Maa-nulth Wildlife Allocation.
- 11.7.9 In negotiating and attempting to reach agreement on the Maa-nulth Wildlife Allocation in accordance with 11.7.1, or a variation of the Maa-nulth Wildlife Allocation in accordance with 11.7.5, the Wildlife Council will attempt to reach an agreement with British Columbia and any overlapping First Nation, if applicable, on a determination of the harvest levels of the Wildlife species by all harvesters.
- 11.7.10 If the Wildlife Council develops a Wildlife Harvest Plan for the harvest of a Wildlife species in accordance with 11.9.2, the Wildlife Council will attempt to reach an agreement with British Columbia and any overlapping First Nations, if applicable, on a determination of the harvest levels of the Wildlife species by all harvesters.
- 11.7.11 Any Maa-nulth Wildlife Allocation for a Wildlife species which may be established in accordance with 11.7.1 or 11.7.2 in any area free from overlap with other First Nations will be the same as the Maa-nulth Wildlife Allocation for Roosevelt elk established in accordance with paragraph 3 of Schedule 1, unless the information taken into account in accordance with 11.7.3 indicates that such an allocation is not appropriate.
- 11.7.12 If the Minister authorizes the harvest of Roosevelt elk in the Power Harvest Area, British Columbia and the Wildlife Council will negotiate and attempt to reach agreement on a variation of the Maa-nulth Wildlife Allocation in accordance with 11.7.5.
- 11.7.13 Any Maa-nulth Wildlife Allocation for a Wildlife species which may be established in accordance with 11.7.12 will be the same as the Maa-nulth Wildlife Allocation for Roosevelt elk established in accordance with paragraph 3 of Schedule 1, unless the information taken into account in accordance with 11.7.7 indicates that such an allocation is not appropriate.

**11.8.0 INITIAL DESIGNATED WILDLIFE SPECIES, ALLOCATION AND HARVEST PLAN**

- 11.8.1 On the Effective Date, the Minister will establish Roosevelt elk as a Designated Wildlife Species.
- 11.8.2 The Maa-nulth Wildlife Allocation of Roosevelt elk in the Wildlife Harvest Area is as described in Schedule 1.
- 11.8.3 The Wildlife Council and British Columbia will develop the initial Wildlife Harvest Plan for Roosevelt elk before the Effective Date, to take effect on the Effective Date.
- 11.8.4 British Columbia and the Maa-nulth First Nations may consent to an amendment to the boundaries of the Artlish Harvest Area, the Nahmint Harvest Area, the Power Harvest Area or the Tahsish Harvest Area and upon receipt by British Columbia of such consent from each Maa-nulth First Nation and receipt by each Maa-nulth First Nation of such consent from British Columbia, Plan 1, 2, 3 or 4 of Appendix Q-3, as applicable, is deemed to be amended to reflect such amendment.

**11.9.0 WILDLIFE HARVEST PLAN**

- 11.9.1 Each Maa-nulth First Nation Right to Harvest Wildlife will be exercised in accordance with the approved Wildlife Harvest Plan.
- 11.9.2 The Wildlife Council will develop a Wildlife Harvest Plan for the harvest of:
- a. Designated Wildlife Species;
  - b. Wildlife species proposed by the Wildlife Council or British Columbia in order to adequately manage and conserve that Wildlife species; or
  - c. any Wildlife species harvested in accordance with a Wildlife Sharing Agreement.
- 11.9.3 The Wildlife Harvest Plan will include provisions consistent with this Agreement in respect of the harvesting by any Maa-nulth-aht or individual harvesting in accordance with a Wildlife Sharing Agreement of Wildlife species contemplated by 11.9.2 regarding:
- a. documentation requirements for harvesters;
  - b. the Maa-nulth Wildlife Allocation;
  - c. the methods, timing and locations of the harvest;
  - d. as appropriate, the sex and age composition of the harvest;

- e. monitoring and reporting of the harvest and data collection;
  - f. method of identifying harvested Wildlife or Wildlife parts;
  - g. the process for the approval of the in-season adjustment and amendment to the Wildlife Harvest Plan; and
  - h. other matters agreed to by British Columbia and the Wildlife Council.
- 11.9.4 The Wildlife Harvest Plan, or any proposed amendments to an approved Wildlife Harvest Plan, will be submitted by the Wildlife Council to the Minister for approval.
- 11.9.5 In considering a proposed Wildlife Harvest Plan or its proposed amendment, the Minister will take into account:
- a. conservation requirements and availability of the Wildlife species referred to in 11.9.2;
  - b. any Maa-nulth First Nations preferences in respect of harvest locations, methods, or times described in the proposed Wildlife Harvest Plan;
  - c. harvest under a Wildlife Sharing Agreement;
  - d. harvest of the Wildlife species referred to in 11.9.2 by non-Maa-nulth-aht;
  - e. requirements for the integration and efficient management of Wildlife;
  - f. public health and public safety;
  - g. accepted scientific procedures for Wildlife management; and
  - h. other relevant statutory considerations.
- 11.9.6 The Wildlife Harvest Plan will take into account management concerns identified by the Minister.
- 11.9.7 If a Wildlife Harvest Plan proposed in accordance with 11.9.4 or any proposed amendment to an approved Wildlife Harvest Plan is consistent with this Agreement, the Minister will, subject to the factors referred to in 11.9.5, approve, or vary and approve, that Wildlife Harvest Plan, or the proposed amendment, and the Minister will provide written reasons to the Wildlife Council for any significant changes between the proposed Wildlife Harvest Plan and the approved Wildlife Harvest Plan.
- 11.9.8 The Wildlife Harvest Plan will be reviewed by the Wildlife Council and British Columbia at such times as proposed by either the Wildlife Council or British Columbia.

11.9.9 The Minister may approve a method of harvesting Wildlife that differs from those permitted under Federal Law or Provincial Law if the Minister is satisfied that the method is consistent with conservation, public health and public safety.

11.9.10 An approved Wildlife Harvest Plan prevails to the extent of a Conflict with Provincial Law.

#### **11.10.0 WILDLIFE ADVISORY MANAGEMENT PROCESSES**

11.10.1 The Maa-nulth First Nations have the right to participate in any public Wildlife advisory committee that may be established by British Columbia in respect of the Wildlife Harvest Area.

11.10.2 The Maa-nulth First Nations and British Columbia may agree to refer a proposed Wildlife Harvest Plan developed in accordance with 11.8.3 or 11.9.2 to any public Wildlife advisory committee that may be established by British Columbia in respect of the Wildlife Harvest Area before submitting it to the Minister for approval.

11.10.3 If there is a public Wildlife advisory committee established by British Columbia for an area that includes any portion of the Wildlife Harvest Area, the Minister may request recommendations from the public Wildlife advisory committee before determining:

- a. whether a Wildlife species will be or continue to be a Designated Wildlife Species; and
- b. the Total Allowable Wildlife Harvest for any Designated Wildlife Species.

11.10.4 At the request of British Columbia, the Wildlife Council will participate in any regional planning process initiated by British Columbia for the management and enhancement of Wildlife species if that process includes consideration of:

- a. habitat management measures; and
- b. population enhancement measures, including the transplant of Wildlife species within the regional planning area.

#### **11.11.0 LAW-MAKING**

11.11.1 Each Maa-nulth First Nation Government may make laws, in respect of the applicable Maa-nulth First Nation Right to Harvest Wildlife and an approved Wildlife Harvest Plan for:

- a. the distribution of harvested Wildlife among the Maa-nulth-aht of the applicable Maa-nulth First Nation;

- b. designating the Maa-nulth-aht of that Maa-nulth First Nation to harvest Wildlife;
  - c. documenting the Maa-nulth-aht of that Maa-nulth First Nation who have been designated or any individual harvesting in accordance with a Wildlife Sharing Agreement;
  - d. the methods, timing and location of the harvest of the Wildlife included in the Wildlife Harvest Plan by the Maa-nulth-aht of that Maa-nulth First Nation or any individual harvesting in accordance with a Wildlife Sharing Agreement; and
  - e. Trade and Barter of Wildlife harvested by the Maa-nulth-aht of that Maa-nulth First Nation.
- 11.11.2 Each Maa-nulth First Nation Government will make laws to require the Maa-nulth-aht of the applicable Maa-nulth First Nation and any individual harvesting in accordance with a Wildlife Sharing Agreement to comply with the Wildlife Harvest Plan.
- 11.11.3 Maa-nulth First Nation Law under 11.11.1a., 11.11.1b., 11.11.1d., or 11.11.1e. prevails to the extent of a Conflict with Federal Law or Provincial Law.
- 11.11.4 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 11.11.1c.

#### **11.12.0 TRADE AND BARTER AND SALE**

- 11.12.1 Each Maa-nulth First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada resident in British Columbia, any Wildlife or Wildlife parts, including meat and furs, harvested under its Maa-nulth First Nation Right to Harvest Wildlife.
- 11.12.2 A Maa-nulth First Nation right to Trade and Barter described in 11.12.1 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 11.11.1e.
- 11.12.3 A Maa-nulth First Nation may not Dispose of its right to Trade and Barter described in 11.12.1.
- 11.12.4 Wildlife or Wildlife parts, including meat and furs, harvested under a Maa-nulth First Nation Right to Harvest Wildlife may not be sold unless permitted by and in accordance with Federal Law or Provincial Law.
- 11.12.5 For greater certainty, a First Nation or any individual harvesting Wildlife in accordance with a Wildlife Sharing Agreement does not have the right to Trade

and Barter among themselves, or with other aboriginal people of Canada resident in British Columbia, any Wildlife or Wildlife parts, including meat and furs, harvested in accordance with the agreement.

#### **11.13.0 TRANSPORT AND EXPORT**

- 11.13.1 Any transport or export of Wildlife or Wildlife parts, including meat, harvested under a Maa-nulth First Nation Right to Harvest Wildlife will be in accordance with Federal Law or Provincial Law.

#### **11.14.0 TRAINING**

- 11.14.1 Each Maa-nulth First Nation may establish programs, consistent with provincial programs, to require training for its Maa-nulth-aht hunters in relation to:
- a. conservation and safety; and
  - b. methods of harvesting and handling of Wildlife.
- 11.14.2 In the absence of a Maa-nulth First Nation program established in accordance with 11.14.1, the provincial training system will apply to the Maa-nulth-aht of that Maa-nulth First Nation.
- 11.14.3 The provincial training system does not apply to any Maa-nulth-aht who is 19 years of age or older on the Effective Date.

#### **11.15.0 ENFORCEMENT**

- 11.15.1 The Parties may negotiate agreements concerning enforcement of Federal Law, Provincial Law or Maa-nulth First Nation Law in respect of Wildlife.
- 11.15.2 Maa-nulth First Nation Law under 11.11.0 may be enforced by individuals authorized to enforce Provincial Law or Maa-nulth First Nation Law in respect of Wildlife in British Columbia.

#### **11.16.0 TRAPPING**

- 11.16.1 Traplines wholly or partially on Maa-nulth First Nation Lands existing on the Effective Date are listed in Part 1 of Appendices E-11 to E-15, are retained by the persons who hold those traplines and may be transferred or renewed in accordance with Provincial Law.
- 11.16.2 The applicable Maa-nulth First Nation will allow reasonable access on its Maa-nulth First Nation Public Lands to the registered holder of a trapline listed in Part 1 of the applicable Appendices E-11 to E-15, or any renewal or replacement

thereof, for the purpose of carrying out trapping activities within the registered trapline area.

- 11.16.3 The applicable Maa-nulth First Nation will allow reasonable access on its Maa-nulth First Nation Public Lands to any person who has written permission from a registered trapline holder of a trapline listed in Part 1 of the applicable Appendices E-11 to E-15, or any renewal or replacement thereof, for the purpose of carrying out trapping activities within the registered trapline area.
- 11.16.4 If a trapline listed in Part 1 of Appendices E-11 to E-15 becomes vacant by reason of abandonment or operation of law, British Columbia will not register the portion of the trapline on Maa-nulth First Nation Lands without the consent of the applicable Maa-nulth First Nation.
- 11.16.5 If the registered holder of a trapline that is wholly or partially on Maa-nulth First Nation Lands agrees to transfer the trapline to the applicable Maa-nulth First Nation, British Columbia will consent to and register the transfer.

#### **11.17.0 GUIDING**

- 11.17.1 Guide outfitter certificates existing on the Effective Date are listed in Part 2 of Appendices E-11 to E-15, are retained by the persons who hold those guide outfitter certificates, and may be transferred or renewed in accordance with Provincial Law.
- 11.17.2 The applicable Maa-nulth First Nation will allow reasonable access on its Maa-nulth First Nation Public Lands for the purpose of carrying out guiding activities to any person who:
- a. holds a guide outfitter certificate listed in Part 2 of Appendices E-11 to E-15, or any renewal or replacement thereof;
  - b. holds a guide outfitter licence or assistant guide licence and is carrying out guiding activities in relation to a guide outfitter certificate area listed in Part 2 of Appendices E-11 to E-15, or any renewal or replacement thereof;
  - c. holds an angling guide licence;
  - d. holds an assistant angling guide licence; or
  - e. is an employee, agent or other representative of any person listed in a. to d.
- 11.17.3 If a guide outfitter certificate that applies to Maa-nulth First Nation Lands becomes vacant by reason of abandonment or operation of law, any new guide outfitter certificate issued by British Columbia will not include Maa-nulth First Nation Lands without the consent of the applicable Maa-nulth First Nation.

**SCHEDULE 1 - MAA-NULTH WILDLIFE ALLOCATION OF DESIGNATED SPECIES****General**

1. If the calculation of a Maa-nulth Wildlife Allocation results in a fractional number, the Maa-nulth Wildlife 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.
2. The Maa-nulth Wildlife Allocation of Roosevelt elk in the Wildlife Harvest Area is the total of the allocation of Roosevelt elk for the Artlish Harvest Area, the Nahmint Harvest Area, the Power Harvest Area and the Tahsish Harvest Area as described in paragraphs 3 to 6.
3. The Maa-nulth Wildlife Allocation of Roosevelt elk in the Artlish Harvest Area is:
  - a. if the Total Allowable Wildlife Harvest of Roosevelt elk is nine or fewer, 55% of the Total Allowable Wildlife Harvest; and
  - b. if the Total Allowable Wildlife Harvest of Roosevelt elk is ten or greater:
    - i. the number of Roosevelt elk determined in accordance with 3a.; plus
    - ii. 50% of the Total Allowable Wildlife Harvest of Roosevelt elk greater than nine.
4. The Maa-nulth Wildlife Allocation of Roosevelt elk in the Nahmint Harvest Area is 25% of the Total Allowable Wildlife Harvest.
5. The Maa-nulth Wildlife Allocation of Roosevelt elk in the Power Harvest Area is zero.
6. The Maa-nulth Wildlife Allocation of Roosevelt elk in the Tahsish Harvest Area is:
  - a. if the Total Allowable Wildlife Harvest of Roosevelt elk is nine or fewer, 55% of the Total Allowable Wildlife Harvest; and
  - b. if the Total Allowable Wildlife Harvest of Roosevelt elk is ten or greater:
    - i. the number of Roosevelt elk determined in accordance with 6a.; plus
    - ii. 50% of the Total Allowable Wildlife Harvest of Roosevelt elk greater than nine.



7. Unless otherwise authorized in accordance with an agreement contemplated by paragraph 8, the Maa-nulth Wildlife Allocation of Roosevelt elk to be harvested in the Artlish Harvest Area and the Tahsish Harvest Area will be harvested by the Maa-nulth-aht of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.
8. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations may enter into:
  - a. agreements with another Maa-nulth First Nation to authorize the Maa-nulth-aht of that Maa-nulth First Nation to harvest the Maa-nulth Wildlife Allocation of Roosevelt elk to be harvested in the Artlish Harvest Area and the Tahsish Harvest Area; and
  - b. Wildlife Sharing Agreements with another First Nation to authorize members of that First Nation who are aboriginal people of Canada resident in British Columbia to harvest the Maa-nulth Wildlife Allocation of Roosevelt elk to be harvested in the Artlish Harvest Area and the Tahsish Harvest Area.
9. Unless otherwise authorized in accordance with an agreement contemplated by paragraph 10, the Maa-nulth Wildlife Allocation of Roosevelt elk to be harvested in the Nahmint Harvest Area will be harvested by the Maa-nulth-aht of Uchucklesaht Tribe and Ucluelet First Nation.
10. Uchucklesaht Tribe and Ucluelet First Nation may jointly enter into:
  - a. agreements with another Maa-nulth First Nation to authorize the Maa-nulth-aht of that Maa-nulth First Nation to harvest the Maa-nulth Wildlife Allocation of Roosevelt elk to be harvested in the Nahmint Harvest Area; and
  - b. Wildlife Sharing Agreements with another First Nation to authorize members of that First Nation who are aboriginal people of Canada resident in British Columbia to harvest the Maa-nulth Wildlife Allocation of Roosevelt elk to be harvested in the Nahmint Harvest Area.



## CHAPTER 12 MIGRATORY BIRDS

### 12.1.0 GENERAL

- 12.1.1 Each Maa-nulth First Nation has the right to harvest Migratory Birds for Domestic Purposes in the Migratory Bird Harvest Area in accordance with this Agreement.
- 12.1.2 Each Maa-nulth First Nation Right to Harvest Migratory Birds is limited by measures necessary for conservation, public health or public safety.
- 12.1.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.1.4 A Maa-nulth First Nation Right to Harvest Migratory Birds may be exercised by every Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided under a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.
- 12.1.5 British Columbia may authorize uses of or Dispose of provincial Crown land, and any authorized use or Disposition may affect the methods, times and locations of harvesting Migratory Birds under this Agreement, provided that British Columbia ensures that those authorized uses or Dispositions do not deny a Maa-nulth First Nation the reasonable opportunity to harvest Migratory Birds under its Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.1.6 For the purposes of 12.1.5, British Columbia and the applicable Maa-nulth First Nation will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or Dispositions of provincial Crown land on that Maa-nulth First Nation's reasonable opportunity to harvest Migratory Birds.
- 12.1.7 Each Maa-nulth First Nation will exercise its Maa-nulth First Nation Right to Harvest Migratory Birds in a manner that does not interfere with other authorized uses or Dispositions of Crown land existing on the Effective Date or authorized in accordance with 12.1.5.
- 12.1.8 A Maa-nulth First Nation or a Maa-nulth-aht may enter into an agreement with a federal department or agency to authorize the harvest of Migratory Birds by that Maa-nulth First Nation or that Maa-nulth-aht on land owned by that federal department or agency in accordance with Federal Law or Provincial Law.
- 12.1.9 Each Maa-nulth First Nation may exercise its Maa-nulth First Nation Right to Harvest Migratory Birds on fee simple lands within the Migratory Bird Harvest Area, other than Maa-nulth First Nation Lands, but that harvesting is subject to Federal Law or Provincial Law in respect of access to fee simple lands.

- 12.1.10 Subject to 12.1.11, no Maa-nulth-aht is required to have any federal or provincial licence or pay any fee or royalty to Canada or British Columbia relating to the exercise of a Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.1.11 Nothing in this Agreement affects Canada's ability to require any Maa-nulth-aht to obtain licences for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
- 12.1.12 Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in Migratory Birds.
- 12.1.13 Nothing in this Agreement precludes a Maa-nulth-aht from harvesting Migratory Birds throughout Canada in accordance with:
- a. Federal Law or Provincial Law;
  - b. any agreements, that are in accordance with Federal Law or Provincial Law, between a Maa-nulth First Nation and other aboriginal people; or
  - c. any arrangements between other aboriginal people and Canada or British Columbia.
- 12.1.14 The Minister retains authority for managing and conserving Migratory Birds and Migratory Bird habitat.

## **12.2.0 TRADE AND BARTER**

- 12.2.1 Each Maa-nulth First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada resident in British Columbia, any Migratory Birds harvested under its Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.2.2 A Maa-nulth First Nation right to Trade and Barter in accordance with 12.2.1 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 12.5.1d.
- 12.2.3 A Maa-nulth First Nation may not Dispose of its right to Trade and Barter described in 12.2.1.

## **12.3.0 SALE**

- 12.3.1 Each Maa-nulth First Nation and its Maa-nulth-aht may only sell Migratory Birds harvested under the Maa-nulth First Nation Right to Harvest Migratory Birds of that Maa-nulth First Nation if:
- a. permitted under Federal Law or Provincial Law; and

- b. in accordance with Federal Law, Provincial Law and any Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government enacted under 12.5.3b.

12.3.2 Notwithstanding 12.3.1, each Maa-nulth First Nation and its Maa-nulth-aht may sell inedible byproducts, including down, of Migratory Birds harvested under the Maa-nulth First Nation Right to Harvest Migratory Birds of that Maa-nulth First Nation in accordance with any Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government enacted under 12.5.1e.

#### 12.4.0 TRANSPORT AND EXPORT

12.4.1 Any transport or export of Migratory Birds and their inedible byproducts, including down, harvested under a Maa-nulth First Nation Right to Harvest Migratory Birds will be in accordance with Federal Law or Provincial Law.

#### 12.5.0 LAW-MAKING

12.5.1 Each Maa-nulth First Nation Government may make laws in respect of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds for:

- a. the distribution of harvested Migratory Birds among the Maa-nulth-aht of the applicable Maa-nulth First Nation;
- b. designating the Maa-nulth-aht of that Maa-nulth First Nation to harvest Migratory Birds;
- c. the methods, timing, and location of the harvest of Migratory Birds by the Maa-nulth-aht of that Maa-nulth First Nation;
- d. the Trade and Barter of Migratory Birds harvested by the Maa-nulth-aht of that Maa-nulth First Nation; and
- e. the sale of inedible byproducts, including down, of Migratory Birds harvested by the Maa-nulth-aht of that Maa-nulth First Nation.

12.5.2 Maa-nulth First Nation Law under 12.5.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.

12.5.3 Each Maa-nulth First Nation Government may make laws in respect of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds for:

- a. the management of Migratory Birds and Migratory Bird habitat on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation;

- b. the sale of Migratory Birds harvested by the Maa-nulth-aht of that Maa-nulth First Nation, other than their inedible byproducts, if permitted under and in accordance with Federal Law or Provincial Law;
- c. the establishment and administration of licensing requirements for the harvest of Migratory Birds by the Maa-nulth-aht of that Maa-nulth First Nation; and
- d. documenting the Maa-nulth-aht of that Maa-nulth First Nation who have been designated as harvesters.

12.5.4 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 12.5.3.

#### 12.6.0 DOCUMENTATION

12.6.1 Each Maa-nulth First Nation Government will issue documentation to the Maa-nulth-aht of the applicable Maa-nulth First Nation who harvest Migratory Birds under the applicable Maa-nulth First Nation Right to Harvest Migratory Birds.

12.6.2 A Maa-nulth-aht who harvests Migratory Birds under a Maa-nulth First Nation Right to Harvest Migratory Birds is required to carry documentation issued by the applicable Maa-nulth First Nation Government and to produce that documentation on request by an authorized individual.

12.6.3 Documentation issued by a Maa-nulth First Nation Government in accordance with 12.6.1 will:

- a. be in the English language, which version is authoritative, and, at the discretion of that Maa-nulth First Nation Government, in the Nuu-chah-nulth language; and
- b. include the name and address of the Maa-nulth-aht.

#### 12.7.0 MIGRATORY BIRD HARVEST AREA

12.7.1 If after the Effective Date Canada and British Columbia enter into a treaty within the meaning of section 35 of the *Constitution Act, 1982* with a Nuu-chah-nulth First Nation, other than a Maa-nulth First Nation, the Parties will review the boundaries of the Migratory Bird Harvest Area and consider amendments, if any, to this Agreement.

**12.8.0 MANAGEMENT**

- 12.8.1 Each Maa-nulth First Nation has the right to participate in any public advisory committee, including any Wildlife advisory committee as described in 11.10.1, that may be established by Canada or British Columbia that addresses matters regarding Migratory Birds that occur in or impact the Migratory Bird Harvest Area.

**12.9.0 CONSERVATION MEASURES**

- 12.9.1 Where, in the opinion of the Minister, conservation measures are needed within the Migratory Bird Harvest Area to protect a particular population of Migratory Bird, and those measures are likely to affect the Maa-nulth First Nation Right to Harvest Migratory Birds of a Maa-nulth First Nation, Canada will Consult with that Maa-nulth First Nation regarding such conservation measures.
- 12.9.2 If a Maa-nulth First Nation is of the opinion that conservation measures are needed within the Migratory Bird Harvest area to protect a particular population of Migratory Bird that is harvested by that Maa-nulth First Nation under its Maa-nulth First Nation Right to Harvest Migratory Birds, that Maa-nulth First Nation may present its views to Canada in respect of such conservation measures and Canada will give full and fair consideration to that Maa-nulth First Nation's views.
- 12.9.3 Each Maa-nulth First Nation Government will provide to the Minister upon request, for Migratory Bird conservation purposes, information concerning the activities of the Maa-nulth-aht of the applicable Maa-nulth First Nation related to the exercise of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds.

**12.10.0 DESIGNATED MIGRATORY BIRD POPULATIONS**

- 12.10.1 Where the Minister, after Consulting with the Parties, determines that there is a conservation risk to a Migratory Bird population which requires the allocation of the harvest of that population, the Minister may designate that population as a Designated Migratory Bird Population.
- 12.10.2 Where, in the opinion of any Party, there is a conservation risk to a Migratory Bird population, that Party may make recommendations to the Minister for the designation of that population as a Designated Migratory Bird Population.
- 12.10.3 The Minister will, after Consulting with the Parties, determine the Total Allowable Migratory Bird Harvest of the Designated Migratory Bird Population.

- 12.10.4 In determining the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population, the Minister will take into account, among other things:
- a. the status of the Designated Migratory Bird Population;
  - b. continental and local conservation requirements; and
  - c. Canada's international commitments in respect of Migratory Birds.
- 12.10.5 The Minister will make an allocation of the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population for the Maa-nulth First Nations.
- 12.10.6 In making an allocation in accordance with 12.10.5, the Minister will take into account, among other things:
- a. the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population;
  - b. the current and past domestic needs and harvesting practices of the Maa-nulth First Nations in respect of the Designated Migratory Bird Population;
  - c. the extent and nature of the Maa-nulth First Nations' Maa-nulth First Nation Right to Harvest Migratory Birds; and
  - d. the interests of non-Maa-nulth-aht in respect of the Designated Migratory Bird Population.
- 12.10.7 On the recommendation of a Party, the Minister may determine that there is no longer a conservation risk to a Designated Migratory Bird Population and remove the designation.



## CHAPTER 13 GOVERNANCE

### 13.1.0 MAA-NULTH FIRST NATION GOVERNANCE

- 13.1.1 Each Maa-nulth First Nation has the right to self-government, and the authority to make laws, as set out in this Agreement.
- 13.1.2 Each Maa-nulth First Nation has a Maa-nulth First Nation Government in accordance with its Maa-nulth First Nation Constitution and this Agreement.
- 13.1.3 The rights, powers, privileges and authorities of each Maa-nulth First Nation will be exercised in accordance with:
- a. this Agreement;
  - b. its Maa-nulth First Nation Constitution; and
  - c. Maa-nulth First Nation Law enacted by its Maa-nulth First Nation Government.
- 13.1.4 Each Maa-nulth First Nation will act through its Maa-nulth First Nation Government in exercising its rights, powers, privileges and authorities, and in carrying out its duties, functions and obligations.

### 13.2.0 LEGAL STATUS AND CAPACITY

- 13.2.1 Each Maa-nulth First Nation is a separate and distinct legal entity with the capacity, rights, powers and privileges of a natural person including the ability 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 and borrow money;
  - d. sue and be sued; and
  - e. do other things ancillary to the exercise of its rights, powers and privileges.

**13.3.0 MAA-NULTH FIRST NATION CONSTITUTIONS**

- 13.3.1 Each Maa-nulth First Nation will have a Maa-nulth First Nation Constitution, consistent with this Agreement, which will provide:
- a. for a democratic Maa-nulth First Nation Government, including its duties, composition and membership;
  - b. that its Maa-nulth First Nation Government is democratically accountable to its Maa-nulth-aht and Maa-nulth First Nation Citizens with elections at least every five years;
  - c. for a process for removal of Office Holders of its Maa-nulth First Nation Government;
  - d. for a system of financial administration with standards comparable to those generally accepted for governments in Canada through which its Maa-nulth First Nation Government is financially accountable to its Maa-nulth-aht and Maa-nulth First Nation Citizens;
  - e. for conflict of interest rules comparable to those generally accepted for governments in Canada;
  - f. for recognition and protection of rights and freedoms of its Maa-nulth-aht and Maa-nulth First Nation Citizens;
  - g. that every Maa-nulth-aht of that Maa-nulth First Nation is entitled to be a Maa-nulth First Nation Citizen of that Maa-nulth First Nation;
  - h. that every registered Indian of the applicable Maa-nulth Indian Band is entitled to be a Maa-nulth First Nation Citizen of that Maa-nulth First Nation;
  - i. the process for the enactment of laws by its Maa-nulth First Nation Government;
  - j. a process for challenging the validity of the Maa-nulth First Nation Laws of its Maa-nulth First Nation Government;
  - k. that a Maa-nulth First Nation Law of its Maa-nulth First Nation Government which is inconsistent or in Conflict with its Maa-nulth First Nation Constitution is, to the extent of the inconsistency or Conflict, of no force or effect;
  - l. for the establishment of the Maa-nulth First Nation Public Institutions of its Maa-nulth First Nation Government;

- m. for conditions under which that Maa-nulth First Nation may Dispose of its lands or Interests in lands;
- n. for amendment of its Maa-nulth First Nation Constitution;
- o. that its Maa-nulth First Nation Government will establish processes for appeal or review of administrative decisions made by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions; and
- p. for other provisions as determined by that Maa-nulth First Nation.

13.3.2 At the discretion of each Maa-nulth First Nation, its Maa-nulth First Nation Constitution may provide for the appointment of *Ha'wiih* into its governance structure, including:

- a. the process for appointment of *Ha'wiih*;
- b. the duties of *Ha'wiih*; and
- c. other related matters.

13.3.3 If a Maa-nulth First Nation exercises its discretion under 13.3.2, it will provide in its Maa-nulth First Nation Constitution that the majority of Office Holders within its Maa-nulth First Nation Government are elected.

13.3.4 Each Maa-nulth First Nation represents and warrants to Canada and British Columbia that:

- a. its Maa-nulth First Nation Constitution was approved by at least 50% of the Eligible Voters of that Maa-nulth First Nation who voted to approve its Maa-nulth First Nation Constitution; and
- b. as of the Effective Date, its Maa-nulth First Nation Constitution approved in accordance with 13.3.4a. has not been amended.

13.3.5 Each Maa-nulth First Nation Constitution will come into force and effect on the Effective Date.

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

13.4.1 If the processes established under 13.3.1o. provide for a right of appeal to a court, the Supreme Court of British Columbia has jurisdiction to hear those appeals.

13.4.2 The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by a Maa-nulth First Nation Public Institution or a Maa-nulth First Nation Government under its applicable Maa-nulth First Nation Law.

- 13.4.3 The *Judicial Review Procedure Act* applies to an application for judicial review under 13.4.2 as if the Maa-nulth First Nation Law were an “enactment” within the meaning of that Act.

### **13.5.0 REGISTRY OF LAWS**

- 13.5.1 Each Maa-nulth First Nation Government will:
- a. maintain a public registry of its Maa-nulth First Nation Laws in the English language and, at the discretion of that Maa-nulth First Nation Government, in the Nuu-chah-nulth language, the English version of which is authoritative; and
  - b. provide British Columbia and, upon request, Canada with copies of its Maa-nulth First Nation Laws after they are enacted.

### **13.6.0 INDIVIDUALS WHO ARE NON-MEMBERS**

- 13.6.1 Each Maa-nulth First Nation Government will Consult with Non-Members concerning decisions of that Maa-nulth First Nation Government that directly and significantly affect those Non-Members.
- 13.6.2 Each Maa-nulth First Nation Public Institution will Consult with Non-Members concerning decisions of that Maa-nulth First Nation Public Institution that directly and significantly affect those Non-Members.
- 13.6.3 In addition to the requirements to Consult in 13.6.1 and 13.6.2, the applicable Maa-nulth First Nation Government will ensure that Non-Members, or their representatives, have the ability to participate in discussions and vote on decisions of a Maa-nulth First Nation Public Institution established by that Maa-nulth First Nation Government that directly and significantly affect Non-Members.
- 13.6.4 Notwithstanding 13.6.3, the Maa-nulth First Nation Government may provide that a majority of the members of its Maa-nulth First Nation Public Institutions will be Maa-nulth First Nation Citizens.
- 13.6.5 Each Maa-nulth First Nation Government will establish the means of participation under 13.6.3 by Maa-nulth First Nation Law at the same time that it establishes a Maa-nulth First Nation Public Institution whose activities may directly and significantly affect Non-Members.
- 13.6.6 Each Maa-nulth First Nation Government will provide that Non-Members have access to the appeal and review procedures established under 13.3.1o. in respect of the activities that directly affect those Non-Members.

**13.7.0 TRANSITION TO MAA-NULTH FIRST NATION GOVERNMENT**

- 13.7.1 The Chief or Chief Councillor and Councillors of the band council of the applicable Maa-nulth Indian Band under the *Indian Act*, on the day immediately before the Effective Date, are the members of the applicable Maa-nulth First Nation Government from the Effective Date until the Office Holders elected in its first election take office.
- 13.7.2 The first elections for the Office Holders of each Maa-nulth First Nation Government will be initiated no later than six months after the Effective Date and the Office Holders elected in the election will take office no later than one year after the Effective Date.

**13.8.0 TRANSITION**

- 13.8.1 Before a Maa-nulth First Nation Government makes a Maa-nulth First Nation Law in respect of adoption, child protection, health, social development, child care or kindergarten to grade 12 education, that Maa-nulth First Nation Government will provide at least six months notice to Canada and British Columbia of its intention to exercise the law-making authority.
- 13.8.2 Notwithstanding 13.8.1, upon agreement by the applicable Maa-nulth First Nation Government, Canada and British Columbia, that Maa-nulth First Nation Government may exercise a law-making authority before the expiration of the six month notice period required in accordance with 13.8.1.
- 13.8.3 At the request of Canada or British Columbia made within three months of receiving notice under 13.8.1, that Maa-nulth First Nation Government will Consult with Canada or British Columbia, as applicable, in respect of:
- a. options to address the interests of the Maa-nulth First Nation Government through methods other than the exercise of law-making authority by that Maa-nulth First Nation Government;
  - b. the comparability of standards established under proposed Maa-nulth First Nation Law to standards under Provincial Law;
  - c. immunity of individuals providing services or exercising authority under its Maa-nulth First Nation Law;
  - d. readiness;
  - e. quality assurance; and
  - f. other matters agreed to by that Maa-nulth First Nation Government and Canada or British Columbia, as applicable.

- 13.8.4 At the request of a Maa-nulth First Nation Government, Canada or British Columbia, made within three months of Canada and British Columbia receiving notice under 13.8.1, that Maa-nulth First Nation Government and Canada or British Columbia, as applicable, will discuss:
- a. any transfer of cases and related documentation from Canada or British Columbia to the applicable Maa-nulth First Nation Public Institution or that Maa-nulth First Nation Government, including any confidentiality and privacy considerations;
  - b. any transfer of assets from Canada or British Columbia to that Maa-nulth First Nation Public Institution or that Maa-nulth First Nation Government;
  - c. any appropriate amendments to Federal Law or Provincial Law, including amendments to address duplicate licencing requirements; and
  - d. other matters agreed to by that Maa-nulth First Nation Government and Canada or British Columbia, as applicable.
- 13.8.5 A Maa-nulth First Nation Government, Canada or British Columbia, as applicable, may negotiate agreements regarding any of the matters described in 13.8.3 and 13.8.4, but such agreement is not a condition precedent to the exercise of law-making authority by a Maa-nulth First Nation Government, and such authority may be exercised immediately following the six month notice period.

### **13.9.0 NOTIFICATION OF PROVINCIAL LEGISLATION**

- 13.9.1 Subject to an agreement under 13.9.4, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council, British Columbia will notify each Maa-nulth First Nation Government of the proposed legislation or regulation if:
- a. this Agreement provides that Maa-nulth First Nation Government law-making authority in respect of the subject matter of the legislation or regulation;
  - b. the legislation or regulation may affect the protections, immunities, limitations in respect of liability, remedies over or rights referred to in 13.35.8; or

- c. the legislation or regulation may affect:
  - i. the rights, powers or obligations; or
  - ii. the protections, immunities or limitations in respect of liability, referred to in 13.26.2,

except where this cannot be done for reasons of emergency or confidentiality.

13.9.2 If British Columbia does not notify a Maa-nulth First Nation Government under 13.9.1 for reasons of emergency or confidentiality, British Columbia will notify that Maa-nulth First Nation Government that legislation has been introduced in the Legislative Assembly, or a regulation has been deposited with the Registrar of Regulations.

13.9.3 A notification under 13.9.1 or 13.9.2 will include:

- a. the nature and purpose of the proposed legislation or regulation; and
- b. the date the proposed legislation or regulation is anticipated to take effect, if it has not already done so.

13.9.4 Each Maa-nulth First Nation may enter into an agreement with British Columbia establishing alternatives to the obligations which would otherwise apply under 13.9.1 to 13.9.3 and 13.9.5.

13.9.5 Subject to 13.9.6 or an agreement contemplated by 13.9.4, if, within 30 days after notice is provided in accordance with 13.9.1 or 13.9.2, the Maa-nulth First Nation Government makes a request to British Columbia, then British Columbia and the Maa-nulth First Nation Government will discuss the effect of the legislation or regulation, if any, on:

- a. a Maa-nulth First Nation Law of that Maa-nulth First Nation Government; or
- b. a matter referred to in 13.9.1b. or 13.9.1c.,

and British Columbia will have due regard for any views of the Maa-nulth First Nation Government provided during such discussions.

13.9.6 If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in 13.9.5:

- a. each Maa-nulth First Nation Government will participate in that process; and

- b. the process is deemed to satisfy British Columbia's obligation, in accordance with 13.9.5, for discussion in respect of a particular matter.
- 13.9.7 Unless British Columbia agrees otherwise, each Maa-nulth First Nation Government will retain the information provided in accordance with 13.9.1 to 13.9.6 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative Assembly or a regulation is deposited with the Registrar of Regulations, as applicable.
- 13.9.8 The Parties acknowledge that nothing in 13.9.1 to 13.9.6 will delay the enactment of a Provincial Law.
- 13.9.9 Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in 13.9.1 affects the validity of an otherwise valid Maa-nulth First Nation Law, the Maa-nulth First Nation Law will be deemed to be valid for a period of six months after the coming into force of the provincial legislation or regulation.

#### **13.10.0 DELEGATION**

- 13.10.1 Any law-making authority of a Maa-nulth First Nation Government under this Agreement may be delegated by a law of that Maa-nulth First Nation Government to:
  - a. a Maa-nulth First Nation Public Institution established by a law of that Maa-nulth First Nation Government;
  - b. another First Nation Government in British Columbia;
  - c. a public institution established by one or more First Nation Governments in British Columbia;
  - d. British Columbia;
  - e. Canada;
  - f. a Local Government; or
  - g. a legal entity as agreed to by the Parties,if the delegation and the exercise of any law-making authority is in accordance with the terms of this Agreement and the applicable Maa-nulth First Nation Constitution.



- 13.10.2 Any authority of a Maa-nulth First Nation Government other than a law-making authority may be delegated by a law of that Maa-nulth First Nation Government to:
- a. any body listed in 13.10.1; or
  - b. a legal entity in Canada,
- if the delegation and the exercise of any delegated authority is in accordance with this Agreement and the applicable Maa-nulth First Nation Constitution.
- 13.10.3 Any delegation under 13.10.1 or 13.10.2 will require the written consent of the delegate.
- 13.10.4 Each Maa-nulth First Nation Government may enter into agreements to receive authorities, including law-making authority, by delegation.

### **13.11.0 MAA-NULTH FIRST NATION GOVERNMENT**

- 13.11.1 Each Maa-nulth First Nation Government may make laws in respect of the election, administration, management and operation of that Maa-nulth First Nation Government, including:
- a. the establishment of Maa-nulth First Nation Public Institutions, including their respective powers, duties, composition and membership, but the registration or incorporation of Maa-nulth First Nation Public Institutions will be under Federal Law or Provincial Law;
  - b. the establishment of Maa-nulth First Nation Corporations, but the registration or incorporation of Maa-nulth First Nation Corporations will be under Federal Law or Provincial Law;
  - c. the powers, duties, responsibilities, remuneration, and indemnification of members, officials, employees and appointees of that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions;
  - d. financial administration of that Maa-nulth First Nation Government, its Maa-nulth First Nation Public Institutions and the applicable Maa-nulth First Nation; and
  - e. elections, by-elections and referenda.
- 13.11.2 For greater certainty, in accordance with 1.8.11, nothing in 13.11.1 confers authority on a Maa-nulth First Nation Government to make laws in respect of labour relations or working conditions.

- 13.11.3 Each Maa-nulth First Nation Government will make laws to provide the Maa-nulth-aht and Maa-nulth First Nation Citizens of the applicable Maa-nulth First Nation with reasonable access to information in the custody or control of that Maa-nulth First Government and its Maa-nulth First Nation Public Institutions.
- 13.11.4 Each Maa-nulth First Nation Government will make laws to provide persons other than the Maa-nulth-aht and Maa-nulth First Nation Citizens of the applicable Maa-nulth First Nation with reasonable access to information in the custody or control of that Maa-nulth First Government and its Maa-nulth First Nation Public Institutions regarding matters that directly and significantly affect those persons.
- 13.11.5 Maa-nulth First Nation Law under 13.11.1, 13.11.3 or 13.11.4 prevails to the extent of a Conflict with Federal Law or Provincial Law, except Federal Law or Provincial Law in relation to the protection of personal information prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.11.1, 13.11.3 or 13.11.4.

#### **13.12.0 MAA-NULTH FIRST NATION ASSETS**

- 13.12.1 Each Maa-nulth First Nation Government may make laws in respect of the use, possession and management of assets owned by the applicable Maa-nulth First Nation, a Maa-nulth First Nation Public Institution or a Maa-nulth First Nation Corporation of that Maa-nulth First Nation located off the Maa-nulth First Nation Lands of that Maa-nulth First Nation.
- 13.12.2 Each Maa-nulth First Nation Government may make laws in respect of the use, possession and management of assets owned by the applicable Maa-nulth First Nation, a Maa-nulth First Nation Public Institution or a Maa-nulth First Nation Corporation of that Maa-nulth First Nation located on the Maa-nulth First Nation Lands of that Maa-nulth First Nation.
- 13.12.3 For greater certainty, the law-making authority under 13.12.1 and 13.12.2 does not include the authority to make laws regarding creditor's rights and remedies.
- 13.12.4 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.12.1.
- 13.12.5 Maa-nulth First Nation Law under 13.12.2 prevails to the extent of a Conflict with Federal Law or Provincial Law.

#### **13.13.0 MAA-NULTH FIRST NATION CITIZENSHIP**

- 13.13.1 Each Maa-nulth First Nation Government may make laws in respect of citizenship in the applicable Maa-nulth First Nation.

- 13.13.2 The conferring of Maa-nulth First Nation citizenship 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 described in this Agreement or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.
- 13.13.3 Maa-nulth First Nation Law under 13.13.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.

#### **13.14.0 MAA-NULTH FIRST NATION LANDS**

- 13.14.1 Each Maa-nulth First Nation Government may make laws in respect of:
- a. the use of the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation, including management, planning, zoning and development;
  - b. the ownership and Disposition of estates or Interests in the Maa-nulth First Nation Lands of that Maa-nulth First Nation owned by that Maa-nulth First Nation, its Maa-nulth First Nation Corporations or a Maa-nulth First Nation Public Institution of that Maa-nulth First Nation Government; and
  - c. expropriation for public purposes and public works by the Maa-nulth First Nation Government of estates or Interests in the Maa-nulth First Nation Lands of that Maa-nulth First Nation other than:
    - i. estates or Interests granted or continued on the Effective Date, or thereafter replaced in accordance with this Agreement, unless specifically provided for otherwise in this Agreement;
    - ii. estates or Interests expropriated by a Federal Expropriating Authority or a Provincial Expropriating Authority or otherwise acquired by Canada or British Columbia; and
    - iii. any other Interests upon which the Parties have agreed in this Agreement,if the Maa-nulth First Nation Government provides fair compensation to the owner of the estate or Interest and the expropriation is of the smallest estate or Interest necessary for the public purpose or public work.
- 13.14.2 Maa-nulth First Nation Law under 13.14.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.

- 13.14.3 Maa-nulth First Nation Law under 13.14.1b. in respect of estates or Interests that are recognized under Federal Law or Provincial Law must be consistent with Federal Law or Provincial Law in respect of estates or Interests in land.
- 13.14.4 Each Maa-nulth First Nation Government will make laws that will take effect on the Effective Date governing the establishment, amendment, repeal and content of community plans for the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.14.5 A Maa-nulth First Nation Law made in accordance with 13.14.4 will require that the community plans include:
- a. a statement of objectives and policies that will guide decisions on land use planning and management of the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation; and
  - b. content similar to that required in the official community plans of Local Government.
- 13.14.6 Each Maa-nulth First Nation Government may develop and adopt community plans on an incremental basis, provided that it will develop and adopt community plans for all Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation within ten years of the Effective Date.
- 13.14.7 Any development or use of Maa-nulth First Nation Lands approved by a Maa-nulth First Nation Government will be in accordance with a community plan adopted by that Maa-nulth First Nation Government in accordance with this Agreement or a development plan in place as of the Effective Date.
- 13.14.8 Each Maa-nulth First Nation Government will consult with other organizations and authorities on the development, amendment and repeal of its community plans similar to the manner and extent as Local Governments are required to consult with other organizations and authorities in respect of development, amendment and repeal of official community plans.

### **13.15.0 ADOPTION**

- 13.15.1 At the request of a Maa-nulth First Nation, British Columbia will transmit the provisions of this Agreement related to adoption to other provincial governments in Canada.
- 13.15.2 For the purposes of this Chapter, all relevant factors must be considered in determining a Child's best interests, including those factors that must be considered under the *Adoption Act*.

- 13.15.3 Each Maa-nulth First Nation Government may make laws in respect of adoptions in British Columbia for:
- a. the Maa-nulth First Nation Children of the applicable Maa-nulth First Nation; and
  - b. Children who reside on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation to be adopted by a Maa-nulth First Nation Citizen or Maa-nulth-aht of the applicable Maa-nulth First Nation.
- 13.15.4 Maa-nulth First Nation Law under 13.15.3 will:
- a. expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place; and
  - b. provide for the consent of individuals whose consent to a Child's adoption is required under Provincial Law, subject to the power of the court to dispense with such consent under Provincial Law.
- 13.15.5 If a Maa-nulth First Nation Government makes a law under 13.15.3, the applicable Maa-nulth First Nation will:
- a. develop operational and practice standards that promote the best interests of the Child; and
  - b. provide British Columbia and Canada with a record of all adoptions occurring under its Maa-nulth First Nation Law.
- 13.15.6 The Parties will negotiate and attempt to reach agreement on the information that will be included in the record under 13.15.5b.
- 13.15.7 A Maa-nulth First Nation Law under 13.15.3 applies to the adoption of a Maa-nulth First Nation Child of the applicable Maa-nulth First Nation residing off the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation or a Child residing on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation who is not a Maa-nulth First Nation Child of that Maa-nulth First Nation if:
- a. the Child has not been placed for adoption under the *Adoption Act*, and all of the following consent to the application of the Maa-nulth First Nation Law to the adoption:
    - i. the parents;

- ii. the Child, if the Child has reached the age where consent to adoption is required under the *Adoption Act*; and
    - iii. the guardian of the Child if the Child is not under the guardianship of a Director;
  - b. a Director designated under the *Child, Family and Community Service Act* is guardian of the Child and the Director consents; or
  - c. a court dispenses with the requirement for the consent referred to in 13.15.7a., 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 under Provincial Law.
- 13.15.8 If a Director designated under the *Child, Family and Community Service Act*, becomes the guardian of a Maa-nulth First Nation Child, the Director will:
- a. provide notice to the applicable Maa-nulth First Nation Government that the Director is the guardian of the Child;
  - b. provide notice to the applicable Maa-nulth First Nation Government when the Director applies for a continuing custody order;
  - c. provide the applicable Maa-nulth First Nation Government with a copy of the continuing custody order once the order is made and make reasonable efforts to involve that Maa-nulth First Nation Government in the planning for the Child;
  - d. if requested by the applicable Maa-nulth First Nation Government, consent to the application of Maa-nulth First Nation Law to the adoption of the Child, provided that it is in the best interests of the Child; and
  - e. in determining the best interests of the Child under 13.15.8d., the Director will consider, if not set out in the *Adoption Act*, the importance of preserving the Child's cultural identity.
- 13.15.9 Maa-nulth First Nation Law under 13.15.3 prevails to the extent of a Conflict with Federal Law or Provincial Law.
- 13.15.10 Before placing a Maa-nulth First Nation Child for adoption, an Adoption Agency must make reasonable efforts to obtain information about the Child's cultural identity and discuss with the designated representative the Child's placement.
- 13.15.11 13.15.10 does not apply if the Child has reached the age where consent to adoption is required under the *Adoption Act* and objects to the discussion taking place or if the birth parent or other guardian of the Child who requested that the Child be placed for adoption objects to the discussion taking place.

**13.16.0 CHILD PROTECTION**

- 13.16.1 At the request of a Maa-nulth First Nation, British Columbia will transmit the provisions of this Agreement related to Child Protection Services to other provincial governments in Canada.
- 13.16.2 Each Maa-nulth First Nation Government may make laws in respect of Child Protection Services for Maa-nulth First Nation Families on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.16.3 A Maa-nulth First Nation Law under 13.16.2 will:
- a. expressly provide that the Maa-nulth First Nation Law will be interpreted and administered such that the Safety and Well-Being of Children are the paramount considerations; and
  - b. not preclude the reporting, under Provincial Law, of a Child in Need of Protection.
- 13.16.4 If a Maa-nulth First Nation Government makes laws under 13.16.2, that Maa-nulth First Nation Government will:
- a. develop operational and practice standards intended to ensure the Safety and Well-Being of Children and safety and well-being of Maa-nulth First Nation Families;
  - b. deliver the Child Protection Service in accordance with the service delivery principles set out in section 3 of the *Child, Family and Community Service Act*;
  - c. participate in British Columbia's information management systems, or establish an information management system that is compatible with British Columbia's information systems, concerning Children in Need of Protection and Children in Care;
  - d. allow for sharing of information concerning Children in Need of Protection and Children in Care with British Columbia; and
  - e. establish and maintain a system for the management, storage and disposal of Child Protection Services records and the safeguarding of personal Child Protection Services information.
- 13.16.5 Notwithstanding any Maa-nulth First Nation Law under 13.16.2, if there is an emergency in which a Child of a Maa-nulth First Nation Family on Maa-nulth First Nation Lands is in need of protection, and the applicable Maa-nulth First Nation has not responded or is unable to respond in a timely manner, British Columbia may act, in accordance with Provincial Law, to protect the Child and, in those circumstances, unless British Columbia and the applicable

- Maa-nulth First Nation otherwise agree, British Columbia will refer the matter to that Maa-nulth First Nation after the emergency.
- 13.16.6 If a Maa-nulth First Nation Government makes laws under 13.16.2 and there is an emergency in which a Child under British Columbia's authority is a Child in Need of Protection, the applicable Maa-nulth First Nation may act to protect the Child and, in those circumstances, unless British Columbia and the applicable Maa-nulth First Nation otherwise agree, that Maa-nulth First Nation will refer the matter to British Columbia after the emergency.
- 13.16.7 Maa-nulth First Nation Law under 13.16.2 prevails to the extent of a Conflict with Federal Law or Provincial Law.
- 13.16.8 At the request of a Maa-nulth First Nation or British Columbia, that Maa-nulth First Nation and British Columbia will negotiate and attempt to reach agreement in respect of Child Protection Services for:
- a. its Maa-nulth-aht who reside in British Columbia on or off its Maa-nulth First Nation Lands; or
  - b. Children who reside on its Maa-nulth First Nation Lands who are not its Maa-nulth-aht.
- 13.16.9 Where the Director becomes the guardian of a Maa-nulth First Nation Child, the Director will make reasonable efforts to include the applicable Maa-nulth First Nation Government in planning for that child, including adoption planning.

### **13.17.0 CHILD CUSTODY**

- 13.17.1 Each Maa-nulth First Nation has standing in any judicial proceedings in British Columbia in which custody of a Maa-nulth First Nation Child of that Maa-nulth First Nation is in dispute and the court will consider any evidence and representations in respect of the Maa-nulth First Nation Laws of that Maa-nulth First Nation and its customs in addition to any other matters it is required by law to consider.
- 13.17.2 The participation of a Maa-nulth First Nation in proceedings referred to in 13.17.1 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **13.18.0 CHILD CARE**

- 13.18.1 Each Maa-nulth First Nation Government may make laws in respect of Child Care Services on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.



- 13.18.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.18.1.

### **13.19.0 LANGUAGE AND CULTURE EDUCATION**

- 13.19.1 Each Maa-nulth First Nation Government may make laws in respect of education provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation in respect of:
- a. certification and accreditation of its Nuu-chah-nulth language and culture teachers; and
  - b. the development and teaching of its Nuu-chah-nulth language and culture curriculum.
- 13.19.2 Maa-nulth First Nation Law under 13.19.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **13.20.0 KINDERGARTEN TO GRADE 12 EDUCATION**

- 13.20.1 Each Maa-nulth First Nation Government may make laws in respect of kindergarten to grade 12 education provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.20.2 Maa-nulth First Nation Laws under 13.20.1 will:
- a. establish curriculum, examination, and other standards that permit transfers of students between school systems in British Columbia at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
  - b. require that teachers be certified in accordance with Provincial Law applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
- 13.20.3 Each Maa-nulth First Nation Government may make laws in respect of home education of the Maa-nulth-aht of the applicable Maa-nulth First Nation on its Maa-nulth First Nation Lands.
- 13.20.4 Maa-nulth First Nation Law under 13.20.1 or 13.20.3 prevails to the extent of a Conflict with Federal Law or Provincial Law.

13.20.5 At the request of that Maa-nulth First Nation Government or British Columbia, the applicable Maa-nulth First Nation and British Columbia will negotiate and attempt to reach agreement concerning the provision of kindergarten to grade 12 education provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions to:

- a. non-Maa-nulth-aht residing on its Maa-nulth First Nation Lands; and
- b. its Maa-nulth-aht residing in British Columbia off its Maa-nulth First Nation Lands.

### **13.21.0 POST-SECONDARY EDUCATION**

13.21.1 Each Maa-nulth First Nation Government may make laws in respect of post-secondary education provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation including:

- a. the establishment of post-secondary institutions and programs with the ability to grant degrees, diplomas or certificates;
- b. the development of the curriculum for post-secondary institutions established by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions; and
- c. the provision for and coordination of all adult education programs.

13.21.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.21.1.

### **13.22.0 HEALTH**

13.22.1 Each Maa-nulth First Nation Government may make laws in respect of health services provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.

13.22.2 Maa-nulth First Nation Law under 13.22.1 will take into account the protection, improvement and promotion of public and individual health and safety.

13.22.3 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.22.1.

- 13.22.4 Notwithstanding 13.22.3, Maa-nulth First Nation Law under 13.22.1 in respect of the organization and structure of its Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions used to deliver health services prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **13.23.0 SOCIAL DEVELOPMENT**

- 13.23.1 Each Maa-nulth First Nation Government may make laws in respect of social development, including family development services, provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.23.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.23.1.
- 13.23.3 If a Maa-nulth First Nation Government makes laws under 13.23.1, at the request of the applicable Maa-nulth First Nation, Canada or British Columbia, the applicable Maa-nulth First Nation, Canada and British Columbia will negotiate and attempt to reach agreement in respect of exchange of information with regard to avoidance of double payments, and related matters.

### **13.24.0 SOLEMNIZATION OF MARRIAGES**

- 13.24.1 Each Maa-nulth First Nation Government may make laws in respect of solemnization of marriages, including solemnization of marriages by traditional practices, within British Columbia by individuals designated by that Maa-nulth First Nation Government.
- 13.24.2 Individuals designated by each Maa-nulth First Nation Government to solemnize marriages:
- a. will be appointed by British Columbia as individuals authorized to solemnize marriages; and
  - b. have the authority to solemnize marriages under Provincial Law and Maa-nulth First Nation Law and have all the associated rights, duties and responsibilities of a marriage commissioner under the *Marriage Act*.
- 13.24.3 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.24.1.

**13.25.0 PUBLIC ORDER, PEACE AND SAFETY**

- 13.25.1 Each Maa-nulth First Nation Government may make laws in respect of the regulation, control, or prohibition of any actions, activities or undertakings on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation, or on Submerged Lands wholly contained within those Maa-nulth First Nation Lands that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety.
- 13.25.2 Law-making authority under 13.25.1 does not include the authority to make laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Submerged Lands within the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation that are authorized by the Crown.
- 13.25.3 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.25.1.

**13.26.0 EMERGENCY PREPAREDNESS**

- 13.26.1 Each Maa-nulth First Nation Government may make laws in respect of its rights, powers, duties, and obligations under 13.26.2a.
- 13.26.2 Each Maa-nulth First Nation Government:
- a. has the rights, powers, duties, obligations; and
  - b. the protections, immunities and limitations in respect of liability,
- of a local authority under Federal Law or Provincial Law in respect of emergency preparedness and emergency measures on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.26.3 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.26.1.
- 13.26.4 For greater certainty, each Maa-nulth First Nation Government may declare a state of local emergency on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation and exercise the powers of a local authority in respect of local emergencies in accordance with Federal Law or Provincial Law in respect of emergency measures on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation, but any declaration and any exercise of power is subject to the authority of Canada and British Columbia under Federal Law or Provincial Law.

- 13.26.5 Nothing in this Agreement affects the authority of:
- a. Canada to declare a national emergency; or
  - b. British Columbia to declare a provincial emergency,
- in accordance with Federal Law or Provincial Law.

### **13.27.0 PUBLIC WORKS**

- 13.27.1 Each Maa-nulth First Nation Government may make laws in respect of public works and related services on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.27.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law made under 13.27.1.

### **13.28.0 REGULATION OF BUSINESS**

- 13.28.1 Each Maa-nulth First Nation Government may make laws in respect of the regulation, licensing and prohibition of businesses on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation, including the imposition of licence fees or other fees.
- 13.28.2 The law-making authority under 13.28.1 does not include the authority to make laws in respect of accreditation, certification or professional conduct of professions and trades.
- 13.28.3 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.28.1.

### **13.29.0 TRAFFIC, TRANSPORTATION, PARKING AND HIGHWAYS**

- 13.29.1 Each Maa-nulth First Nation Government may make laws in respect of traffic, transportation, parking and highways on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation to the same extent as municipal governments have authority to make laws in respect of traffic, transportation, parking and highways in municipalities in British Columbia.
- 13.29.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.29.1.

**13.30.0 BUILDINGS AND STRUCTURES**

- 13.30.1 Each Maa-nulth First Nation Government may make laws in respect of buildings and structures on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 13.30.2 The British Columbia Building Code applies on Maa-nulth First Nation Lands.
- 13.30.3 Subject to 13.30.4, Maa-nulth First Nation Law under 13.30.1 must not establish standards for buildings or structures to which the British Columbia Building Code applies, which are additional to or different from the standards established by the British Columbia Building Code.
- 13.30.4 At the request of a Maa-nulth First Nation Government, British Columbia and that Maa-nulth First Nation Government will negotiate and attempt to reach agreement to enable that Maa-nulth First Nation Government to establish standards for buildings and structures under its Maa-nulth First Nation Law which are additional to or different from the standards established by the British Columbia Building Code.
- 13.30.5 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.30.1.

**13.31.0 FINES AND PENALTIES**

- 13.31.1 Subject to 13.31.2, 13.31.3, 13.31.5 and 13.31.6, Maa-nulth First Nation Law may provide for the imposition of penalties, including fines, restitution and imprisonment, for the violation of Maa-nulth First Nation Laws.
- 13.31.2 Except as provided in 13.31.3 and 13.31.6, a Maa-nulth First Nation Law may provide for a fine that is not greater than \$10,000 or the general limit for summary conviction offences under section 787 of the *Criminal Code*, whichever is greater.
- 13.31.3 A Maa-nulth First Nation Law in respect of the protection of the Environment may provide for a fine that is not greater than fines that may be imposed for comparable offences punishable upon summary conviction under the *Canadian Environmental Protection Act, 1999*.
- 13.31.4 For greater certainty, a Maa-nulth First Nation Law may provide for the imposition of a fine in respect of a violation of a Maa-nulth First Nation Law made under 21.2.1 by the applicable Maa-nulth First Nation Government in accordance with 13.31.2.
- 13.31.5 Except as provided in 13.31.6, a Maa-nulth First Nation Law may provide for a term of imprisonment for the violation of a Maa-nulth First Nation Law not greater than the general limit for summary conviction offences under section 787 of the *Criminal Code*.

- 13.31.6 A Maa-nulth First Nation Law in respect of taxation may provide for:
- a. a fine that is greater than the limit described in 13.31.2; or
  - b. a term of imprisonment that is greater than the limit described in 13.31.5, where there is an agreement to that effect as contemplated in 19.2.1.

### **13.32.0 ENFORCEMENT OF MAA-NULTH FIRST NATION LAWS**

- 13.32.1 Each Maa-nulth First Nation Government may make laws to provide for:
- a. the appointment of enforcement officers to enforce its Maa-nulth First Nation Law; and
  - b. powers of enforcement, provided such powers will not exceed those provided by Federal Law or Provincial Law for enforcing similar laws.
- 13.32.2 Each Maa-nulth First Nation Government is responsible for the enforcement of its Maa-nulth First Nation Laws and may negotiate agreements for the enforcement of Maa-nulth First Nation Laws by a police force or federal or provincial enforcement officials.
- 13.32.3 The law-making authority in 13.32.1 does not include:
- a. the authority to establish a police force; or
  - b. authorizing the carriage or use of firearms by enforcement officials,
- but nothing in this Agreement prevents a Maa-nulth First Nation Government from establishing a police force in accordance with Provincial Law.
- 13.32.4 Nothing in this Agreement authorizes the establishment or maintenance of places of confinement.
- 13.32.5 If a Maa-nulth First Nation Government appoints officials to enforce its Maa-nulth First Nation Laws, that Maa-nulth First Nation Government will:
- a. ensure that enforcement officials appointed by that Maa-nulth First Nation Government are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in British Columbia; and
  - b. establish and implement procedures for responding to complaints against its enforcement officials.
- 13.32.6 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 13.32.1.

13.32.7 Each Maa-nulth First Nation may, by a proceeding brought in the Supreme Court of British Columbia, enforce, prevent or restrain the contravention of a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.

### 13.33.0 ADJUDICATION OF MAA-NULTH FIRST NATION LAWS

13.33.1 The Provincial Court of British Columbia has the jurisdiction to hear prosecutions of offences under Maa-nulth First Nation Laws.

13.33.2 In any proceedings, evidence of a Maa-nulth First Nation Law enacted by a Maa-nulth First Nation Government may be given by the production of a copy of the law certified to be a true copy by an individual authorized by that Maa-nulth First Nation Government, without proof of that individual's signature or official character.

13.33.3 The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under Maa-nulth First Nation Laws.

13.33.4 The Provincial Court of British Columbia has jurisdiction in relation to legal disputes arising between individuals under Maa-nulth First Nation Law if those matters are within the jurisdiction of the Provincial Court of British Columbia under Federal Law or Provincial Law.

13.33.5 The Supreme Court of British Columbia has jurisdiction in relation to legal disputes arising between individuals under Maa-nulth First Nation Law if those matters are within the jurisdiction of the Supreme Court of British Columbia under Federal Law or Provincial Law.

13.33.6 Each Maa-nulth First Nation is responsible for the prosecution of all matters arising from a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government, 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; or
- b. entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals.

13.33.7 Unless the Parties otherwise agree, British Columbia will pay to the applicable Maa-nulth First Nation any fines collected, in respect of a penalty imposed on a person by the Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, for an offence under a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia for an offence under a Federal Law.



- 13.33.8 For greater certainty, the law-making authority of a Maa-nulth First Nation Government does not include the authority to establish a court.

**13.34.0 COMMUNITY CORRECTIONAL SERVICES**

- 13.34.1 Each Maa-nulth First Nation Government may provide Community Correctional Services for individuals charged with, or found guilty of, an offence under its Maa-nulth First Nation Law and to carry out such responsibilities as may be provided for in an agreement under 13.34.2, 13.34.4 and 13.34.5.

- 13.34.2 At the request of a Maa-nulth First Nation, that Maa-nulth First Nation and British Columbia will negotiate and attempt to reach agreement to provide Community Correctional Services in relation to individuals who fall under the jurisdiction of British Columbia on Maa-nulth First Nation Lands for individuals charged with, or found guilty of, an offence under a Federal Law or Provincial Law.

- 13.34.3 An agreement reached in accordance with 13.34.2 between that Maa-nulth First Nation and British Columbia will address:

- a. recruitment and selection standards for individuals appointed by the applicable Maa-nulth First Nation Government to provide Community Correctional Services;
- b. adherence to provincial operational policy relating to Community Correctional Services, including training standards;
- c. confirmation of the authority of the official charged with the responsibility for investigations, inspections and standards of corrections and youth justice services under Provincial Law; and
- d. provisions for Maa-nulth First Nation Government to provide Community Correctional Services consistent with the needs and priorities of that Maa-nulth First Nation.

- 13.34.4 Each Maa-nulth First Nation and British Columbia may enter into agreements to enable the applicable Maa-nulth First Nation to provide rehabilitative community based programs and interventions off its Maa-nulth First Nation Lands for Maa-nulth First Nation Citizens charged with, or found guilty of, an offence under a Federal Law or Provincial Law.

- 13.34.5 Each Maa-nulth First Nation and Canada may enter into agreements:
- a. to authorize individuals to provide Community Correctional Services to individuals residing on its Maa-nulth First Nation Lands released from a federal penitentiary or supervised under a long-term supervision order; and
  - b. for the provision of programs and services to individuals residing on its Maa-nulth First Nation Lands released from a federal penitentiary or supervised under a long-term supervision order, including their care and custody.

### **13.35.0 MAA-NULTH FIRST NATION GOVERNMENT LIABILITY**

#### **Maa-nulth First Nation Government Office Holders**

- 13.35.1 No action for damages lies or may be instituted against an Office Holder or former Office Holder for:
- a. anything said or done, or omitted to be said or done, by or on behalf of a Maa-nulth First Nation or a Maa-nulth First Nation Government by somebody other than that Office Holder or former Office Holder while that Office Holder is, or was, an Office Holder;
  - b. any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of a Maa-nulth First Nation or a Maa-nulth First Nation Government while that Office Holder is, or was, an Office Holder;
  - c. anything said or done or omitted to be said or done by that Office Holder in the performance, or intended performance, of the Office Holder's duty or the exercise of the Office Holder's power; or
  - d. any alleged neglect or default in the performance, or intended performance, of that Office Holder's duty or exercise of that Office Holder's power.
- 13.35.2 13.35.1 does not provide a defence if:
- a. the Office Holder has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
  - b. the cause of action is libel or slander.

- 13.35.3 13.35.1 does not absolve the Maa-nulth First Nation from vicarious liability arising out of a tort committed by an Office Holder or former Office Holder for which the Maa-nulth First Nation would have been liable had 13.35.1 not been in effect.

**Maa-nulth First Nation Public Officers**

- 13.35.4 No action for damages lies or may be instituted against a Public Officer or former Public Officer:
- a. for anything said or done or omitted to be said or done by that Public Officer in the performance, or intended performance, of the Public Officer's duty or the exercise of the Public Officer's power; or
  - b. for any alleged neglect or default in the performance, or intended performance, of that Public Officer's duty or exercise of that Public Officer's power.
- 13.35.5 13.35.4 does not provide a defence if:
- a. the Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
  - b. the cause of action is libel or slander.
- 13.35.6 13.35.4 does not absolve any of the corporations or bodies referred to in the definition of Public Officer from vicarious liability arising out of a tort committed by a Public Officer for which the corporation or body would have been liable had 13.35.4 not been in effect.
- 13.35.7 Notwithstanding 13.35.4, except as may be otherwise provided under Federal Law or Provincial Law, a Public Officer does not have protections, immunities or limitations in respect of liability, in respect of the provision of a service, if no individual delivering reasonably similar programs or services under Federal Law or Provincial Law has protections, immunities or limitations in respect of liability and rights under Federal Law or Provincial Law.

**Maa-nulth First Nation and Maa-nulth First Nation Government**

- 13.35.8 Each Maa-nulth First Nation and Maa-nulth First Nation Government has the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a Municipality and its municipal council under Part 7 of the *Local Government Act*.

- 13.35.9 Subject to 5.1.2, each Maa-nulth First Nation 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 its Maa-nulth First Nation Lands used by the public, or by industrial or resource users, if that Maa-nulth First Nation is the occupier of that road.

### 13.36.0 WRIT OF EXECUTION AGAINST A MAA-NULTH FIRST NATION

- 13.36.1 Notwithstanding 13.35.8, a writ of execution against a Maa-nulth First Nation will not be issued without leave of the Supreme Court of British Columbia, which may:

- a. permit its issue at a time and on conditions the court considers proper; or
- b. refuse to permit it to be issued or suspend action under it on terms and conditions the court thinks proper or expedient.

- 13.36.2 In determining how it will proceed in accordance with 13.36.1, the court must have regard to:

- a. any reputed insolvency of the Maa-nulth First Nation;
- b. any security afforded to the person entitled to the judgment by the registration of the judgment;
- c. the delivery of programs or services by the Maa-nulth First Nation that are not provided by municipalities in British Columbia, and the funding of those programs or services; and
- d. the immunities from seizure of assets of the Maa-nulth First Nation as described in this Agreement.

### 13.37.0 OTHER MATTERS

- 13.37.1 Each Maa-nulth First Nation Government may adopt Federal Law or Provincial Law in respect of matters within its Maa-nulth First Nation Government authority as described in this Agreement.

- 13.37.2 For greater certainty, the authority of each Maa-nulth First Nation Government to make laws in respect of a subject matter as described in this Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.

## CHAPTER 14 REGIONAL GOVERNMENT

### 14.1.0 GENERAL

#### **Status of Maa-nulth First Nation Lands**

- 14.1.1 Maa-nulth First Nation Lands of a Maa-nulth First Nation do not form part of any Municipality or Electoral Area and, until that Maa-nulth First Nation becomes a member of a Regional District in accordance with 14.3.0, do not form part of any Regional District.
- 14.1.2 Nothing in this Agreement limits the ability of British Columbia to amalgamate two or more Regional Districts or to amend the boundaries of or divide a Regional District, Municipality or Electoral Area in accordance with Provincial Law.
- 14.1.3 British Columbia will Consult with each Maa-nulth First Nation on any changes to the structure or boundaries of a Regional District that directly and significantly affect that Maa-nulth First Nation.

#### **Land Use Planning Protocols and Service Contracts**

- 14.1.4 Each Maa-nulth First Nation may enter into a land use planning protocol with a Local Government to coordinate and harmonize land use planning processes and land use decisions.
- 14.1.5 Each Maa-nulth First Nation may enter into a service contract with a Local Government respecting:
- a. services to be provided by that Local Government to that Maa-nulth First Nation, its Maa-nulth First Nation Lands or any resident of its Maa-nulth First Nation Lands;
  - b. services to be provided by the Maa-nulth First Nation Government of that Maa-nulth First Nation to lands within the applicable Municipality or Regional District; or
  - c. the provision of any other services to which that Maa-nulth First Nation and Local Government may agree.
- 14.1.6 Any service contract entered into between a Maa-nulth First Nation and a Local Government in accordance with 14.1.5 will include a dispute resolution process, which may include a dispute resolution process described in the *Community Charter* to resolve disputes between Local Governments.

- 14.1.7 Any contractual service agreement between a Local Government and a Maa-nulth Indian Band in effect immediately before the Effective Date will remain in effect until such time as it is renegotiated or is terminated under the terms of such service agreement.

## **14.2.0 TRANSITION PERIOD ARRANGEMENTS**

### **Representation on Regional District Boards**

- 14.2.1 During the Transition Period, a Regional District may invite the applicable Maa-nulth First Nation to participate in meetings of its Regional District Board or that Regional District Board's committees, on a non-voting basis, on matters of mutual interest.
- 14.2.2 During the Transition Period for the purposes of Electoral Area Director elections the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation are treated as if those lands are located within the boundaries of the applicable Electoral Area and the residents of those lands may participate and vote in applicable Electoral Area Director elections in accordance with Provincial Law.
- 14.2.3 At any time before four months before the tenth anniversary of the Effective Date, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations may give written notice to British Columbia and the Comox-Strathcona Regional District of its intention to end the Transition Period and become a member of the Comox-Strathcona Regional District.
- 14.2.4 At any time before four months before the tenth anniversary of the Effective Date, Huu-ay-aht First Nations, Toquaht Nation, Uchucklesaht Tribe or Ucluelet First Nation may give written notice to British Columbia and the Alberni-Clayoquot Regional District of its intention to end its respective Transition Period and become a member of the Alberni-Clayoquot Regional District.
- 14.2.5 After receipt of notice in accordance with 14.2.3 or 14.2.4, the applicable Maa-nulth First Nation and the applicable Regional District will meet to discuss the process to end the Transition Period.
- 14.2.6 Unless otherwise agreed by the applicable Maa-nulth First Nation and the applicable Regional District and British Columbia, the Transition Period for that Maa-nulth First Nation will end within four months of receipt of notification in accordance with 14.2.3 or 14.2.4.

**Regional District Service Arrangements**

- 14.2.7 Unless otherwise agreed by a Maa-nulth First Nation and the applicable Regional District, during the Transition Period that Maa-nulth First Nation will not participate in or be required to contribute to the cost of any Regional District service and that Regional District will have no corresponding obligation to provide any service to that Maa-nulth First Nation, its Maa-nulth First Nation Lands or any resident of its Maa-nulth First Nation Lands.

**14.3.0 MAA-NULTH FIRST NATION REGIONAL DISTRICT MEMBERSHIP**

- 14.3.1 On the Transition Date for the applicable Maa-nulth First Nation, that Maa-nulth First Nation will become a member of the applicable Regional District and appoint at least one Regional District Board Director to the applicable Regional District Board in accordance with 14.3.2 and its Maa-nulth First Nation Lands will form part of the applicable Regional District.
- 14.3.2 As of the Transition Date, the number of Regional District Board Directors appointed by the applicable Maa-nulth First Nation and the number of votes to which such directors are entitled is determined as if the Maa-nulth First Nation Lands of that Maa-nulth First Nation and the residents therein constituted a Municipality.
- 14.3.3 A Maa-nulth First Nation that becomes a member of an applicable Regional District in accordance with this Chapter has the functions, powers, duties and obligations of a Municipal member of the applicable Regional District.
- 14.3.4 A Regional District Board Director appointed by a Maa-nulth First Nation to the applicable Regional District Board in accordance with this Chapter will be an elected member of the Maa-nulth First Nation Government of that Maa-nulth First Nation.
- 14.3.5 A Regional District Board Director appointed by a Maa-nulth First Nation to a Regional District Board in accordance with this Chapter has the functions, powers, duties and obligations of a Municipal director of the applicable Regional District Board.

**14.4.0 SERVICE ARRANGEMENTS AFTER TRANSITION DATE**

- 14.4.1 After the Transition Date, each Maa-nulth First Nation will participate in, and contribute to the costs of, those services which Municipalities and Electoral Areas within the applicable Regional District are required to participate in and contribute to the cost of, in accordance with Provincial Law, including:
- a. general administration; and

- b. the applicable regional hospital district.
- 14.4.2 In accordance with 14.3.3, as a member of a Regional District each Maa-nulth First Nation may participate in, and contribute to the costs of, the optional services provided by the Regional District including:
  - a. Vancouver Island Regional Library;
  - b. E-911 Emergency Telephone Service;
  - c. Tofino/Ucluelet Airport;
  - d. West Coast Landfill; and
  - e. other optional services provided by that Regional District.
- 14.4.3 Unless otherwise agreed to by a Maa-nulth First Nation and the applicable Regional District, the annual contribution of that Maa-nulth First Nation to the cost of the services which it will participate in and contribute to in accordance with 14.4.1 is based on the same cost apportionment method identified in section 804(2) of the *Local Government Act* and section 24 of the *Hospital District Act*.
- 14.4.4 Subject to 14.4.1 and 14.4.2, unless otherwise agreed by a Maa-nulth First Nation and the applicable Regional District, after the Transition Date, that Maa-nulth First Nation will not participate in or be required to contribute to the cost of any Regional District service, and that Regional District will have no obligation to provide any corresponding service to that Maa-nulth First Nation, its Maa-nulth First Nation Lands or any resident of its Maa-nulth First Nation Lands.
- 14.4.5 Each Maa-nulth First Nation has the same opportunity to participate in other services of the applicable Regional District as member Municipalities of that Regional District under the *Local Government Act*.
- 14.4.6 Where a Maa-nulth First Nation agrees to participate in other services of the applicable Regional District, that Maa-nulth First Nation will exit those services as member Municipalities of the applicable Regional District under the *Local Government Act*.

#### **14.5.0 FORESHORE AGREEMENTS**

- 14.5.1 British Columbia and each Maa-nulth First Nation will enter into an agreement contemplated by 13.10.4 which will come into effect on the Effective Date, to provide the applicable Maa-nulth First Nation Government with law-making authority in accordance with 14.5.2 in respect of the applicable Foreshore Area.



- 14.5.2 A Foreshore Agreement will:
- a. identify the applicable Foreshore Area;
  - b. provide the Maa-nulth First Nation Government of the applicable Maa-nulth First Nation with law-making authority in relation to the Foreshore Area, comparable to the law-making authority of a Municipality in respect of:
    - i. the regulation of nuisances;
    - ii. the regulation of buildings and structures;
    - iii. the regulation of business;
    - iv. land use, planning, zoning and development; and
    - v. such other matters as a Maa-nulth First Nation and British Columbia may agree to;
  - c. provide that if the Foreshore Area of that Maa-nulth First Nation is located within the boundaries of a Municipality, that Municipality will not exercise law-making authority in respect of the matters listed in 14.5.2b. in relation to that Foreshore Area; and
  - d. provide that Federal Law or Provincial Law prevail to the extent of a Conflict with a law made by a Maa-nulth First Nation Government in accordance with the Foreshore Agreement.
- 14.5.3 Before concluding an agreement in accordance with 14.5.1, British Columbia will Consult with Canada regarding the proposed Foreshore Agreements.



## CHAPTER 15 *INDIAN ACT* TRANSITION

### 15.1.0 ESTATES

15.1.1 The *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of an individual who:

- a. died testate or intestate before the Effective Date; and
- b. at the time of death, was an Indian of a Maa-nulth Indian Band.

15.1.2 Before the Effective Date, Canada will take reasonable steps to:

- a. notify in writing all Indians of the Maa-nulth Indian Bands who have deposited wills with the Minister; and
- b. provide information to all Indians of the Maa-nulth Indian Bands who have not deposited wills with the Minister and to all individuals 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 Law.

15.1.3 Section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of an individual:

- a. who was a “mentally incompetent Indian” as defined in the *Indian Act* immediately before the Effective Date;
- b. whose property and estate were under the authority of the Minister under section 51 of the *Indian Act* immediately before the Effective Date; and
- c. who was an Indian of a Maa-nulth Indian Band immediately before the Effective Date,

until that individual is no longer a “mentally incompetent Indian”.

15.1.4 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 an individual who is an infant child of an Indian of a Maa-nulth Indian Band 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.

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

- 15.2.1 The by-laws of each Maa-nulth Indian Band that were in effect immediately before the Effective Date have effect for six months after the Effective Date on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.
- 15.2.2 The relationship between a by-law referred to in 15.2.1 and Federal Law or Provincial Law is governed by the provisions of this Agreement governing the relationship between Maa-nulth First Nation Law and Federal Law or Provincial Law in respect of the subject matter of the by-law.
- 15.2.3 The Maa-nulth First Nation Government replacing the band council that made a by-law referred to in 15.2.1 may repeal, but not amend, that by-law.
- 15.2.4 Nothing in this Agreement precludes a person from challenging the validity of a by-law referred to in 15.2.1.

**15.3.0 STATUS OF BANDS AND TRANSFER OF BAND ASSESTS**

- 15.3.1 Subject to the provisions of this Agreement, on the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of:
- a. Huu-ay-aht First Nations vest in Huu-ay-aht First Nations;
  - b. Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations vest in Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations;
  - c. Toquaht Band vest in Toquaht Nation;
  - d. Uchucklesaht Band vest in Uchucklesaht Tribe; and
  - e. Ucluelet First Nation vest in Ucluelet First Nation,
- and the Maa-nulth Indian Bands cease to exist.

## **CHAPTER 16 CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT**

### **16.1.0 CAPITAL TRANSFER**

- 16.1.1 Subject to 16.1.2 and 16.2.2, the Capital Transfer from Canada to each Maa-nulth First Nation will be paid in accordance with the applicable Capital Transfer Payment Plan.
- 16.1.2 If British Columbia or Canada acquires lands for a Maa-nulth First Nation before the Effective Date in accordance with 2.10.26, the Capital Transfer payment amounts for the Effective Date and the first three anniversaries of the Effective Date in the Capital Transfer Payment Plan for that Maa-nulth First Nation will be adjusted by deducting the amount paid for such lands in a manner described in the notes for finalizing the Capital Transfer Payment Plans.

### **16.2.0 NEGOTIATION LOAN REPAYMENT**

- 16.2.1 Subject to 16.3.1, each Maa-nulth First Nation will make negotiation loan repayments to Canada in accordance with the applicable Negotiation Loan Repayment Plan.
- 16.2.2 Canada may set off and deduct from a payment made in accordance with 16.1.1 the amount of a repayment to be made in accordance with 16.2.1 on the same date, except to the extent that the loan repayment amount has been prepaid in accordance with 16.3.1.

### **16.3.0 PREPAYMENTS**

- 16.3.1 In addition to any negotiation loan repayment amount required in accordance with 16.2.1, a Maa-nulth First Nation may make negotiation loan prepayments to Canada. All prepayments will be applied to the outstanding scheduled negotiation loan repayment amounts in consecutive order from the Effective Date. A Maa-nulth First Nation will notify Canada of a prepayment at least 30 days before the date of that prepayment.

- 16.3.2 The “n” anniversary for which a prepayment is to be applied is the earliest anniversary for which a scheduled negotiation loan repayment amount, or a portion thereof, remains outstanding. Any loan prepayment applied to an outstanding negotiation loan repayment amount, or to a portion thereof, is credited at its future value, as of the “n” anniversary, determined in accordance with the following formula:

$$\text{Future Value} = \text{Prepayment} * (1 + \text{CR})^K * (1 + \text{CR} * H / 365)$$

where,

“/” means divided by;

“\*” means multiplied by;

“K” is the number of complete years between the date of the prepayment and the “n” anniversary;

“H” is one plus the number of days remaining in the period between the date of the prepayment and the “n” anniversary, once the number of complete years referred to in “K” above has been deducted; and

“CR” is 4.545 percent.

- 16.3.3 If the future value of the prepayment exceeds the outstanding amount of the negotiation loan repayment amount scheduled for the “n” anniversary, the excess is deemed to be a prepayment made on the “n” anniversary so that the future value of the excess is applied as of the next anniversary in a manner analogous to that described in this paragraph.
- 16.3.4 On receipt of a loan prepayment, Canada will issue a letter to the applicable Maa-nulth First Nation setting out the amount of the prepayment received and the manner in which it will be applied.

# SCHEDULE 1 - CAPITAL TRANSFER PAYMENT PLAN

## Huu-ay-aht First Nations Capital Transfer Payment Plan

PAYMENT DATE	PROVISIONAL PAYMENT AMOUNT
Effective Date	4,236,880
First anniversary of Effective Date	2,713,319
Second anniversary of Effective Date	2,713,319
Third anniversary of Effective Date	2,713,319
Fourth anniversary of Effective Date	2,341,233
Fifth anniversary of Effective Date	2,341,233
Sixth anniversary of Effective Date	2,341,233
Seventh anniversary of Effective Date	2,341,233
Eighth anniversary of Effective Date	2,341,233
Ninth anniversary of Effective Date	2,341,233
Total payments*	26,424,233

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Capital Transfer Payment Plan.

**Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL PAYMENT AMOUNT</b>
Effective Date	<b>3,257,135</b>
First anniversary of Effective Date	<b>2,295,355</b>
Second anniversary of Effective Date	<b>2,295,355</b>
Third anniversary of Effective Date	<b>2,295,355</b>
Fourth anniversary of Effective Date	<b>1,984,141</b>
Fifth anniversary of Effective Date	<b>1,984,141</b>
Sixth anniversary of Effective Date	<b>1,984,141</b>
Seventh anniversary of Effective Date	<b>1,984,141</b>
Eighth anniversary of Effective Date	<b>1,984,141</b>
Ninth anniversary of Effective Date	<b>1,984,141</b>
Total payments*	<b>22,048,046</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Capital Transfer Payment Plan.



**Toquaht Nation Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL PAYMENT AMOUNT</b>
Effective Date	<b>1,171,010</b>
First anniversary of Effective Date	<b>559,707</b>
Second anniversary of Effective Date	<b>559,707</b>
Third anniversary of Effective Date	<b>559,707</b>
Fourth anniversary of Effective Date	<b>434,104</b>
Fifth anniversary of Effective Date	<b>434,104</b>
Sixth anniversary of Effective Date	<b>434,104</b>
Seventh anniversary of Effective Date	<b>434,104</b>
Eighth anniversary of Effective Date	<b>434,104</b>
Ninth anniversary of Effective Date	<b>434,104</b>
Total payments*	<b>5,454,755</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Capital Transfer Payment Plan.

**Uchucklesaht Tribe Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL PAYMENT AMOUNT</b>
Effective Date	<b>1,213,341</b>
First anniversary of Effective Date	<b>768,312</b>
Second anniversary of Effective Date	<b>768,312</b>
Third anniversary of Effective Date	<b>768,312</b>
Fourth anniversary of Effective Date	<b>610,277</b>
Fifth anniversary of Effective Date	<b>610,277</b>
Sixth anniversary of Effective Date	<b>610,277</b>
Seventh anniversary of Effective Date	<b>610,277</b>
Eighth anniversary of Effective Date	<b>610,277</b>
Ninth anniversary of Effective Date	<b>610,277</b>
Total payments*	<b>7,179,939</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Capital Transfer Payment Plan.

**Ucluelet First Nation Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL PAYMENT AMOUNT</b>
Effective Date	<b>3,262,454</b>
First anniversary of Effective Date	<b>2,754,599</b>
Second anniversary of Effective Date	<b>2,754,599</b>
Third anniversary of Effective Date	<b>2,754,599</b>
Fourth anniversary of Effective Date	<b>2,387,004</b>
Fifth anniversary of Effective Date	<b>2,387,004</b>
Sixth anniversary of Effective Date	<b>2,387,004</b>
Seventh anniversary of Effective Date	<b>2,387,004</b>
Eighth anniversary of Effective Date	<b>2,387,004</b>
Ninth anniversary of Effective Date	<b>2,387,004</b>
Total payments*	<b>25,848,275</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Capital Transfer Payment Plan.

## NOTES FOR FINALIZING THE CAPITAL TRANSFER PAYMENT PLANS

These notes do not form part of this Agreement. The purpose of these notes is to enable the Parties to calculate on the Revision Date the amounts to be shown in the final version of this Schedule. Interest at a rate of 4.545% per annum beginning on Effective Date and compounded annually was used to establish the provisional payment amounts in each Capital Transfer Payment Plan.

1. In these notes,

**“FDDIPI”** means the Final Domestic Demand Implicit Price Index for Canada, series D100466, published regularly by Statistics Canada in Matrix 10512: Implicit Price Indexes, Gross Domestic Product or its replacement series as specified by Statistics Canada;

**“Revision Date”** means the date 30 days before the Effective Date, or another date if the Parties agree.

**“Signing Date”** means the date on which this Agreement is signed by the Parties after ratification of this Agreement by the Maa-nulth First Nations in accordance with 28.2.1.

**“Transition Date”** means the date 15 months after the Signing Date.

2. If the period between the Signing Date and the Effective Date is less than 15 months, on the Revision Date each provisional payment amount in the Capital Transfer Payment Plans is adjusted as follows:

provisional payment amount \* M/L

where,

“/” means divided by;

“\*” means multiplied by;

“L” is the value of FDDIPI for the first quarter of 2006 published by Statistics Canada at the same time that the values used in M are published; and

“M” is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the Revision Date.

3. If the period between the Signing Date and the Effective Date is greater than 15 months, on the Revision Date each provisional payment amount in the Capital Transfer Payment Plans is adjusted as follows:

provisional payment amount \*  $[(P/Q) * (1 + CR)^Y * (1 + CR * D/365)]$

where:

“Q” is the value of FDDIPI for the first quarter of 2006 published by Statistics Canada at the same time that the values used in P are published;

“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;

“Y” means 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; and

“CR” is 4.545 percent.

The purpose of applying this paragraph is 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 Date, and to lengthen the period of which the Capital Transfer is adjusted by the calculation rate to the period between the date that is 15 months after the Signing Date and the Effective Date.

4. If British Columbia or Canada acquires lands for a Maa-nulth First Nation in accordance with 2.10.26 and 16.1.2, on the Revision Date the Capital Transfer payment amounts for the Effective Date and the first three anniversaries of the Effective Date in the Capital Transfer Payment Plan for that Maa-nulth First Nation will be adjusted by deducting the amount paid (as adjusted for inflation in the equation below), as described in the following equation. This deduction will occur after the provisional payment plan has been adjusted for inflation as described in these notes in 2 and 3 above.

$$T_n = C_n - (0.25 * R * (1+CR)^n)$$

where,

“T<sub>n</sub>” is the Capital Transfer payment amount after adjusting for the land acquisition on the ‘n’th anniversary of Effective Date;

“C<sub>n</sub>” is the Capital Transfer payment amount before adjusting for the land acquisition on the ‘n’th anniversary of Effective Date;

“n” is the ‘n’th anniversary of Effective Date;

“CR” is 4.545 percent;

“\*” means multiplied by;

“R” is as follows:

If the period between the Signing Date and the Effective Date is less than 15 months, then “R” is the amount paid by British Columbia or Canada to purchase lands in accordance with 2.10.26, multiplied by M/W,

where,

“M” 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

“W” is the value of FDDIPI published by Statistics Canada at the same time that the FDDIPI value above in “M” was published, for the calendar quarter immediately preceding that calendar quarter in which the land was purchased.

If the period between the Signing Date and the Effective Date is greater than 15 months, then “R” is the amount paid by British Columbia or Canada to purchase lands in accordance with 2.10.26, multiplied by:

$$P/V * (1 + CR)^Y * (1+CR*D/365)$$

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;

“V” is the value of FDDIPI published by Statistics Canada at the same time that the FDDIPI value above in “P” was published, for the calendar quarter immediately preceding that calendar quarter in which the land was purchased;

“Y” means 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; and

“CR” is 4.545 percent.

5. On the Revision Date, following the adjustment performed in accordance with either paragraph 2 or 3 of these notes, as applicable, and paragraph 4, if applicable, the Capital Transfer Payment Plans are amended to incorporate the adjusted figures and the headings in the Capital Transfer Payment Plans above are replaced by the following headings:

**Huu-ay-aht First Nations Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>
	<b>CANADA WILL PAY</b>

**Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>
	<b>CANADA WILL PAY</b>

**Toquaht Nation Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>
	<b>CANADA WILL PAY</b>

**Uchucklesaht Tribe Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>
	<b>CANADA WILL PAY</b>

**Ucluelet First Nation Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>
	<b>CANADA WILL PAY</b>

**SCHEDULE 2 - NEGOTIATION LOAN REPAYMENT PLAN****Huu-ay-aht First Nations Negotiation Loan Repayment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL LOAN REPAYMENT AMOUNT</b>
Effective Date	<b>343,228</b>
First anniversary of Effective Date	<b>343,228</b>
Second anniversary of Effective Date	<b>343,228</b>
Third anniversary of Effective Date	<b>343,228</b>
Fourth anniversary of Effective Date	<b>343,228</b>
Fifth anniversary of Effective Date	<b>343,228</b>
Sixth anniversary of Effective Date	<b>343,228</b>
Seventh anniversary of Effective Date	<b>343,228</b>
Eighth anniversary of Effective Date	<b>343,228</b>
Ninth anniversary of Effective Date	<b>343,228</b>
Total repayments*	<b>3,432,280</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Negotiation Loan Repayment Plan.



**Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations Negotiation Loan Repayment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL LOAN REPAYMENT AMOUNT</b>
Effective Date	<b>291,974</b>
First anniversary of Effective Date	<b>291,974</b>
Second anniversary of Effective Date	<b>291,974</b>
Third anniversary of Effective Date	<b>291,974</b>
Fourth anniversary of Effective Date	<b>291,974</b>
Fifth anniversary of Effective Date	<b>291,974</b>
Sixth anniversary of Effective Date	<b>291,974</b>
Seventh anniversary of Effective Date	<b>291,974</b>
Eighth anniversary of Effective Date	<b>291,974</b>
Ninth anniversary of Effective Date	<b>291,974</b>
Total repayments*	<b>2,919,740</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Negotiation Loan Repayment Plan.

**Toquaht Nation Negotiation Loan Repayment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL LOAN REPAYMENT AMOUNT</b>
Effective Date	<b>212,504</b>
First anniversary of Effective Date	<b>116,553</b>
Second anniversary of Effective Date	<b>116,553</b>
Third anniversary of Effective Date	<b>116,553</b>
Fourth anniversary of Effective Date	<b>116,553</b>
Fifth anniversary of Effective Date	<b>116,553</b>
Sixth anniversary of Effective Date	<b>116,553</b>
Seventh anniversary of Effective Date	<b>116,553</b>
Eighth anniversary of Effective Date	<b>116,553</b>
Ninth anniversary of Effective Date	<b>116,553</b>
Total repayments*	<b>1,261,480</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Negotiation Loan Repayment Plan.

**Uchucklesaht Tribe Negotiation Loan Repayment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL LOAN REPAYMENT AMOUNT</b>
Effective Date	<b>236,483</b>
First anniversary of Effective Date	<b>136,757</b>
Second anniversary of Effective Date	<b>136,757</b>
Third anniversary of Effective Date	<b>136,757</b>
Fourth anniversary of Effective Date	<b>136,757</b>
Fifth anniversary of Effective Date	<b>136,757</b>
Sixth anniversary of Effective Date	<b>136,757</b>
Seventh anniversary of Effective Date	<b>136,757</b>
Eighth anniversary of Effective Date	<b>136,757</b>
Ninth anniversary of Effective Date	<b>136,757</b>
Total repayments*	<b>1,467,296</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Negotiation Loan Repayment Plan.

**Ucluelet First Nation Negotiation Loan Repayment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL LOAN REPAYMENT AMOUNT</b>
Effective Date	<b>366,504</b>
First anniversary of Effective Date	<b>366,504</b>
Second anniversary of Effective Date	<b>366,504</b>
Third anniversary of Effective Date	<b>366,504</b>
Fourth anniversary of Effective Date	<b>366,504</b>
Fifth anniversary of Effective Date	<b>366,504</b>
Sixth anniversary of Effective Date	<b>366,504</b>
Seventh anniversary of Effective Date	<b>366,504</b>
Eighth anniversary of Effective Date	<b>366,504</b>
Ninth anniversary of Effective Date	<b>366,504</b>
Total repayments*	<b>3,665,040</b>

\*This line is included for informational purposes only and the amount represents the sum of the ten capital transfer amounts described in the applicable Negotiation Loan Repayment Plan.

**NOTES FOR FINALIZING THE NEGOTIATION LOAN REPAYMENT PLAN**

These notes do not form part of this Agreement. The purpose of these notes is to enable the Parties to calculate on the Revision Date the amounts to be shown in the final version of this Schedule.

The provisional loan repayment amounts are based on total outstanding negotiation loans and interest accrued up to March 31, 2006. Final negotiation loan repayment amounts, including any further loans made and interest accrued after March 31, 2006, will be calculated and included in the final loan repayment schedules in accordance with the following notes.

In these notes:

“**Revision Date**” has the same meaning as in Schedule 1 of this Chapter.

1. Before the Revision Date, Canada and the Maa-nulth First Nations will jointly produce a document capturing the final loan and interest amounts as of the Effective Date and setting out the amounts of all the loans from Canada to the Maa-nulth First Nations, all interest accrued to date, and the relevant terms and conditions of those loans.
2. On the Revision Date, the provisional negotiation loan repayment amounts in the Negotiation Loan Repayment Plans are adjusted to final negotiation loan repayment amounts by:
  - a. determining the amount of the additional negotiation loans made by Canada to each Maa-nulth First Nation which were not included in the calculation of the provisional negotiation loan repayment amounts and any applicable additional interest accrued since the provisional negotiation loan and interest amounts were calculated; and
  - b. prorating and adjusting the additional amounts determined in accordance with paragraph 2a. for that Maa-nulth First Nation over the applicable Negotiation Loan Repayment Plan such that the amounts in the final Negotiation Loan Repayment Plans are proportional to the amounts in the provisional Negotiation Loan Repayment Plan and such that each final Negotiation Loan Repayment Plan incorporates interest on unpaid loan balances at 4.545% per annum beginning on the Effective Date and compounded annually which is the same rate of interest used to establish the provisional Negotiation Loan Repayment Plan.

3. On the Revision Date, following the adjustment performed in accordance with paragraph 2, the Negotiation Loan Repayment Plans are amended to incorporate the adjusted figures and the headings in each Negotiation Loan Repayment Plan are replaced by the following headings:

<b>PAYMENT DATE</b>	<b>NEGOTIATION LOAN REPAYMENT AMOUNT</b>
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## CHAPTER 17 RESOURCE REVENUE SHARING

### 17.1.0 PAYMENT OF RESOURCE REVENUES

- 17.1.1 British Columbia and Canada will jointly provide to each Maa-nulth First Nation, within 60 days of the Effective Date, a statement of the Invoiced Resource Amount for the Fiscal Year ended immediately before the Effective Date.
- 17.1.2 For a period of 24 years after the Effective Date, British Columbia and Canada will jointly provide to each Maa-nulth First Nation, within 60 days of each anniversary of the Effective Date, a statement of the Invoiced Resource Amount for the Fiscal Year ended immediately before that anniversary.
- 17.1.3 British Columbia and Canada will, within 30 days of providing statements to each Maa-nulth First Nation in accordance with 17.1.1 or 17.1.2, each pay 50% of the following amounts:
- a. to Huu-ay-aht First Nations 2.45% multiplied by the Invoiced Resource Amount, provided that such amount is not:
    - i. less than \$175,795 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter; or
    - ii. greater than \$527,386 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter;
  - b. to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations 2.08% multiplied by the Invoiced Resource Amount, provided that such amount is not:
    - i. less than \$148,982 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter; or
    - ii. greater than \$446,947 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter;
  - c. to Toquaht Nation 0.50% multiplied by the Invoiced Resource Amount, provided that such amount is not :
    - i. less than \$35,846 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter; or
    - ii. greater than \$107,539 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter;

- d. to Uchucklesaht Tribe 0.69% multiplied by the Invoiced Resource Amount, provided that such amount is not:
    - i. less than \$49,872 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter; or
    - ii. greater than \$149,616 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter; and
  - e. to Ucluelet First Nation 2.64% multiplied by the Invoiced Resource Amount, provided that such amount is not:
    - i. less than \$189,504 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter; or
    - ii. greater than \$568,512 multiplied by Current FDDIPI divided by 2005 FDDIPI 1<sup>st</sup> Quarter.
- 17.1.4 For a period of five years following the Effective Date, British Columbia and Canada will each pay \$90,000 multiplied by Current FDDIPI divided by 2005 FDDIPI 2<sup>nd</sup> Quarter to Huu-ay-aht First Nations on the same date as the payments contemplated by 17.1.3.
- 17.2.0 PROVINCIAL AUTHORITY ON PROVINCIAL CROWN LAND**
- 17.2.1 Nothing in this Chapter limits the ability of British Columbia to:
- a. authorize use of or Dispose of provincial Crown lands and resources in accordance with Provincial Law, policy or practices;
  - b. amend Provincial Law, policies or practices in relation to the use or Disposition of provincial Crown lands and resources;
  - c. amend Provincial Law, policy or practices in relation to the determination and collection of stumpage, rents, fees, royalties or other charges in respect of provincial Crown lands and resources, including Provincial Timber Resources; or
  - d. amend or eliminate the boundaries for forest revenue administration or management of forest districts or their successors,
- as British Columbia may in its discretion determine from time to time.
- 17.2.2 Nothing in this Chapter creates an Interest in provincial Crown lands or resources in favour of any person.



## CHAPTER 18 FISCAL RELATIONS

### 18.1.0 FISCAL RELATIONS

18.1.1 Canada, British Columbia and each Maa-nulth First Nation acknowledge that they each have a role in supporting that Maa-nulth First Nation, through direct or indirect financial support or through access to public programs and services, as provided for in the Fiscal Financing Agreement or other arrangements.

18.1.2 Every eight years, or other periods as may be agreed, each Maa-nulth First Nation, Canada and British Columbia will negotiate and attempt to reach agreement on a Fiscal Financing Agreement that will describe:

- a. the Agreed-Upon Programs and Services, including recipients of those programs and services;
- b. the responsibilities of each of the Maa-nulth First Nation, Canada and British Columbia in respect of the Agreed-Upon Programs and Services;
- c. the funding for Agreed-Upon Programs and Services;
- d. the Maa-nulth First Nation's contribution to the funding of Agreed-Upon Programs and Services from its own source revenues as determined in accordance with 18.1.4;
- e. mechanisms for the transfer of funds to the Maa-nulth First Nation by Canada or British Columbia;
- f. procedures for:
  - i. the collection and exchange of information, including statistical and financial information, required for the administration of the Fiscal Financing Agreement;
  - ii. dispute resolution in relation to the Fiscal Financing Agreement;
  - iii. accountability requirements, including reporting and audit, of the Maa-nulth First Nation;
  - iv. negotiating the inclusion of additional programs and services to the list of Agreed-Upon Programs and Services within the term of a Fiscal Financing Agreement;
  - v. addressing exceptional circumstances and emergencies;

- vi. negotiating subsequent Fiscal Financing Agreements; and
  - g. other matters agreed to by the Maa-nulth First Nation, Canada and British Columbia.
- 18.1.3 In negotiating a Fiscal Financing Agreement, the applicable Maa-nulth First Nation, Canada and British Columbia will take into account:
- a. the cost of providing, either directly or indirectly, Agreed-Upon Programs and Services that are reasonably comparable to similar programs and services available in other communities of similar size and circumstance in British Columbia;
  - b. efficiency and effectiveness, including opportunities for economies of scale in the provision of Agreed-Upon Programs and Services, which may include, where appropriate, cooperative arrangements with other governments, First Nations or existing service providers;
  - c. existing levels of funding provided by Canada or British Columbia;
  - d. the costs of operating its Maa-nulth First Nation Government;
  - e. prevailing fiscal policies of Canada or British Columbia;
  - f. location and accessibility of communities on its Maa-nulth First Nation Lands;
  - g. jurisdictions, authorities, programs and services assumed by the Maa-nulth First Nation Governments under this Agreement;
  - h. the desirability of reasonably stable, predictable and flexible fiscal arrangements;
  - i. changes in price and volume, which may include the number of individuals eligible to receive Agreed-Upon Programs and Services; and
  - j. other matters as agreed to by that Maa-nulth First Nation, Canada and British Columbia.
- 18.1.4 From time to time, each Maa-nulth First Nation, Canada and British Columbia will negotiate and attempt to reach agreement on the Maa-nulth First Nation's own source revenue contribution to the funding of Agreed-Upon Programs and Services contemplated by 18.1.2d., taking into account the following:
- a. the capacity of that Maa-nulth First Nation to generate revenues;
  - b. existing own source revenue arrangements negotiated with that Maa-nulth First Nation under this Agreement;

- c. prevailing fiscal policies in respect of the treatment of First Nation own source revenue in self-government fiscal arrangements;
- d. that own source revenue arrangements should not unreasonably reduce incentives for that Maa-nulth First Nation to generate revenues;
- e. that the applicable Maa-nulth First Nation's reliance on fiscal transfers should decrease over time as it becomes more self-sufficient; and
- f. other matters as agreed to by that Maa-nulth First Nation, Canada and British Columbia.

18.1.5 In negotiating each Maa-nulth First Nation's own source revenue contribution to the funding of Agreed-Upon Programs and Services in accordance with 18.1.4, unless otherwise agreed:

- a. the following are excluded from own source revenue calculations:
  - i. the Capital Transfer, in the manner provided for in the initial agreement in respect of own source revenues;
  - ii. resource revenue sharing payments made in accordance with Chapter 17 Resource Revenue Sharing, in the manner provided for in the initial agreement in respect of own source revenues;
  - iii. proceeds from the sale of the Maa-nulth First Nation Lands of that Maa-nulth First Nation;
  - iv. any federal or provincial payments in accordance with a Fiscal Financing Agreement or other agreements for programs and services with that Maa-nulth First Nation;
  - v. interest or income on funds received by that Maa-nulth First Nation from Canada or British Columbia for a purpose related to the implementation of this Agreement and held in a special purpose fund provided for in the initial agreement in respect of own source revenues, or as agreed to by that Maa-nulth First Nation, Canada and British Columbia from time to time, provided that the interest or income derived from the investment of funds held in the special purpose fund is used for a purpose or activity that is intended by that Maa-nulth First Nation, Canada and British Columbia to be funded from that special purpose fund;
  - vi. gifts or charitable donations;
  - vii. amounts received as compensation for specific losses or damages to property or assets;

- viii. Specific Claim Settlements; and
    - ix. other sources agreed to by that Maa-nulth First Nation, Canada and British Columbia; and
  - b. own source revenue arrangements will not permit:
    - i. Canada to benefit from a decision of British Columbia to vacate tax room or to transfer revenues or tax authorities to that Maa-nulth First Nation; or
    - ii. British Columbia to benefit from a decision of Canada to vacate tax room or to transfer revenues or tax authorities to that Maa-nulth First Nation.
- 18.1.6 If a Maa-nulth First Nation, Canada and British Columbia do not reach agreement on a subsequent Fiscal Financing Agreement by the expiry date of an existing Fiscal Financing Agreement, that Fiscal Financing Agreement:
  - a. continues in effect for up to two years from its original expiry date, or for such other period of time as that Maa-nulth First Nation, Canada and British Columbia may agree to in writing; and
  - b. terminates on the earlier of:
    - i. the expiry of the extended term determined in accordance with a.; or
    - ii. the date of commencement of a subsequent Fiscal Financing Agreement.
- 18.1.7 None of the creation of each Maa-nulth First Nation Government, the inclusion of Maa-nulth First Nation Government law-making authority in this Agreement, nor the exercise of a Maa-nulth First Nation Government law-making authority creates or implies any financial obligation or service responsibility on the part of any Party, other than as described in a Fiscal Financing Agreement.
- 18.1.8 For greater certainty, where a Maa-nulth First Nation, Canada and British Columbia agree in the initial Fiscal Financing Agreement that Canada will provide Time Limited Federal Funding for any responsibilities of that Maa-nulth First Nation specified in that agreement and Canada duly provides the Time Limited Federal Funding, Canada has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of those responsibilities.

- 18.1.9 For greater certainty, where a Maa-nulth First Nation, Canada and British Columbia agree in the initial Fiscal Financing Agreement that British Columbia will provide Time Limited Provincial Funding for any responsibilities of that Maa-nulth First Nation specified in that agreement and British Columbia duly provides the Time Limited Provincial Funding, British Columbia has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of those responsibilities.
- 18.1.10 Any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are required or permitted under any provision of this Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
- a. in the case of Canada, by the Parliament of Canada;
  - b. in the case of British Columbia, by the Legislature; or
  - c. in the case of a Maa-nulth First Nation, by its Maa-nulth First Nation Government.



## CHAPTER 19 TAXATION

### 19.1.0 DIRECT TAXATION

19.1.1 Each Maa-nulth First Nation Government may make laws in respect of:

- a. Direct taxation of Maa-nulth First Nation Citizens of the applicable Maa-nulth First Nation within the Maa-nulth First Nation Lands of that Maa-nulth First Nation in order to raise revenue for that Maa-nulth First Nation Government's purposes; and
- b. the implementation of any taxation agreement entered into between the applicable Maa-nulth First Nation and Canada or British Columbia.

19.1.2 The law-making authority of a Maa-nulth First Nation Government provided for in 19.1.1a. does not limit the taxation powers of Canada or British Columbia.

19.1.3 Notwithstanding any other provision of this Agreement, any Maa-nulth First Nation Law made under this Chapter or any exercise of power by a Maa-nulth First Nation Government, is subject to and will conform with International Legal Obligations respecting taxation, and 1.7.1 to 1.7.5 do not apply in respect of International Legal Obligations respecting taxation.

### 19.2.0 TAXATION POWERS AGREEMENTS

19.2.1 From time to time, at the request of a Maa-nulth First Nation, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with that Maa-nulth First Nation respecting:

- a. the extent that the Direct taxation law-making authority of its Maa-nulth First Nation Government under 19.1.1a. may be extended to apply to Persons, other than the Maa-nulth First Nation Citizens of the applicable Maa-nulth First Nation, within the Maa-nulth First Nation Lands of that Maa-nulth First Nation; and
- b. the coordination of its Maa-nulth First Nation Government's taxation of any Person with federal or provincial tax systems.

19.2.2 Notwithstanding the provisions of Chapter 13 Governance, parties to an agreement contemplated by 19.2.1 may provide for an alternative approach to the appeal, enforcement or adjudication of a Maa-nulth First Nation Law in respect of taxation.

**19.3.0 MAA-NULTH FIRST NATION LANDS**

19.3.1 A Maa-nulth First Nation is not subject to capital taxation, including real property taxes and taxes on capital or wealth, in respect of the estate or interest of the Maa-nulth First Nation in its Maa-nulth First Nation Lands on which there are no improvements or on which there is a designated improvement.

19.3.2 In 19.3.1, “designated improvement” means:

- a. a residence of a Maa-nulth First Nation 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 Maa-nulth First Nation cultural or spiritual purposes;
  - ii. works of public convenience constructed or operated for the benefit of Maa-nulth First Nation Citizens, occupiers of Maa-nulth First Nation Lands or persons visiting or in transit through Maa-nulth First Nation 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 Forest Resource or a 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.

19.3.3 In 19.3.2b., “public purpose” does not include the provision of property or services primarily for the purpose of profit.

19.3.4 For the purposes of 19.3.1 and 19.3.2:

- a. for greater certainty, Maa-nulth First Nation Lands include the improvements on those lands; and



- b. an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.

19.3.5 For greater certainty, the exemption from taxation in 19.3.1 does not apply to a taxpayer other than the Maa-nulth First Nation nor does it apply in respect of a disposition of Maa-nulth First Nation Lands or interests in those lands by the Maa-nulth First Nation.

19.3.6 For federal and provincial income tax purposes, proceeds of disposition received by a Maa-nulth First Nation on expropriation of Maa-nulth First Nation Lands in accordance with Chapter 2 Lands are not taxable.

#### **19.4.0 TRANSFER OF MAA-NULTH FIRST NATION CAPITAL**

19.4.1 A transfer under this Agreement of Maa-nulth First Nation Capital and a recognition of ownership of Maa-nulth First Nation Capital under this Agreement is not taxable.

19.4.2 For purposes of 19.4.1, an amount paid by a Maa-nulth First Nation to its Maa-nulth-aht is deemed to be a transfer of Maa-nulth First Nation Capital under this Agreement if the payment:

- a. reasonably can be considered to be a distribution of a Capital Transfer received by the Maa-nulth First Nation; and
- b. becomes payable to the Maa-nulth-aht within 90 days and is paid to the Maa-nulth-aht within 270 days from the date that the Maa-nulth First Nation receives the Capital Transfer.

19.4.3 For federal and provincial income tax purposes, Maa-nulth First Nation Capital of a Maa-nulth First Nation is deemed to have been acquired by the Maa-nulth First Nation at a cost equal to its fair market value on the later of:

- a. the Effective Date; and
- b. the date of transfer of ownership or the date of recognition of ownership, as the case may be.

#### **19.5.0 INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION**

19.5.1 Section 87 of the *Indian Act* will have no application to a Maa-nulth-aht:

- a. in respect of Transaction Taxes, as of the first day of the first month 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 after the twelfth anniversary of the Effective Date.

- 19.5.2 Subject to 19.1.1a. and 19.2.1a. and 19.5.3 to 19.5.6, as of the Effective Date, the following is exempt from taxation:
- a. the interest of an Indian in Maa-nulth First Nation Lands that were an Indian Reserve or Surrendered Lands on the day before the Effective Date;
  - b. the personal property of an Indian situated on Maa-nulth First Nation Lands that were an Indian Reserve on the day before the Effective Date; and
  - c. an Indian in respect of the ownership, occupation, possession or use of any property mentioned in subparagraphs a. or b.
- 19.5.3 19.5.2 will cease to be effective:
- a. in respect of Transaction Taxes, as of the first day of the first month 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 after the twelfth anniversary of the Effective Date.
- 19.5.4 19.5.2 will be interpreted to exempt an Indian in respect of a property or interest, or in respect of the ownership, occupation, possession or use thereof, in the same manner and under the same conditions in which section 87 of the *Indian Act* would have applied, but for this Agreement, if the property were situated on, or the interest were in, an Indian Reserve.
- 19.5.5 19.5.2 only applies to an Indian during the period that section 87 of the *Indian Act* applies to the Indian.
- 19.5.6 If a Maa-nulth First Nation Government imposes a tax within Maa-nulth First Nation Lands and concludes a tax agreement for that purpose with Canada or British Columbia as contemplated in 19.2.1, 19.5.2 does not apply to the extent that the Maa-nulth First Nation Government, Canada or British Columbia, as the case may be, imposes a tax that the particular taxation agreement specifies is applicable to Maa-nulth First Nation Citizens and other Indians within the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.

## **19.6.0 TAX TREATMENT AGREEMENT**

- 19.6.1 The Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date.
- 19.6.2 Canada and British Columbia will recommend to Parliament and the Legislature, respectively, that the tax treatment agreement be given effect and force of law under federal and provincial legislation.

## **CHAPTER 20 ARTIFACTS, HERITAGE SITES AND PLACE NAMES**

### **20.1.0 ARTIFACTS**

20.1.1 The Parties recognize the integral role of the Maa-nulth First Nation Artifacts of each Maa-nulth First Nation in the continuation of that Maa-nulth First Nation's culture, values and traditions, whether those artifacts are held by:

- a. that Maa-nulth First Nation;
- b. a Maa-nulth First Nation Corporation of that Maa-nulth First Nation;
- c. a Maa-nulth First Nation Public Institution established by the applicable Maa-nulth First Nation Government;
- d. a Maa-nulth-aht of that Maa-nulth First Nation;
- e. the Parks Canada Agency;
- f. the Canadian Museum of Civilization; or
- g. the Royal British Columbia Museum.

20.1.2 Each Maa-nulth First Nation owns Maa-nulth First Nation Artifacts discovered within a Heritage Site on its Maa-nulth First Nation Lands after the Effective Date, unless another person establishes ownership of that artifact.

### **20.2.0 TRANSFER OF MAA-NULTH FIRST NATION ARTIFACTS**

#### **Canadian Museum of Civilization**

20.2.1 Parts 1 and Parts 2 of Appendix S list all artifacts in the permanent collection of the Canadian Museum of Civilization on the Effective Date that have been identified as Maa-nulth First Nation Artifacts.

20.2.2 The Canadian Museum of Civilization will transfer to the applicable Maa-nulth First Nation without condition all its legal interests in, and possession of, the Maa-nulth First Nation Artifacts listed in Part 1 of the applicable Appendix S:

- a. following a request by that Maa-nulth First Nation;

- b. if there is no request by that Maa-nulth First Nation, five years after the Effective Date or the date that the artifact was included in Appendix S, whichever date is later; or
  - c. by any other date agreed to by the Canadian Museum of Civilization and that Maa-nulth First Nation.
- 20.2.3 Notwithstanding the five year time period contemplated by 20.2.2b., if the delivery of the Maa-nulth First Nation Artifacts has not occurred within four years after the Effective Date, at the request of the applicable Maa-nulth First Nation, that Maa-nulth First Nation and the Canadian Museum of Civilization will negotiate and attempt to reach an agreement on the extension of that time period for an additional five years.
- 20.2.4 The transfer of the legal interests in, and possession of, the Maa-nulth First Nation Artifacts in accordance with 20.2.2 is deemed to occur when those artifacts arrive at a location for delivery designated in a notice given by the applicable Maa-nulth First Nation.
- 20.2.5 If the applicable Maa-nulth First Nation does not designate a location for delivery, the Canadian Museum of Civilization will deliver those artifacts to the address for that Maa-nulth First Nation identified in 1.23.6.
- 20.2.6 The Canadian Museum of Civilization will:
  - a. continue to hold the Maa-nulth First Nation Artifacts listed in Parts 1 of Appendix S under the same terms and conditions as they are held on the Effective Date, until they are delivered to the applicable Maa-nulth First Nation;
  - b. not be liable for any loss or damage to those Maa-nulth First Nation Artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. determine the delivery arrangements for, and will deliver, those Maa-nulth First Nation Artifacts in accordance with the practices of the Canadian Museum of Civilization for delivery of artifacts to museums prevailing at the time of delivery.
- 20.2.7 If a Maa-nulth First Nation or Canada considers that there may be an error in the determination of whether an artifact:
  - a. listed in Part 1 or Part 2 of the applicable Appendix S; or

- b. in the permanent collection of the Canadian Museum of Civilization,  
  
is a Maa-nulth First Nation Artifact of that Maa-nulth First Nation, Canada and that Maa-nulth First Nation will endeavour to determine whether that artifact is a Maa-nulth First Nation Artifact of that Maa-nulth First Nation.
- 20.2.8 A disagreement in respect of a determination in accordance with 20.2.7 of whether an artifact is a Maa-nulth First Nation Artifact is a Disagreement.
- 20.2.9 In the event of competing claims between Maa-nulth First Nations or with another aboriginal group as to whether an artifact is a Maa-nulth First Nation Artifact of a Maa-nulth First Nation, Canada may request that the relevant parties to the dispute resolve the competing claim and provide Canada with written confirmation of the settlement of such dispute before undertaking further negotiations in regards to that artifact in accordance with this Chapter.
- 20.2.10 If, after the Effective Date:
  - a. a Maa-nulth First Nation Artifact is permanently acquired by the Canadian Museum of Civilization; or
  - b. it is determined in accordance with 20.2.7 or 20.2.8 that another artifact in the collection of the Canadian Museum of Civilization is a Maa-nulth First Nation Artifact,  
  
that artifact will be added to Part 2 of the applicable Appendix S, or, if the Canadian Museum of Civilization and the applicable Maa-nulth First Nation agree, to Part 1 of the applicable Appendix S and Appendix S is deemed to be amended accordingly.
- 20.2.11 If it is determined in accordance with 20.2.7 or 20.2.8 that an artifact listed in Part 1 of the applicable Appendix S is not a Maa-nulth First Nation Artifact:
  - a. Appendix S is deemed to be amended to remove that artifact; and
  - b. unless the applicable Maa-nulth First Nation and Canada otherwise agree, that Maa-nulth First Nation will transfer its legal interests in, and deliver the artifact to, the Canadian Museum of Civilization.
- 20.2.12 If it is determined in accordance with 20.2.7 or 20.2.8 that an artifact listed in Part 2 of the applicable Appendix S is not a Maa-nulth First Nation Artifact, Appendix S is deemed to be amended to remove that artifact.
- 20.2.13 Each Maa-nulth First Nation and the Canadian Museum of Civilization will share possession of the applicable Maa-nulth First Nation Artifacts listed in Part 2 of the applicable Appendix S, in accordance with resources available to the Canadian Museum of Civilization for those activities and any custodial agreement negotiated in accordance with 20.2.15.

- 20.2.14 The Canadian Museum of Civilization is responsible for the care, maintenance and preservation of the Maa-nulth First Nation Artifacts listed in Part 2 of the applicable Appendix S in accordance with any custodial agreement negotiated in accordance with 20.2.15.
- 20.2.15 From time to time, at the request of a Maa-nulth First Nation or the Canadian Museum of Civilization, that Maa-nulth First Nation and the Canadian Museum of Civilization will negotiate and attempt to reach a custodial agreement in respect of that Maa-nulth First Nation's Maa-nulth First Nation Artifacts listed in Part 2 of the applicable Appendix S.
- 20.2.16 Custodial agreements contemplated by 20.2.15 will:
- a. respect Maa-nulth First Nation Law and practices relating to Maa-nulth First Nation Artifacts; and
  - b. comply with Federal Law or Provincial Law and the statutory mandate of the Canadian Museum of Civilization.
- 20.2.17 Custodial agreements contemplated by 20.2.15 may include:
- a. the Maa-nulth First Nation Artifacts to be in the possession of the applicable Maa-nulth First Nation and those to be in the possession of the Canadian Museum of Civilization;
  - b. conditions of maintenance, storage and handling of the Maa-nulth First Nation Artifacts;
  - c. conditions of access to and use, including study, display and reproduction, of the Maa-nulth First Nation Artifacts and associated records by the public, researchers and scholars;
  - d. provisions for incorporating new information into catalogue records and displays of the Maa-nulth First Nation Artifacts; and
  - e. provisions for enhancing public knowledge about the Maa-nulth First Nations through the participation of the Maa-nulth-aht in public programs and activities at the Canadian Museum of Civilization.
- 20.2.18 If a Maa-nulth First Nation proposes to transfer its legal interest in a Maa-nulth First Nation Artifact listed in Part 1 of the applicable Appendix S, it will Consult with the Canadian Museum of Civilization and the Canadian Museum of Civilization may exercise a right of first refusal to acquire the Maa-nulth First Nation Artifact on the proposed terms of the transfer.

- 20.2.19 If the Canadian Museum of Civilization proposes to transfer its legal interest in a Maa-nulth First Nation Artifact listed in Part 2 of the applicable Appendix S, it will Consult with the applicable Maa-nulth First Nation and that Maa-nulth First Nation may exercise a right of first refusal to acquire the Maa-nulth First Nation Artifact on the proposed terms of the transfer.

#### **The Parks Canada Agency**

- 20.2.20 If a Maa-nulth First Nation or the Parks Canada Agency considers that there may be an error in the determination of whether an artifact in the permanent collection of the Parks Canada Agency is a Maa-nulth First Nation Artifact, that Maa-nulth First Nation and the Parks Canada Agency will make reasonable efforts to determine whether the artifact is a Maa-nulth First Nation Artifact.
- 20.2.21 A disagreement in respect of a determination in accordance with 20.2.20 of whether an artifact is a Maa-nulth First Nation Artifact is a Disagreement.

- 20.2.22 After the Effective Date:

- a. if a Maa-nulth First Nation Artifact comes into the permanent possession, or under the control, of the Parks Canada Agency; or
- b. if it is determined in accordance with 20.2.20 or 20.2.21 that an artifact in the permanent collection of the Parks Canada Agency is a Maa-nulth First Nation Artifact,

the Parks Canada Agency and the applicable Maa-nulth First Nation may negotiate and attempt to reach agreement on the transfer or loan of that artifact to the applicable Maa-nulth First Nation.

#### **Royal British Columbia Museum**

- 20.2.23 Parts 3 and Parts 4 of Appendix S list the artifacts in the permanent collection of the Royal British Columbia Museum on the Effective Date that have been identified as Maa-nulth First Nation Artifacts.
- 20.2.24 The Royal British Columbia Museum will transfer to the applicable Maa-nulth First Nation without condition all its legal interests in, and possession of, the Maa-nulth First Nation Artifacts listed in Part 3 of the applicable Appendix S:
- a. following a request by that Maa-nulth First Nation;
  - b. if there is no request from that Maa-nulth First Nation, five years after the Effective Date or the date that the artifact was included in Appendix S, whichever date is later; or
  - c. by any other date agreed to by the Royal British Columbia Museum and that Maa-nulth First Nation.

- 20.2.25 Notwithstanding the five year time period contemplated by 20.2.24b., if the delivery of the Maa-nulth First Nation Artifacts has not occurred within five years after the Effective Date, at the request of the applicable Maa-nulth First Nation, that Maa-nulth First Nation and the Royal British Columbia Museum will negotiate and attempt to reach an agreement on:
- a. the extension of that time period for up to an additional five years; and
  - b. the payment by that Maa-nulth First Nation of the costs of the Royal British Columbia Museum associated with holding the Maa-nulth First Nation Artifacts during any such extended time period, including costs related to storage, insurance, access, inspection and shipping of those Maa-nulth First Nation Artifacts.
- 20.2.26 The transfer of legal interests in, and possession of, the Maa-nulth First Nation Artifacts in accordance with 20.2.24 is deemed to occur when those artifacts arrive at a location for delivery in British Columbia, as designated in a notice given by the applicable Maa-nulth First Nation.
- 20.2.27 If the applicable Maa-nulth First Nation does not designate a location for delivery, the Royal British Columbia Museum will deliver those artifacts to the address for that Maa-nulth First Nation identified in 1.23.6.
- 20.2.28 The Royal British Columbia Museum will:
- a. continue to hold the Maa-nulth First Nation Artifacts listed in Part 3 of the applicable Appendix S under the same terms and conditions as they are held on the Effective Date, until they are delivered to the applicable Maa-nulth First Nation;
  - b. not be liable for any loss or damage to those Maa-nulth First Nation Artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. determine the delivery arrangements for, and will deliver, those Maa-nulth First Nation Artifacts in accordance with the practices of the Royal British Columbia Museum for delivery of artifacts to museums prevailing at the time of delivery.
- 20.2.29 British Columbia is not liable for any loss or damage to a Maa-nulth First Nation Artifact listed in Parts 3 or Parts 4 of Appendix S unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.



- 20.2.30 If a Maa-nulth First Nation or British Columbia considers that there may be an error in the determination of whether an artifact:
- a. listed in Part 3 or Part 4 of the applicable Appendix S; or
  - b. in the permanent collection of the Royal British Columbia Museum,
- is a Maa-nulth First Nation Artifact of that Maa-nulth First Nation, British Columbia and that Maa-nulth First Nation will endeavour to determine whether that artifact is a Maa-nulth First Nation Artifact of that Maa-nulth First Nation.
- 20.2.31 A disagreement in respect of a determination in accordance with 20.2.30 of whether an artifact is a Maa-nulth First Nation Artifact is a Disagreement.
- 20.2.32 In the event of competing claims between Maa-nulth First Nations or with another aboriginal group as to whether an artifact is a Maa-nulth First Nation Artifact of a Maa-nulth First Nation, British Columbia may request that the relevant parties to the dispute resolve the competing claim and provide British Columbia with written confirmation of the settlement of such dispute before undertaking further negotiations in regards to that artifact in accordance with this Chapter.
- 20.2.33 If, after the Effective Date:
- a. a Maa-nulth First Nation Artifact is permanently acquired by the Royal British Columbia Museum; or
  - b. it is determined in accordance with 20.2.30 or 20.2.31 that another artifact in the collection of the Royal British Columbia Museum is a Maa-nulth First Nation Artifact;
- that artifact will be added to Part 4 of the applicable Appendix S, or, if the Royal British Columbia Museum and that Maa-nulth First Nation agree, to Part 3 of the applicable Appendix S and Appendix S is deemed to be amended accordingly.
- 20.2.34 If it is determined in accordance with 20.2.30 or 20.2.31 that an artifact listed in Part 3 of the applicable Appendix S is not a Maa-nulth First Nation Artifact:
- a. Appendix S is deemed to be amended to remove that artifact; and
  - b. unless the applicable Maa-nulth First Nation and British Columbia otherwise agree, that Maa-nulth First Nation will transfer its legal interests in, and deliver that artifact to the Royal British Columbia Museum.
- 20.2.35 If it is determined in accordance with 20.2.30 or 20.2.31 that an artifact listed in Part 4 of the applicable Appendix S is not a Maa-nulth First Nation Artifact, Appendix S is deemed to be amended to remove that artifact.

- 20.2.36 From time to time, at the request of a Maa-nulth First Nation or the Royal British Columbia Museum, that Maa-nulth First Nation and the Royal British Columbia Museum will negotiate and attempt to reach agreement in respect of the custody of that Maa-nulth First Nation's Maa-nulth First Nation Artifacts listed in Part 4 of the applicable Appendix S.
- 20.2.37 Custodial agreements contemplated by 20.2.36 will:
- a. respect applicable Maa-nulth First Nation Law and practices relating to Maa-nulth First Nation Artifacts; and
  - b. comply with Federal Law or Provincial Law, and the policies and procedures of the Royal British Columbia Museum.
- 20.2.38 Custodial agreements contemplated by 20.2.36 may include:
- a. conditions of maintenance, storage and handling of Maa-nulth First Nation Artifacts;
  - b. conditions of access to and use, including study, display and reproduction, of Maa-nulth First Nation Artifacts and associated records by the public, researchers and scholars;
  - c. provisions for incorporating new information into catalogue records and displays of Maa-nulth First Nation Artifacts; and
  - d. conditions under which Maa-nulth First Nation Artifacts may be permanently removed from the collection of the Royal British Columbia Museum.
- 20.2.39 Each Maa-nulth First Nation and the Royal British Columbia Museum may negotiate an agreement that:
- a. establishes processes for lending Maa-nulth First Nation Artifacts;
  - b. provides for replication of Maa-nulth First Nation Artifacts;
  - c. provides for professional and technical training of the Maa-nulth-aht in museum skills and conservation expertise;
  - d. provides for enhancing public knowledge about a Maa-nulth First Nation through the participation of the Maa-nulth-aht in public programs and activities at the Royal British Columbia Museum;
  - e. addresses access to other collections; and
  - f. provides for other matters as agreed to by that Maa-nulth First Nation and the Royal British Columbia Museum.

**20.3.0 ACCESS TO OTHER COLLECTIONS**

- 20.3.1 From time to time, at the request of a Maa-nulth First Nation, Canada will make reasonable efforts to facilitate that Maa-nulth First Nation's access to Maa-nulth First Nation Artifacts and Maa-nulth First Nation Archaeological Human Remains in other public collections in Canada.

**20.4.0 NUU-CHAH-NULTH ARTIFACTS**

- 20.4.1 Nothing in this Agreement affects the ability of a Maa-nulth First Nation to participate in any future negotiations or discussions with Canada or British Columbia in respect of Nuu-chah-nulth Artifacts.

**20.5.0 MAA-NULTH FIRST NATION ARCHAEOLOGICAL HUMAN REMAINS**

- 20.5.1 Canada will return any Maa-nulth First Nation Archaeological Human Remains held by Canada at the Effective Date at the request of the applicable Maa-nulth First Nation, to that Maa-nulth First Nation, in accordance with Federal Law and policy and Provincial Law.
- 20.5.2 If, after the Effective Date, Maa-nulth First Nation Archaeological Human Remains or associated burial objects come into the possession or under the control of Canada, Canada will, at the request of the applicable Maa-nulth First Nation, transfer the Maa-nulth First Nation Archaeological Human Remains or associated burial objects to that Maa-nulth First Nation, in accordance with Federal Law and policy and Provincial Law.
- 20.5.3 In the event of competing claims among the Maa-nulth First Nations or with another aboriginal group in relation to Maa-nulth First Nation Archaeological Human Remains or associated burial objects, the relevant parties to the dispute will resolve the competing claim between themselves and will provide Canada with written confirmation of the settlement of the dispute before further negotiation of the transfer of the Maa-nulth First Nation Archaeological Human Remains in question.
- 20.5.4 At the request of the applicable Maa-nulth First Nation, British Columbia will return any Maa-nulth First Nation Archaeological Human Remains held by British Columbia to that Maa-nulth First Nation, in accordance with Provincial Law and policy.
- 20.5.5 The applicable Maa-nulth First Nation may, with the consent of British Columbia, entomb any Maa-nulth First Nation Archaeological Human Remains returned by British Columbia in accordance with 20.5.4 in any site in accordance with Provincial Law.

- 20.5.6 In the event of competing claims among any Maa-nulth First Nations or with another aboriginal group as to whether human remains are Maa-nulth First Nation Archaeological Human Remains of a particular Maa-nulth First Nation, British Columbia may request that the relevant parties to the dispute resolve the competing claim and provide British Columbia with written confirmation of the settlement of such dispute before further negotiation of the transfer of Maa-nulth First Nation Archaeological Human Remains.

#### **20.6.0 HERITAGE SITES**

- 20.6.1 Each Maa-nulth First Nation Government may develop processes, comparable to British Columbia processes, to manage Heritage Sites on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation in order to preserve Maa-nulth First Nation and other heritage values associated with those sites.
- 20.6.2 Before the Effective Date, British Columbia and the Maa-nulth First Nations will endeavour to agree on a list of key sites of cultural and historic significance outside Maa-nulth First Nation Lands to be protected through provincial heritage site designation or through other measures agreed to by British Columbia and the Maa-nulth First Nations.
- 20.6.3 If, before the Effective Date, British Columbia and the Maa-nulth First Nations agree in writing on a list of key sites to be protected through provincial heritage site designation or through other measures agreed to in accordance with 20.6.2, on the Effective Date this Agreement is deemed to be amended by adding such list as an Appendix.

#### **20.7.0 PLACE NAMES**

- 20.7.1 Before the Effective Date, the Maa-nulth First Nations and British Columbia will endeavour to agree on a list of key geographic features to be named or renamed in the Nuu-chah-nulth language in accordance with Provincial Law, policy and procedures.
- 20.7.2 If, before the Effective Date, British Columbia and the Maa-nulth First Nations agree in writing to a list of key geographic features to be named or renamed in the Nuu-chah-nulth language in accordance with 20.7.1, on the Effective Date this Agreement is deemed to be amended by adding such list as an Appendix.
- 20.7.3 After the Effective Date, a Maa-nulth First Nation may propose that British Columbia name or rename other geographic features with names in the Nuu-chah-nulth language, and British Columbia will consider those proposals in accordance with Provincial Law, policy and procedures.

- 20.7.4      At the request of a Maa-nulth First Nation, British Columbia will record names in the Nuu-chah-nulth language and historic background information about place names submitted by that Maa-nulth First Nation for inclusion in the British Columbia geographic names database for the geographic features that are described in this Agreement, in accordance with Provincial Law, policy and procedures.



## CHAPTER 21 CULTURE AND HERITAGE

### 21.1.0 GENERAL

- 21.1.1 Maa-nulth-aht have the right to practice the Nu-u-chah-nulth culture and to use the Nu-u-chah-nulth language in a manner consistent with this Agreement.
- 21.1.2 For greater certainty, nothing in 21.1.1 creates or implies any financial obligations or service delivery responsibilities on the part of any of the Parties.

### 21.2.0 LAW-MAKING

- 21.2.1 Each Maa-nulth First Nation Government may make laws, applicable on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation, in respect of:
- a. the conservation, protection and management of the Heritage Sites of the applicable Maa-nulth First Nation;
  - b. public access to the Heritage Sites of the applicable Maa-nulth First Nation;
  - c. the conservation, protection and management of the Maa-nulth First Nation Artifacts of the applicable Maa-nulth First Nation;
  - d. preservation, promotion and development of the Nu-u-chah-nulth language and Nu-u-chah-nulth culture; and
  - e. the cremation or entombment of Maa-nulth First Nation Archeological Human Remains of the applicable Maa-nulth First Nation that;
    - i. are found on Maa-nulth First Nation Lands and are determined, based on the evidence available, to be of that Maa-nulth First Nation ancestry; or
    - ii. are returned to the applicable Maa-nulth First Nation by Canada, British Columbia or any other person.
- 21.2.2 For the purposes of 21.2.1d., Nu-u-chah-nulth culture includes matters relating to Maa-nulth First Nation history, feasts, ceremonies, naming of individuals, symbols, songs, dances and stories.
- 21.2.3 For greater certainty, and in accordance with 1.8.11, the Maa-nulth First Nation Governments do not have the authority to make laws in respect of Intellectual Property or the official languages of Canada.

21.2.4 Maa-nulth First Nation Law under 21.2.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.

**21.3.0 HARVEST OF MONUMENTAL CEDAR AND CYPRESS ON PROVINCIAL CROWN LAND**

21.3.1 British Columbia will enter into an agreement with each Maa-nulth First Nation that will provide that Maa-nulth First Nation with the ability to harvest Monumental Cedar and Cypress for Cultural Purposes on provincial Crown land within its Maa-nulth First Nation Area, excluding, subject to 21.3.4 and 21.3.5, Provincial Protected Areas, which will come into effect on the Effective Date.

21.3.2 A Monumental Cedar and Cypress harvest agreement entered into in accordance with 21.3.1 will provide that:

- a. British Columbia and the Maa-nulth First Nation identify an annual allocation of Monumental Cedar and Cypress required to address the Maa-nulth First Nation's requirement for Monumental Cedar and Cypress for Cultural Purposes;
- b. if the allocation for Monumental Cedar and Cypress is not harvested in any given year, that unused portion of the allocation cannot be added to the allocation for subsequent years;
- c. the Maa-nulth First Nation will make reasonable efforts to manage its Maa-nulth First Nation Lands to provide opportunities for an annual harvest of Monumental Cedar and Cypress trees for Cultural Purposes from such lands; and
- d. the Maa-nulth First Nation will contribute suitable and adequate Monumental Cedar and Cypress located on its Maa-nulth First Nation Lands and any other sources, including tenures, available to the Maa-nulth First Nation, to the annual allocation of Monumental Cedar and Cypress to be harvested by that Maa-nulth First Nation for Cultural Purposes.

21.3.3 British Columbia is not responsible for the costs associated with the harvest by a Maa-nulth First Nation of Monumental Cedar and Cypress.

21.3.4 A Monumental Cedar and Cypress harvest agreement that British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations enter into in accordance with 21.3.1 will also provide that:

- a. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations may harvest each year an annual allocation of up to two Monumental Cedar and Cypress for Cultural Purposes from the Power River Watershed Protected Area;



- b. in each year, before harvesting Monumental Cedar and Cypress for Cultural Purposes from the Power River Watershed Protected Area, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will harvest Monumental Cedar and Cypress for Cultural Purposes from the following sources and in the following order:
  - i. its Maa-nulth First Nation Lands and any other sources, including tenures, available to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations; and
  - ii. provincial Crown land excluding Provincial Protected Areas, or

Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations must provide reasons to British Columbia why Monumental Cedar and Cypress are not suitable or adequate for Cultural Purposes from the above sources, before harvesting Monumental Cedar and Cypress from the Power River Watershed Protected Area;
- c. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will develop a plan for the harvest of any Monumental Cedar and Cypress from the Power River Watershed Protected Area, including the location and timing of when the trees will be felled and transported; and
- d. British Columbia is not responsible for the transport of the felled trees from the Power River Watershed Protected Area.

21.3.5 A Monumental Cedar and Cypress harvest agreement that British Columbia and Uchucklesaht Tribe enter into in accordance with 21.3.1 will also provide that:

- a. Uchucklesaht Tribe may harvest, each year, an allocation of up to two Monumental Cedar and Cypress for Cultural Purposes from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area;
- b. in each year, before harvesting Monumental Cedar and Cypress for Cultural Purposes from provincial Crown land, including Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area, Uchucklesaht Tribe will either:
  - i. first harvest Monumental Cedar and Cypress for Cultural Purposes from its Maa-nulth First Nations Lands and any other sources, including tenures, available to Uchucklesaht Tribe; or
  - ii. provide reasons to British Columbia why Monumental Cedar and Cypress are not suitable or adequate for Cultural Purposes from its Maa-nulth First Nation Lands and any other sources, including tenures, available to Uchucklesaht Tribe;

- c. Uchucklesaht Tribe will develop a plan for the harvest of any Monumental Cedar and Cypress from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area, including the location and timing of when the trees will be felled and transported; and
- d. British Columbia is not responsible for the transport of the felled trees from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area.

#### **21.4.0 STOPPER ISLANDS**

- 21.4.1 British Columbia and Toquaht Nation will negotiate and attempt to reach agreement concerning:
- a. measures to protect cultural, recreational and environmental values on the Stopper Islands; and
  - b. Toquaht Nation's participation in the management planning of the Stopper Islands.

#### **21.5.0 DIANA ISLAND**

- 21.5.1 British Columbia and Huu-ay-aht First Nations will negotiate and attempt to reach agreement concerning:
- a. measures to protect cultural, recreational and environmental values on Diana Island; and
  - b. Huu-ay-aht First Nations' participation in the management planning of Diana Island.

## CHAPTER 22 ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL PROTECTION

### 22.1.0 ENVIRONMENTAL ASSESSMENT

- 22.1.1 For greater certainty, Federal Law and Provincial Law in relation to Environmental Assessment apply on Maa-nulth First Nation Lands.
- 22.1.2 Notwithstanding any decision made by Canada or British Columbia in respect of a Federal Project or Provincial Project, no Federal Project or Provincial Project on the Maa-nulth First Nation Lands of a Maa-nulth First Nation will proceed without the consent of that Maa-nulth First Nation.

### 22.2.0 MAA-NULTH FIRST NATION PARTICIPATION IN FEDERAL ENVIRONMENTAL ASSESSMENTS

- 22.2.1 If a Federal Project is located within a Maa-nulth First Nation Area, and may reasonably be expected to adversely affect Maa-nulth First Nation Lands or Maa-nulth First Nation Section 35 Rights, Canada will ensure that the applicable Maa-nulth First Nation is provided with timely notice of the Environmental Assessment and information describing the Federal Project in sufficient detail to permit that Maa-nulth First Nation to determine if it is interested in participating in the Environmental Assessment.
- 22.2.2 If a Maa-nulth First Nation confirms that it is interested in participating in the Environmental Assessment of the Federal Project in accordance with 22.2.1:
- a. Canada will provide that Maa-nulth First Nation with an opportunity to comment on the Environmental Assessment conducted under the *Canadian Environmental Assessment Act*, including:
    - i. the scope of the Federal Project;
    - ii. the environmental effects of the Federal Project;
    - iii. any mitigation measures to be implemented; and
    - iv. any follow-up programs to be implemented;
  - b. that Maa-nulth First Nation will have access to information in Canada's possession related to the Environmental Assessment of the Federal Project, in accordance with the public registry provisions in the *Canadian Environmental Assessment Act*; and

- c. during the course of the Environmental Assessment conducted under the *Canadian Environmental Assessment Act*, Canada will give full and fair consideration to any comments made in accordance with 22.2.2a., and will respond to the comments, before making any decision to which those comments pertain.
- 22.2.3 If a Federal Project described in 22.2.1 is referred to a panel under the *Canadian Environmental Assessment Act*, the applicable Maa-nulth First Nation will have the opportunity to propose to the Minister a list of names that the Minister may consider for appointment to any panel unless:
  - a. the panel is a decision-making body, such as the National Energy Board; or
  - b. that Maa-nulth First Nation is a proponent of the Federal Project.
- 22.2.4 If a Federal Project described in 22.2.1 is referred to a panel under the *Canadian Environmental Assessment Act*, the applicable Maa-nulth First Nation will have formal standing before that panel.
- 22.3.0 MAA-NULTH FIRST NATION PARTICIPATION IN PROVINCIAL ENVIRONMENTAL ASSESSMENT PROCESSES**
- 22.3.1 If a Provincial Project is located within a Maa-nulth First Nation Area and may reasonably be expected to adversely affect Maa-nulth First Nation Lands, the residents of such lands, or Maa-nulth First Nation Section 35 Rights under this Agreement, British Columbia will ensure that the applicable Maa-nulth First Nation:
  - a. is provided with timely notice of, and relevant available information on, the Provincial Project;
  - b. is Consulted regarding the environmental effects of the Provincial Project; and
  - c. receives an opportunity to participate in any Environmental Assessment of that Provincial Project.
- 22.3.2 British Columbia will respond to any views provided by the applicable Maa-nulth First Nation to British Columbia in accordance with 22.3.1 before making a decision that would have the effect of enabling the Provincial Project to be carried out in whole or in part.

**22.4.0 LAW-MAKING**

- 22.4.1 Each Maa-nulth First Nation Government may make laws applicable on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation to protect, preserve and conserve the Environment including:
- a. prevention, mitigation and remediation of pollution and degradation of the Environment;
  - b. waste management, including solid wastes and wastewater;
  - c. protection of local air quality; and
  - d. Environmental Emergency response.
- 22.4.2 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 22.4.1.

**22.5.0 ENVIRONMENTAL EMERGENCIES**

- 22.5.1 Each Maa-nulth First Nation is responsible for the prevention of, preparedness for, timely response to and recovery from Environmental Emergencies that originate on its Maa-nulth First Nation Lands.
- 22.5.2 Any Party may respond to an Environmental Emergency on Crown land or Maa-nulth First Nation Lands or the bodies of water immediately adjacent to Maa-nulth First Nation Lands, if the Party with primary responsibility for responding has not responded or is unable to respond in a timely manner.
- 22.5.3 Any Party responding in accordance with 22.5.2 will notify the applicable Parties of such response.

**22.6.0 MAA-NULTH FIRST NATION COMMUNITY WATERSHED LANDS**

- 22.6.1 Huu-ay-aht First Nations, Toquaht Nation and Ucluelet First Nation each acknowledges that, on the Effective Date, its Maa-nulth First Nation Community Watershed Lands are located within an area designated under Provincial Law as a community watershed in order to protect water being diverted for human consumption through a licensed waterwork.
- 22.6.2 Huu-ay-aht First Nations, Toquaht Nation and Ucluelet First Nation will each manage, use and develop its Maa-nulth First Nation Community Watershed Lands in accordance with those standards and objectives established under Provincial Law for the purpose of protecting water being diverted for human consumption which applies to provincial Crown land adjacent to such lands.

- 22.6.3 British Columbia will Consult with the applicable Maa-nulth First Nation before discontinuing a community watershed designation which applies to the Maa-nulth First Nation Community Watershed Lands of that Maa-nulth First Nation.
- 22.6.4 If British Columbia determines that any Maa-nulth First Nation Community Watershed Lands are no longer required for the purpose of protecting water being diverted for human consumption, British Columbia will notify the applicable Maa-nulth First Nation and the obligation to manage, use and develop such lands in accordance with 22.6.2 will terminate.
- 22.6.5 For greater certainty, nothing in this Agreement limits the application of the *Drinking Water Protection Act* to Maa-nulth First Nation Community Watershed Lands.

## CHAPTER 23 FEDERAL PARKS AND PROTECTED AREAS

### 23.1.0 GENERAL

- 23.1.1 The applicable Maa-nulth First Nation has a right to carry out Renewable Resource Harvesting Activities in the Renewable Resource Harvesting Area of that Maa-nulth First Nation.
- 23.1.2 Each Maa-nulth First Nation Renewable Resource Harvesting Right is limited by measures necessary for conservation, public health or public safety.
- 23.1.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Renewable Resource Harvesting Right.
- 23.1.4 A Maa-nulth First Nation Renewable Resource Harvesting Right may be exercised by every Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided under a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.
- 23.1.5 Subject to 23.1.6, no Maa-nulth-aht is required to have any federal licence or pay any fee or royalty to Canada relating to the exercise of a Maa-nulth First Nation Renewable Resource Harvesting Right.
- 23.1.6 Nothing in this Agreement affects Canada's ability to require any Maa-nulth-aht to obtain licences or permits for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
- 23.1.7 This Agreement does not alter Federal Law or Provincial Law in respect of property in the renewable resources harvested under a Maa-nulth First Nation Renewable Resource Harvesting Right.
- 23.1.8 The Minister retains authority for the management, administration and control of National Parks and National Marine Conservation Areas, or any other protected areas that are owned by Canada and administered under the jurisdiction of the Parks Canada Agency.

### 23.2.0 TRADE AND BARTER AND SALE

- 23.2.1 Each Maa-nulth First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada resident in British Columbia any renewable resources harvested under a Maa-nulth First Nation Renewable Resource Harvesting Right.

- 23.2.2 A Maa-nulth First Nation right to Trade and Barter in accordance with 23.2.1 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 23.4.1d.
- 23.2.3 A Maa-nulth First Nation may not Dispose of its right to Trade and Barter described in 23.2.1.
- 23.2.4 Renewable resources harvested by a Maa-nulth First Nation or its Maa-nulth-aht under the Maa-nulth First Nation Renewable Resource Harvesting Right of that Maa-nulth First Nation may not be sold, except for:
- a. fur-bearing land mammals, or
  - b. renewable resources that are used for the making of traditional crafts and artistic objects.
- 23.2.5 For greater certainty, the use, taking or cutting of selected Timber Resources from any National Park or National Marine Conservation Area is not permitted for sale or commercial use, or for use as construction material.
- 23.3.0 TRANSPORT AND EXPORT**
- 23.3.1 Any transport or export of renewable resources harvested under a Maa-nulth First Nation Renewable Resource Harvesting Right will be in accordance with Federal Law or Provincial Law.
- 23.4.0 LAW-MAKING**
- 23.4.1 Each Maa-nulth First Nation Government may make laws in respect of the applicable Maa-nulth First Nation Renewable Resource Harvesting Right for:
- a. the distribution of harvested renewable resources among the Maa-nulth-aht of the applicable Maa-nulth First Nation;
  - b. designating the Maa-nulth-aht of that Maa-nulth First Nation who may carry out Renewable Resource Harvesting Activities;
  - c. documenting the Maa-nulth-aht of that Maa-nulth First Nation who have been designated as harvesters; and
  - d. the Trade and Barter of renewable resources harvested by the Maa-nulth-aht of that Maa-nulth First Nation.
- 23.4.2 Maa-nulth First Nation Law under 23.4.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.



**23.5.0 DOCUMENTATION AND ENFORCEMENT**

- 23.5.1 A Maa-nulth First Nation Government will issue documentation to the Maa-nulth-aht of the applicable Maa-nulth First Nation who harvest renewable resources under the Maa-nulth First Nation Renewable Resource Harvesting Right of that Maa-nulth First Nation.
- 23.5.2 A Maa-nulth-aht who harvests renewable resources under a Maa-nulth First Nation Renewable Resource Harvesting Right is required to carry documentation issued by the Maa-nulth First Nation Government of the applicable Maa-nulth First Nation and to produce that documentation on the request of an authorized individual.
- 23.5.3 Documentation issued by a Maa-nulth First Nation Government in accordance with 23.5.1 will:
- a. be in the English language, which version is authoritative, and, at the discretion of the applicable Maa-nulth Government, in the Nuuchah-nulth language;
  - b. include the name and address of the Maa-nulth-aht; and
  - c. meet any requirements described in a Maa-nulth Permit or Federal Law.

**23.6.0 CO-OPERATION IN RENEWABLE RESOURCE HARVESTING**

- 23.6.1 Each year or as otherwise agreed, Canada and each applicable Maa-nulth First Nation will meet to discuss and develop terms and conditions upon which the Maa-nulth First Nation Renewable Resource Harvesting Right of that Maa-nulth First Nation may be exercised and will make reasonable efforts to reach consensus on those terms and conditions.
- 23.6.2 In developing the terms and conditions referred to in 23.6.1, Canada and that Maa-nulth First Nation will take into account:
- a. the conservation and ecological integrity requirements and availability of the renewable resources to which the terms and conditions would relate;
  - b. the Maa-nulth First Nation's preferences, if any, in respect of methods, timing, frequency and locations for harvesting;
  - c. the use of that National Park or National Marine Conservation Area for the benefit and enjoyment of all Canadians;
  - d. any other authorized uses of that National Park or National Marine Conservation Area;

- e. opportunities for similar harvesting activities outside that National Park or National Marine Conservation Area as otherwise provided in this Agreement;
  - f. use of the harvested renewable resources for making traditional handicrafts or artistic objects for sale;
  - g. requirements for management of that National Park or National Marine Conservation Area;
  - h. renewable resource harvesting activities, if any, by other aboriginal people; and
  - i. any other matters Canada and the Maa-nulth First Nation consider appropriate.
- 23.6.3 Before the development of the terms and conditions referred to in 23.6.1, each applicable Maa-nulth First Nation will Consult with overlapping First Nations who may carry out harvesting activities in the Renewable Resource Harvesting Area of that Maa-nulth First Nation. Recommendations developed as a result of such Consultation may be included in the terms and conditions developed in accordance with 23.6.1 and will be considered by the Minister in developing the terms and conditions, if any, set out in a Maa-nulth Permit for that Maa-nulth First Nation issued in accordance with 23.6.4 or 23.6.5.
- 23.6.4 Where Canada and the Maa-nulth First Nation agree on terms and conditions in accordance with 23.6.1, the Minister will, upon receipt and consideration of those terms and conditions, issue a Maa-nulth Permit to that Maa-nulth First Nation setting out terms and conditions, if any, of the Renewable Resource Harvesting Activities within the applicable Renewable Resource Harvesting Area.
- 23.6.5 Where Canada and the Maa-nulth First Nation do not agree on terms and conditions in accordance with 23.6.1, the Minister:
- a. may make the decision or take the action, including issuing a Maa-nulth Permit, that the Minister considers necessary, and
  - b. will advise the Maa-nulth First Nation of the circumstances and the decision made or action taken.
- 23.6.6 Harvesting under a Maa-nulth First Nation Renewable Resource Harvesting Right will be in accordance with the applicable Maa-nulth Permit and the management plan for the applicable National Park or National Marine Conservation Area.
- 23.6.7 Each Maa-nulth First Nation will provide to the Minister, upon request, information concerning the activities of its Maa-nulth-aht related to the exercise of its Maa-nulth First Nation Renewable Resource Harvesting Right.

23.6.8 Canada will Consult with each applicable Maa-nulth First Nation concerning any proposed amendment to Federal Law that is reasonably expected to affect the Maa-nulth First Nation Renewable Resource Harvesting Right of that Maa-nulth First Nation.

23.6.9 The Minister may, after Consultation with each applicable Maa-nulth First Nation, close areas in any National Park or National Marine Conservation Area to any Renewable Resource Harvesting Activities for purposes of park or marine conservation area management.

### **23.7.0 CONSERVATION MEASURES**

23.7.1 Where, in the opinion of Canada, conservation measures are needed within a Renewable Resource Harvesting Area, and those measures are likely to affect the Maa-nulth First Nation Renewable Resource Harvesting Right of a Maa-nulth First Nation, Canada will Consult with that Maa-nulth First Nation regarding such conservation measures.

23.7.2 After the Consultation contemplated by 23.7.1, the Minister may amend and re-issue a Maa-nulth Permit to the extent required to bring into effect the conservation measures.

### **23.8.0 PACIFIC RIM NATIONAL PARK**

23.8.1 On or after the Effective Date, Canada may establish as part of Pacific Rim National Park those portions of Pacific Rim National Park Reserve lying within the Maa-nulth First Nation Areas, subject to resolution of any overlaps with other First Nations.

### **23.9.0 NATIONAL PARKS AND NATIONAL MARINE CONSERVATION AREAS**

23.9.1 Canada will Consult with each Maa-nulth First Nation before the establishment of any new National Park or National Marine Conservation Area within its Maa-nulth First Nation Area.

23.9.2 Except for Pacific Rim National Park Reserve, no part of a National Park or National Marine Conservation Area that lies within a Maa-nulth First Nation Area will be removed from that National Park or National Marine Conservation Area without the consent of the applicable Maa-nulth First Nation.

23.9.3 If Canada conducts studies in relation to enlarging a National Park or National Marine Conservation Area within a Maa-nulth First Nation Area, the applicable Maa-nulth First Nation will be invited to participate in the design and conduct of the studies and will be provided with the results.

- 23.9.4 Where a National Park or National Marine Conservation Area is wholly or partially within the Maa-nulth First Nation Areas, every Maa-nulth-aht has access, without a fee being charged for entrance to and within that National Park or National Marine Conservation Area, but Canada may charge fees in relation to visitor facilities and services.

#### **23.10.0 CO-OPERATION IN PLANNING AND MANAGEMENT**

- 23.10.1 Where a National Park or National Marine Conservation Area is wholly or partially within a Maa-nulth First Nation Area, Canada will Consult with the applicable Maa-nulth First Nation regarding that Maa-nulth First Nation's:
- a. role in the interim planning and management planning of that National Park or National Marine Conservation Area;
  - b. role in research, protection, identification, interpretation and presentation of any area in that National Park or National Marine Conservation Area which has heritage value to a Maa-nulth First Nation, other aboriginal people, or other Canadians and may include a traditional use site, archaeological site, burial site or sacred site that is of significance to that Maa-nulth First Nation;
  - c. role in the identification, protection, interpretation and presentation of Maa-nulth First Nation Artifacts within or related to that National Park or National Marine Conservation Area;
  - d. role in the interpretation and presentation of Maa-nulth First Nation heritage, where applicable, including Nuu-chah-nulth language use in signage and interpretation, within or related to that National Park or National Marine Conservation Area;
  - e. traditional ecological knowledge being considered in the natural history and management of that National Park or National Marine Conservation Area;
  - f. role in research, protection, use and management of special marine areas within that National Park or National Marine Conservation Area; and
  - g. interests in economic, employment and training opportunities in or associated with that National Park or National Marine Conservation Area.
- 23.10.2 At the request of the Maa-nulth First Nation consulted with in accordance with 23.10.1, Canada and that Maa-nulth First Nation will make reasonable efforts to enter into an agreement regarding arrangements for cooperation in the planning and management of the applicable National Park or National Marine Conservation Area in order to provide advice to the Minister regarding the matters identified in 23.10.1.

- 23.10.3 An agreement made in accordance with 23.10.2 will take the place of the Consultation contemplated by 23.10.1 for the term of the agreement.
- 23.10.4 An agreement made in accordance with 23.10.2 may provide for an advisory structure and include:
- a. representation in the advisory structure;
  - b. procedures for the advisory structure, including a consensus seeking approach and a dispute resolution process;
  - c. procedures related to cooperation in renewable resource harvesting and cultural activities;
  - d. procedures for the advisory structure to interact with the Joint Fisheries Committee on matters, including recommendations to the Minister, relating to the harvest of Fish and Aquatic Plants in a National Park or National Marine Conservation Area that is wholly or partially within the Domestic Fishing Area; and
  - e. any other matters as agreed by Canada and the Maa-nulth First Nation.
- 23.10.5 Canada and the applicable Maa-nulth First Nations will enter into an agreement in respect of Pacific Rim National Park Reserve in accordance with 23.10.2, which will come into effect on the Effective Date.
- 23.10.6 Where any National Park or National Marine Conservation Area is wholly or partially within two or more Maa-nulth First Nation Areas, the applicable Maa-nulth First Nations will make reasonable efforts to jointly participate in the processes contemplated by 23.10.1 and 23.10.7.
- 23.10.7 Where any National Park or National Marine Conservation Area is wholly or partially within a Maa-nulth First Nation Area and that of any other aboriginal group who has expressed that it has a historical relationship to the region encompassing the National Park or National Marine Conservation Area, Canada and the applicable Maa-nulth First Nations agree to make reasonable efforts to cooperate with the other aboriginal group in the process of planning and management of any such National Park or National Marine Conservation Area.



## CHAPTER 24 PROVINCIAL PROTECTED AREAS

### 24.1.0 GENERAL

- 24.1.1 Each Maa-nulth First Nation may make proposals to British Columbia from time to time to establish new Provincial Protected Areas within its Maa-nulth First Nation Area.
- 24.1.2 Subject to 24.2.1 and 24.3.1, nothing in this Agreement obligates British Columbia to establish a new Provincial Protected Area or maintain the designation of any Provincial Protected Areas.
- 24.1.3 British Columbia will Consult with a Maa-nulth First Nation regarding the creation of new Provincial Protected Areas in its Maa-nulth First Nation Area.
- 24.1.4 British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will negotiate and attempt to reach agreement regarding arrangements for Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations' participation in the management planning of Artlish Caves Provincial Park, Big Bunsby Marine Provincial Park, Brooks Peninsula Provincial Park, Dixie Cove Marine Provincial Park, Rugged Point Marine Provincial Park, Tahsish-Kwois Provincial Park, Checleset Bay Ecological Reserve, Clanninick Creek Ecological Reserve, Solander Island Ecological Reserve, Tahsish River Ecological Reserve, and Power River Watershed Protected Area.
- 24.1.5 British Columbia and Uchucklesaht Tribe will negotiate and attempt to reach agreement regarding arrangements for Uchucklesaht Tribe's participation in the management planning of Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area.
- 24.1.6 If British Columbia creates a new Provincial Protected Area within a Maa-nulth First Nation Area, British Columbia and the applicable Maa-nulth First Nation will negotiate and attempt to reach agreement regarding arrangements for that Maa-nulth First Nation's participation in the management planning of that new Provincial Protected Area.

### 24.2.0 POWER RIVER WATERSHED PROTECTED AREA

- 24.2.1 On the Effective Date, British Columbia will establish the Power River Watershed Protected Area as a Provincial Protected Area.
- 24.2.2 Subject to 21.3.0, the Power River Watershed Protected Area is managed by British Columbia and, unless otherwise determined by British Columbia, has no road access.

24.2.3 For greater certainty, British Columbia's authority and responsibilities in respect of the Power River Watershed Protected Area will continue.

#### **24.3.0 THUNDERBIRD'S NEST (*T'iitsk'in Paawats*) PROTECTED AREA**

24.3.1 On the Effective Date, British Columbia will establish Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area as a Provincial Protected Area.

24.3.2 Subject to 21.3.0, the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area is managed by British Columbia as a Provincial Protected Area.

24.3.3 Unless Uchucklesaht Tribe and British Columbia otherwise agree, British Columbia will continue Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area as a Provincial Protected Area.

24.3.4 Notwithstanding 24.3.3, British Columbia may amend the boundaries of Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area from time to time provided the total area of Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area does not decrease by more than 100 hectares.

#### **24.4.0 QUIN-E-EX LANDS**

24.4.1 Immediately after the Quin-E-Ex Lands become Maa-nulth First Nation Lands of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, the estate in fee simple in the Quin-E-Ex Lands is transferred from Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations to British Columbia free and clear of all Interests, ownership of the estate in fee simple in the Quin-E-Ex Lands vests in British Columbia and the Quin-E-Ex Lands cease to be Maa-nulth First Nation Lands of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.

24.4.2 Upon the transfer of the Quin-E-Ex Lands to British Columbia in accordance with 24.4.1, Appendix B is deemed to be amended to reflect the removal of the Quin-E-Ex Lands from the Maa-nulth First Nation Lands of Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.

24.4.3 British Columbia will amend the boundaries of Brooks Peninsula Provincial Park to add the Quin-E-Ex Lands to Brooks Peninsula Provincial Park.

#### **24.5.0 PUBLIC PLANNING PROCESSES**

24.5.1 A Maa-nulth First Nation may participate in any public management planning process established in respect of any Provincial Protected Area that is wholly or partially within its Maa-nulth First Nation Area, in accordance with procedures established by British Columbia for that public management planning processes.



- 24.5.2 British Columbia may proceed with any process contemplated by 24.5.1 even if the applicable Maa-nulth First Nation does not participate in that process.
- 24.5.3 Nothing in this Agreement obligates British Columbia to undertake a public management planning process with respect to any Provincial Protected Area.
- 24.5.4 British Columbia will provide to a Maa-nulth First Nation any draft public management plan that may be prepared for a Provincial Protected Area that is wholly or partially within its Maa-nulth First Nation Area.
- 24.5.5 A Maa-nulth First Nation receiving a draft public management plan in accordance with 24.5.4 may provide written recommendations to British Columbia in relation to such plan and any recommendations so received may be made public by British Columbia.
- 24.5.6 British Columbia will Consult with a Maa-nulth First Nation in the preparation or modification of any management plan for a Provincial Protected Area wholly or partially within the Maa-nulth First Nation Area of that Maa-nulth First Nation in relation to:
- a. the depiction, if appropriate, of Nuu-chah-nulth culture or heritage in the Provincial Protected Area; and
  - b. the importance of Nuu-chah-nulth culture and heritage to the purpose of the Provincial Protected Area.

#### **24.6.0 GATHERING**

- 24.6.1 Each Maa-nulth First Nation has the right to gather Plants and the boughs, burls and roots of Timber for Domestic Purposes in Provincial Protected Areas wholly or partially within the Maa-nulth First Nation Area of that Maa-nulth First Nation.
- 24.6.2 Each Maa-nulth First Nation Right to Gather Plants is limited by measures necessary for conservation, public health or public safety.
- 24.6.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Right to Gather Plants.
- 24.6.4 A Maa-nulth First Nation Right to Gather Plants may be exercised by every Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided under a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.
- 24.6.5 British Columbia may authorize uses of, or Dispose of, Provincial Protected Areas and any authorized use or Disposition may affect the methods, times and locations of the gathering of Plants and the boughs, burls and roots of Timber under this Agreement, provided that British Columbia ensures that those

authorized uses or Dispositions do not deny a Maa-nulth First Nation the reasonable opportunity to gather Plants and the boughs, burls and roots of Timber under its Maa-nulth First Nation Right to Gather Plants.

- 24.6.6 The Minister may, for conservation, public health or public safety reasons, require the applicable Maa-nulth First Nation to prepare a Gathering Plan.
- 24.6.7 If the Minister requires a Gathering Plan in accordance with 24.6.6, that Gathering Plan will include:
- a. gathering locations;
  - b. times of gathering; and
  - c. the Plant species, boughs, burls or roots of Timber intended to be gathered.
- 24.6.8 A Gathering Plan prepared in accordance with 24.6.7 will be submitted by that Maa-nulth First Nation to the Minister for approval.
- 24.6.9 Each Maa-nulth First Nation will exercise its Maa-nulth First Nation Right to Gather Plants in accordance with an approved Gathering Plan or Provincial Protected Area management plan.
- 24.6.10 No Maa-nulth-aht is required to have any federal or provincial licence or pay any fee or royalty to Canada or British Columbia relating to the exercise of a Maa-nulth First Nation Right to Gather Plants.

#### **Trade and Barter**

- 24.6.11 Each Maa-nulth First Nation has the right to Trade and Barter Plants and the boughs, burls and roots of Timber gathered under its Maa-nulth First Nation Right to Gather Plants, among themselves or with other aboriginal people of Canada resident in British Columbia.
- 24.6.12 A Maa-nulth First Nation right to Trade and Barter described in 24.6.11 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation, except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 24.6.14d.
- 24.6.13 A Maa-nulth First Nation may not Dispose of its right to Trade and Barter described in 24.6.11.

**Law-making**

- 24.6.14 Each Maa-nulth First Nation Government may make laws in respect of the applicable Maa-nulth First Nation Right to Gather Plants for:
- a. the distribution of gathered Plants, boughs, burls or roots of Timber among the Maa-nulth-aht of the applicable Maa-nulth First Nation;
  - b. designating the Maa-nulth-aht of that Maa-nulth First Nation to gather Plants, boughs, burls or roots of Timber;
  - c. documenting the Maa-nulth-aht of that Maa-nulth First Nation who have been designated; and
  - d. Trade and Barter of the Plants, boughs, burls or roots of Timber gathered by the Maa-nulth-aht of that Maa-nulth First Nation.
- 24.6.15 Maa-nulth First Nation Law under 24.6.14a., 24.6.14b. or 24.6.14d. prevails to the extent of a Conflict with Federal Law or Provincial Law.
- 24.6.16 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law made under 24.6.14c.

**Documentation**

- 24.6.17 Each Maa-nulth First Nation Government will issue documentation to the Maa-nulth-aht of that Maa-nulth First Nation who gather or attempt to gather Plants or the boughs, burls or roots of Timber under its Maa-nulth First Nation Right to Gather Plants.
- 24.6.18 A Maa-nulth-aht who gathers or attempts to gather Plants or the boughs, burls or roots of Timber under a Maa-nulth First Nation Right to Gather Plants is required to carry documentation issued by the Maa-nulth First Nation Government of the applicable Maa-nulth First Nation and to produce that documentation on request by an authorized individual.
- 24.6.19 Documentation issued by a Maa-nulth First Nation Government in accordance with 24.6.17 will:
- a. be in the English language, which version is authoritative, and at the discretion of that Maa-nulth First Nation Government, in the Nuu-chah-nulth language;
  - b. include the name and address of the Maa-nulth-aht; and
  - c. meet any other requirements to which the Maa-nulth First Nation Government and British Columbia may agree.

**24.7.0      EXPROPRIATION OF MAA-NULTH FIRST NATION LANDS FOR  
PROVINCIAL PROTECTED AREA PURPOSES**

- 24.7.1      Notwithstanding 2.11.2, British Columbia will not acquire any Interest in Maa-nulth First Nation Lands by expropriation for the purpose of enlarging an existing Provincial Protected Area or establishing a new Provincial Protected Area.

## CHAPTER 25 DISPUTE RESOLUTION

### 25.1.0 GENERAL

25.1.1 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.

25.1.2 Subject to a determination as to which Parties are directly engaged in a Disagreement in accordance with 25.4.1 and Appendix Y-1, in this Chapter, and in Appendices Y-2 to Y-6, a Party is deemed to be directly engaged in a Disagreement if another Party, acting reasonably, provides that Party a notice requiring it to participate in a process described in this Chapter to resolve the Disagreement.

25.1.3 All Maa-nulth First Nations who are Participating Parties to a Disagreement will act as one party to the Disagreement.

25.1.4 Except as contemplated by 25.10.1 and 25.10.2, any agreement or resolution reached under Stage One, Stage Two or Stage Three in this Chapter or under Appendix Y-1, is binding on each Maa-nulth First Nation who is directly engaged in that Disagreement.

25.1.5 Except as otherwise provided, Participating Parties may agree to vary a procedural requirement contained in this Chapter, or in Appendix Y, as it applies to a particular Disagreement.

25.1.6 Participating Parties may agree to, and the Supreme Court of British Columbia, on application, may order:

- a. the abridgement of a time limit in this Chapter or in Appendix Y; or
- b. the extension of a time limit in this Chapter or in Appendix Y, despite the expiration of that time limit.

**25.2.0 SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT**

25.2.1 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 25.2.2.

25.2.2 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”.

25.2.3 This Chapter does not apply to:

- a. any agreement, plan, guideline or other document contemplated in this Agreement that is entered into, negotiated or prepared by the Parties unless the Parties have agreed that this Chapter applies to that agreement, plan, guideline or other document;
- b. conflicts or disputes solely among Maa-nulth First Nations; or
- c. conflicts or disputes, where excluded from this Chapter.

25.2.4 Nothing in this Chapter limits the application of a dispute resolution process under any Federal Law or Provincial Law to a conflict or dispute involving a person if that conflict or dispute is not a Disagreement.

25.2.5 Nothing in any Federal Law or Provincial Law limits the ability of a Party to refer a Disagreement to a process under this Chapter.

**25.3.0 DISAGREEMENTS TO GO THROUGH STAGES**

25.3.1 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.

- 25.3.2 Except as otherwise provided in this Agreement, Disagreements not resolved informally will progress, following initial identification of the Parties, until resolved, through the following stages:
- a. Stage One: formal, unassisted efforts to reach agreement between or among the Participating Parties, in collaborative negotiations in accordance with Appendix Y-2;
  - b. Stage Two: structured efforts to reach agreement between or among the Participating Parties with the assistance of a Neutral, who has no authority to resolve the Disagreement, in a facilitated process in accordance with Appendix Y-3, Y-4, or Y-5 as applicable; and
  - c. Stage Three: final adjudication in arbitral proceedings in accordance with Appendix Y-6, or in judicial proceedings.
- 25.3.3 Except as otherwise provided in this Agreement, 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.
- 25.3.4 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.

#### **25.4.0 IDENTIFICATION OF THE PARTIES TO THE DISAGREEMENT**

- 25.4.1 If there is a dispute between or among the Parties as to whether a Party is directly engaged in a Disagreement, the matter will be resolved by the process provided for in Appendix Y-1. During the time that the matter is being resolved in accordance with Appendix Y-1, any timeframes contemplated by this Chapter and Appendices Y-2 to Y-6 are suspended. A Party can only dispute its involvement in a Disagreement once during the course of any Disagreement.

#### **25.5.0 STAGE ONE: COLLABORATIVE NEGOTIATIONS**

- 25.5.1 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 notice, in accordance with Appendix Y-2, to the other Parties, requiring the commencement of collaborative negotiations.

- 25.5.2 Upon receiving the notice in accordance with 25.5.1, each Party directly engaged in the Disagreement will participate in the collaborative negotiations.
- 25.5.3 Subject to 25.1.3, a Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving notice to the other Parties, preferably before the collaborative negotiations commence.
- 25.5.4 If the Parties have commenced negotiations in the circumstances described in 25.2.2c. then, for all purposes under this Chapter, those negotiations are deemed collaborative negotiations and, for greater certainty, the particular matter under negotiation is considered a Disagreement.
- 25.5.5 Collaborative negotiations terminate in the circumstances described in Appendix Y-2.

#### **25.6.0 STAGE TWO: FACILITATED PROCESSES**

- 25.6.1 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.
- 25.6.2 A notice contemplated by 25.6.1:
- a. will include the name of the Parties directly engaged in the Disagreement;
  - b. will set out a summary of the particulars of the Disagreement; and
  - c. may propose the use of a particular facilitated process described in 25.6.5.
- 25.6.3 Upon receiving a notice in accordance with 25.6.1, each Party directly engaged in the Disagreement will participate in a facilitated process described in 25.6.5.
- 25.6.4 A Party not directly engaged in the Disagreement may participate in the facilitated process by giving notice to the other Parties within 15 days of delivery of a notice in accordance with 25.6.1.
- 25.6.5 Within 30 days after delivery of a notice in accordance with 25.6.1, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:
- a. mediation in accordance with Appendix Y-3;
  - b. technical advisory panel in accordance with Appendix Y-4;
  - c. neutral evaluation in accordance with Appendix Y-5; or



- d. any other non-binding dispute resolution process assisted by a Neutral, and if they do not agree, they are deemed to have selected mediation in accordance with Appendix Y-3.

25.6.6 A facilitated process terminates:

- a. in the circumstances described in the applicable Appendix Y; or
- b. as agreed by the Participating Parties, if Appendix Y does not apply.

**25.7.0 NEGOTIATING CONDITIONS**

25.7.1 In order to enhance the prospect of reaching agreement, the Participating Parties will:

- a. at the request of a Participating Party, provide 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.

**25.8.0 SETTLEMENT AGREEMENT**

25.8.1 Any agreement reached in a process in accordance with 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. For greater certainty, the agreement is binding on all Maa-nulth First Nations who are Participating Parties.

25.8.2 For greater certainty, any agreement reached in a facilitated process under this Chapter requires the agreement only of those Participating Parties who are directly engaged in the Disagreement.

**25.9.0 STAGE THREE: ADJUDICATION – ARBITRATION**

- 25.9.1 Except as otherwise provided in this Agreement, 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 to arbitrate by a Party directly engaged in the Disagreement to all Parties in accordance with Appendix Y-6, be referred to and finally resolved by arbitration in accordance with that Appendix.
- 25.9.2 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 25.9.1, 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 Y-6.
- 25.9.3 If all Parties directly engaged in the Disagreement make a written agreement to arbitrate in accordance with 25.9.2, they will deliver a copy of the agreement to the other Parties.
- 25.9.4 Upon delivering a notice to the parties to the arbitration within 15 days after receiving a notice to arbitrate in accordance with 25.9.1 or copy of a written agreement to arbitrate in accordance with 25.9.3, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a Participating Party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.
- 25.9.5 Notwithstanding 25.9.4, 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 other 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 in accordance with 25.9.1 or the written agreement to arbitrate in accordance with 25.9.2,
- 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.

**25.10.0 EFFECT OF ARBITRAL AWARD**

- 25.10.1 An arbitral award, as defined in Appendix Y-6, is final and binding on all Parties whether or not a Party has participated in the arbitration.

- 25.10.2 Notwithstanding 25.10.1, an arbitral award, as defined in Appendix Y-6, 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 in accordance with 25.9.5.

### **25.11.0 APPLICATION OF LEGISLATION**

- 25.11.1 No legislation of any Party respecting arbitration, except the Settlement Legislation, applies to an arbitration conducted under this Chapter.
- 25.11.2 A court may not intervene or offer assistance in an arbitration or review an arbitral award, as defined in Appendix Y-6, under this Chapter except as provided in Appendix Y-6.

### **25.12.0 STAGE THREE: ADJUDICATION – JUDICIAL PROCEEDINGS**

- 25.12.1 Nothing in this Chapter creates a cause of action where none otherwise exists.
- 25.12.2 Subject to 25.12.3, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a Disagreement.
- 25.12.3 A Party may not commence judicial proceedings in respect of a Disagreement if the Disagreement:
- a. is required to be referred to arbitration in accordance with 25.9.1 or has been agreed to be referred to arbitration in accordance with 25.9.2;
  - 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.
- 25.12.4 Nothing in 25.12.3a. 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 Y-6.

**25.13.0 NOTICE TO PARTIES**

25.13.1 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 Maa-nulth First Nation 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 the applicable Maa-nulth First Nation.

25.13.2 In any judicial or administrative proceeding to which 25.13.1 applies, the Attorney General of British Columbia, the Attorney General of Canada and the applicable Maa-nulth First Nation may appear and participate in the proceedings as parties with the same rights as any other party.

**25.14.0 COSTS**

25.14.1 Except as provided otherwise in Appendix Y, 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.

25.14.2 Subject to 25.14.1 and except as provided otherwise in Appendix Y, the Participating Parties will share equally all costs of collaborative negotiations, a facilitated process or an arbitration, conducted under this Chapter.

25.14.3 For purposes of 25.14.2, 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 Appendix Y; and
- e. administration fees of a Neutral Appointing Authority.

- 25.14.4 For greater certainty, for the purpose of 25.14.2, all Maa-nulth First Nations who are Participating Parties are one party for the purpose of determining the sharing of costs.



## CHAPTER 26 ELIGIBILITY AND ENROLMENT

### 26.1.0 MAA-NULTH FIRST NATIONS ELIGIBILITY CRITERIA

26.1.1 As regards a Maa-nulth First Nation, an individual is eligible for enrolment under this Agreement if that individual:

- a. is of that Maa-nulth First Nation ancestry;
- b. was adopted under laws recognized in Canada or in accordance with the custom of that Maa-nulth First Nation by an individual of that applicable Maa-nulth First Nation who is eligible for enrolment under a., b. or c.;
- c. is a descendant of an individual of that Maa-nulth First Nation who is eligible for enrolment under a. or b.; or
- d. is accepted by that Maa-nulth First Nation as a member of that Maa-nulth First Nation in accordance with the custom of the Maa-nulth First Nation and has a demonstrated attachment to that Maa-nulth First Nation community.

26.1.2 An individual can only be a Maa-nulth-aht of one Maa-nulth First Nation at any point in time.

26.1.3 Being a Maa-nulth-aht 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 provided in this Agreement, or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

### 26.2.0 OTHER LAND CLAIMS AGREEMENTS

26.2.1 An individual who:

- a. receives benefits under another treaty or land claims agreement in Canada; or
  - b. is enrolled under another treaty or land claims agreement in Canada,
- may not at the same time be a Maa-nulth-aht.

- 26.2.2 For greater certainty, as provided in Chapter 1 General Provisions, following the Effective Date, upon becoming a Maa-nulth-aht an individual ceases to be a member or a registered Indian of an Indian Band.
- 26.2.3 An individual who is enrolled under another treaty or land claims agreement in Canada or receives benefits under another treaty or land claims agreement in Canada may apply to be a Maa-nulth-aht, provided that:
- a. the individual meets one of the eligibility criteria described in 26.1.1; and
  - b. if his or her application succeeds that individual must withdraw from enrolment under the other treaty or land claims agreement in Canada and is no longer entitled to receive benefits under that treaty or land claims agreement.
- 26.2.4 If, prior to the Effective Date, the Enrolment Committee determines that an individual who has applied to enrol under this Agreement and who is enrolled under another treaty or land claims agreement in Canada meets the eligibility criteria described in 26.2.3, the individual will be placed on the Preliminary Enrolment Register.
- 26.2.5 If an individual who has been placed on the Preliminary Enrolment Register as contemplated by 26.2.4 does not, within 60 days after the Effective Date or within 60 days of receiving written notification by the Enrolment Committee, whichever is later, demonstrate in writing that he or she has ceased to be enrolled under another treaty or land claims agreement in Canada, or has ceased to be a member or registered Indian of the Indian Band, the Enrolment Committee will remove that individual's name from the Enrolment Register.

### 26.3.0 INITIAL ENROLMENT PERIOD

- 26.3.1 During the Initial Enrolment Period, an individual may:
- a. apply to the Enrolment Committee for:
    - i. placement on the Preliminary Enrolment Register of a Maa-nulth First Nation before the Effective Date; or
    - ii. placement on the Enrolment Register of a Maa-nulth First Nation following the Effective Date;
  - 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 his or her own behalf, or on behalf of a minor, or an adult, whose affairs he or she has the legal authority to manage.

#### **26.4.0 MAA-NULTH FIRST NATIONS ENROLMENT COMMITTEE**

- 26.4.1 At the beginning of the Initial Enrolment Period, the Maa-nulth First Nations will establish an Enrolment Committee to be responsible for the enrolment process of each Maa-nulth First Nation during the Initial Enrolment Period.
- 26.4.2 The Enrolment Committee will be composed of five Maa-nulth First Nation individuals, as follows:
  - a. one member to be selected by Huu-ay-aht First Nations;
  - b. one member to be selected by Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations;
  - c. one member to be selected by Toquaht Nation;
  - d. one member to be selected by Uchucklesaht Tribe; and
  - e. one member to be selected by Ucluelet First Nation,each of whom will have his or her own advisory committee to consult with on matters of Maa-nulth First Nation customs and ancestry.
- 26.4.3 Each Maa-nulth First Nation will notify Canada and British Columbia of the name of the member it selects to participate on the Enrolment Committee upon that individual's appointment.
- 26.4.4 During the Initial Enrolment Period, the Enrolment Committee will:
  - a. consider and decide each application for enrolment based on the eligibility criteria of the applicable Maa-nulth First Nation and:
    - i. enrol each applicant, or the individual upon whose behalf the application was submitted, who demonstrates that he or she, or the individual upon whose behalf the application was submitted, meets the eligibility criteria; and
    - ii. refuse to enrol each applicant, or the individual upon whose behalf the application was submitted, who does not demonstrate that he or she, or the individual upon whose behalf the application was submitted, meets the eligibility criteria;

- b. establish and maintain, as a public document, a Preliminary Enrolment Register for each Maa-nulth First Nation, containing the name of each individual who is enrolled in that Maa-nulth First Nation before the Effective Date;
- c. establish and maintain, as a public document, an Enrolment Register for each Maa-nulth First Nation, containing the name of each individual who is enrolled in that Maa-nulth First Nation following the Effective Date and before the end of the Initial Enrolment Period;
- d. amend the Enrolment Register of the applicable Maa-nulth First Nation to take into account decisions of the Enrolment Appeal Board;
- e. take reasonable steps to publish the enrolment rules and the eligibility criteria;
- f. provide an application form to any individual who wishes to apply for enrolment on his or her own behalf, or on behalf of a minor, or an adult, whose affairs he or she has the legal authority to manage;
- g. provide written notification to each applicant of its decision in respect of his or her application, and if enrolment is refused, include reasons for that decision;
- h. provide a copy of the notification referred to in 26.4.4g., including any reasons, to the applicable Maa-nulth First Nations, Canada and British Columbia;
- i. upon request, provide to a Party or the Enrolment Appeal Board, in confidence, information in respect of an individual's enrolment application;
- j. other than as provided in this Chapter, keep confidential information provided by and about an applicant, and an individual, if different from the applicant, on whose behalf the applicant submitted the application;
- k. provide a copy of the Enrolment Register and the Preliminary Enrolment Register for each Maa-nulth First Nation to each of the Parties each year and at other times on request;
- l. report on the enrolment process to the Parties; and
- m. comply with other requirements as provided for in this Agreement.

- 26.4.5 In addition to the functions described in 26.4.4, before the completion of the ratification of this Agreement by the Maa-nulth First Nations contemplated by Chapter 28 Ratification, 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, or the individual on whose behalf the applicant submitted the application, will be refused enrolment, provide the applicant with a reasonable opportunity to present further information or representations.
- 26.4.6 Each applicant has the burden of proving to the Enrolment Committee that he or she, or the individual on whose behalf the applicant submitted the application, meets the eligibility criteria of the applicable Maa-nulth First Nation.
- 26.4.7 Subject to 26.6.0, all decisions of the Enrolment Committee are final and binding.
- 26.4.8 The Enrolment Committee may, before an appeal of a decision is commenced, vary its decision on the basis of new information, if it considers the decision was in error.
- 26.4.9 If the Enrolment Committee does not make a decision in respect of an application for enrolment within 60 days of the receipt of a completed application, the application is deemed to be refused and the deemed refusal constitutes grounds to appeal to the Enrolment Appeal Board.

#### **26.5.0 APPLICATIONS TO REMOVE NAMES FROM ENROLMENT REGISTER**

- 26.5.1 If an applicant applies to have his or her own name, or the name of a minor, or an adult, whose affairs he or she has the legal authority to manage, removed from the Maa-nulth First Nation Enrolment Register, the Enrolment Committee will remove the name and will notify the applicant.

#### **26.6.0 ENROLMENT APPEAL BOARD**

- 26.6.1 An applicant or a Party may appeal to the Enrolment Appeal Board any decision of the Enrolment Committee made in accordance with 26.4.4a., 26.4.8 or 26.4.9.
- 26.6.2 The Maa-nulth First Nations and Canada will establish the Enrolment Appeal Board at the Effective Date to be responsible for the enrolment appeal process provided for in this Agreement.

- 26.6.3 The Enrolment Appeal Board will be composed of one individual appointed by each Maa-nulth First Nation and one individual appointed by the Minister of Indian Affairs and Northern Development. A member of the Enrolment Committee may not be a member of the Enrolment Appeal Board.
- 26.6.4 The Enrolment Appeal Board will:
- a. establish its own procedures and set time limits;
  - b. maintain as a public document its procedures and time limits;
  - c. consider and decide appeals from decisions of the Enrolment Committee brought in accordance with 26.6.1 and decide whether the applicant, or the individual upon whose behalf the application is being made, will be enrolled;
  - d. 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;
  - e. provide written reasons for its decision to the appellant, the applicant and the Parties; and
  - f. provide written reasons for its decision within 90 days of receiving each appeal.
- 26.6.5 The Enrolment Appeal Board:
- a. by subpoena, may require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in his or her possession; and
  - b. may direct a witness to answer on oath or solemn affirmation questions posed to the witness.
- 26.6.6 A judge of the Provincial Court of British Columbia, on application by the Enrolment Appeal Board, may enforce a subpoena or direction made in accordance with 26.6.5.
- 26.6.7 Each applicant, Party, and witness appearing before the Enrolment Appeal Board may be represented by counsel or agent.
- 26.6.8 No action lies against the Enrolment Appeal Board, or any member of the Enrolment Appeal Board, for anything done or omitted in good faith in the performance, or intended performance, of a duty under this Chapter.
- 26.6.9 Subject to 26.7.0, all decisions of the Enrolment Appeal Board are final and binding.

**26.7.0 JUDICIAL REVIEW**

- 26.7.1 An applicant or a Party may apply to the Supreme Court of British Columbia to review and set aside a decision of the Enrolment Appeal Board or a decision of a Maa-nulth First Nation made in accordance with 26.11.1, on the grounds that the Enrolment Appeal Board or the Maa-nulth First Nation 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.
- 26.7.2 On an application for judicial review, the Supreme Court of British Columbia may either dismiss the application or set aside the decision and refer the matter back to the Enrolment Appeal Board or the Maa-nulth First Nation for determination in accordance with any directions that the Supreme Court of British Columbia considers appropriate.
- 26.7.3 If the Enrolment Appeal Board or the Maa-nulth First Nation fails to hear or decide an appeal within a reasonable time, an applicant or a Party may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board or the Maa-nulth First Nation to hear or decide the appeal in accordance with any directions that the Supreme Court of British Columbia considers appropriate.
- 26.7.4 An applicant or a Party may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board or the Maa-nulth First Nation or a longer time determined by the Supreme Court of British Columbia.

**26.8.0 COSTS**

- 26.8.1 Canada and British Columbia will provide agreed upon funding for the Enrolment Committee and Enrolment Appeal Board.

**26.9.0 ENROLMENT REGISTER**

- 26.9.1 On the Effective Date, the names on the Preliminary Enrolment Register of a Maa-nulth First Nation will be placed on the Enrolment Register of that Maa-nulth First Nation by the Enrolment Committee.

**26.10.0 DISSOLUTION OF ENROLMENT COMMITTEE AND ENROLMENT APPEAL BOARD**

- 26.10.1 Each of the Enrolment Committee and the Enrolment Appeal Board is dissolved when it has made a decision in respect of every application or appeal made or commenced before the end of its Initial Enrolment Period.

26.10.2 On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records and the Enrolment Register to the applicable Maa-nulth First Nation.

**26.11.0 MAA-NULTH FIRST NATION RESPONSIBILITIES FOR ENROLMENT**

26.11.1 After the Initial Enrolment Period each Maa-nulth First Nation will:

- a. be responsible for its enrolment process and the administrative costs of that process;
- b. maintain its own Enrolment Register;
- c. provide a copy of its Enrolment Register to Canada and British Columbia each year or as they request; and
- d. provide information concerning enrolment in that Maa-nulth First Nation to Canada and British Columbia as they request.

## CHAPTER 27 IMPLEMENTATION

### 27.1.0 GENERAL

27.1.1 The Implementation Plan takes effect on the Effective Date and has a term of ten years, which may be renewed or extended upon agreement of the Parties.

### 27.2.0 IMPLEMENTATION PLAN

27.2.1 The Implementation Plan:

- a. identifies the obligations arising from this Agreement, the activities to be undertaken to fulfill those obligations, the responsible Party and the timeframe for completion of those activities;
- b. specifies how the Implementation Plan may be amended;
- c. specifies how the Implementation Plan may be renewed or extended; and
- d. addresses other matters agreed to by the Parties.

27.2.2 The Implementation Plan:

- a. does not create legal obligations;
- b. does not alter any rights or obligations described in this Agreement;
- c. 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
- d. is not to be used to interpret this Agreement.

### 27.3.0 IMPLEMENTATION COMMITTEE

27.3.1 On the Effective Date, the Maa-nulth First Nations, Canada and British Columbia will each appoint an individual to a three-member implementation committee for a term of ten years, which term may be renewed or extended by agreement of the Parties.

27.3.2 The implementation committee will:

- a. establish its own procedures and operating guidelines;

- b. develop a communications strategy in respect of the implementation and content of this Agreement;
- c. be a forum for the Parties to discuss the implementation of this Agreement;
- d. provide for the preparation of annual reports on the implementation of this Agreement;
- e. before the expiry of the Implementation Plan, review the Implementation Plan and advise the Parties on the further implementation of this Agreement and, if a consensus is reached by the implementation committee in respect of a recommendation, recommend whether the Implementation Plan should be renewed or extended; and
- f. address other matters agreed to by the Parties.



## CHAPTER 28 RATIFICATION

### 28.1.0 GENERAL

- 28.1.1 This Agreement is legally binding once ratified by all of the Parties in accordance with this Chapter.
- 28.1.2 This Agreement will be submitted to the Parties for ratification as provided for in this Chapter after it has been initialed by the chief negotiators for Canada and British Columbia, and the lead negotiator for the Maa-nulth First Nations.

### 28.2.0 RATIFICATION BY MAA-NULTH FIRST NATIONS

- 28.2.1 Ratification of this Agreement by a Maa-nulth First Nation requires that:
- a. its Eligible Voters have a reasonable opportunity to review this Agreement;
  - b. subject to 28.3.5, dates be set for the Treaty Vote and Band Vote, which will be the same days for every Treaty Vote and Band Vote unless otherwise agreed to by the Parties;
  - c. each of the Treaty Vote and Band Vote be conducted by way of a secret ballot and overseen by the Ratification Committee, on behalf of that Maa-nulth First Nation, in accordance with 28.2.5 and 28.2.6;
  - d. a majority of its Eligible Voters on its List of Eligible Voters have voted to approve this Agreement;
  - e. a majority of the Eligible Voters on the List of Eligible Voters of each other Maa-nulth First Nation have voted to approve this Agreement;
  - f. the matters provided for in 28.3.1 be approved by the applicable Band Vote in accordance with 28.3.0; and
  - g. this Agreement be signed by that Maa-nulth First Nation's representative as authorized by a band council resolution of the applicable Maa-nulth Indian Band or such other authorization as that Maa-nulth First Nation may determine.
- 28.2.2 Before the Treaty Vote, each Maa-nulth First Nation will have ratified its Maa-nulth First Nation Constitution in accordance with 13.3.4.

- 28.2.3 The Parties will establish a seven member Ratification Committee, with one representative from each Maa-nulth First Nation, one representative from Canada and one representative from British Columbia.
- 28.2.4 The Ratification Committee is responsible for:
- a. matters relating to the Treaty Vote of each Maa-nulth First Nation described in 28.2.5 and 28.2.7 to 28.2.9; and
  - b. matters relating to the Band Vote of each Maa-nulth Indian Band described in 28.2.6 and 28.3.0.
- 28.2.5 As regards the Treaty Vote of a Maa-nulth First Nation the Ratification Committee will:
- a. ensure that Maa-nulth First Nation has provided its Eligible Voters a reasonable opportunity to review this Agreement;
  - b. prepare and publish:
    - i. the List of Eligible Voters of that Maa-nulth First Nation based on the names of the individuals on the Preliminary Enrolment Register provided by the Enrolment Committee in accordance with 26.4.4b.; and
    - ii. an updated List of Eligible Voters of that Maa-nulth First Nation updated in accordance with 28.2.5c. at least 14 days before the Treaty Vote commences;
  - c. update the List of Eligible Voters for that Maa-nulth First Nation by:
    - i. at any time on or before the last day of the Treaty Vote, adding to the List of Eligible Voters of that Maa-nulth First Nation the name of each individual whom the Ratification Committee determines to be eligible to vote in that Maa-nulth First Nation's Treaty Vote in accordance with 28.2.7;
    - ii. adding to the List of Eligible Voters of that Maa-nulth First Nation the name of each individual who votes in the Treaty Vote of that Maa-nulth First Nation in accordance with 28.2.8 and whose vote counts in accordance with 28.2.9;
    - iii. removing from the List of Eligible Voters of that Maa-nulth First Nation the name of each individual who died on or before the last day of the Treaty Vote, provided the individual has not already voted;

- iv. removing from the List of Eligible Voters of that Maa-nulth First Nation the name of each individual who did not vote in the Treaty Vote of that Maa-nulth First Nation and for whom certification is provided to the Ratification Committee by the close of polls on the last day of the Treaty Vote, by a qualified medical practitioner, that the individual was physically or mentally incapacitated to the point that he or she could not have voted on the dates set for the Treaty Vote;
- v. removing from the List of Eligible Voters of that Maa-nulth First Nation the name of each individual who has applied, or on whose behalf application has been made to the Ratification Committee, by the close of polls on the last day of voting in the Treaty Vote, to have his or her name removed from the List of Eligible Voters of that Maa-nulth First Nation, provided the individual has not already voted;
- vi. subject to 28.2.11, removing from the List of Eligible Voters of that Maa-nulth First Nation the name of each individual whose name appears on the Preliminary Enrolment Register but in respect of whom that Maa-nulth First Nation has made a specific request to the Ratification Committee by the close of polls on the last day of the Treaty Vote for removal from the List of Eligible Voters due to an inability to contact that individual; and
- vii. adding to the List of Eligible Voters of that Maa-nulth First Nation the name of each individual whose name has been removed from the List of Eligible Voters in accordance with 28.2.5c.vi. and who has, before the close of polls on the last day of the Treaty Vote, provided contact information to the applicable Maa-nulth First Nation or the Ratification Committee;
- d. prepare, approve and publish the form and content of the ballot to be used in the Treaty Vote of that Maa-nulth First Nation at least 14 days before the Treaty Vote commences;
- e. authorize and provide general direction to voting officers regarding the Treaty Vote including the establishment of polling stations and rules that may include advance polling and mail-in ballots;
- f. oversee the conduct of the Treaty Vote on days determined by the Maa-nulth First Nations in all polling stations established by the Ratification Committee;
- g. ensure that the dates of the Treaty Vote and location of the polling stations are made publicly available;
- h. oversee the counting of each Treaty Vote ballot;

- i. make public the results of the Treaty Vote; and
  - j. within 90 days following the last day of the Treaty Vote prepare and provide to the Parties a written report on the outcome of the Treaty Vote.
- 28.2.6 As regards the Band Vote of a Maa-nulth Indian Band, the Ratification Committee will:
  - a. prepare, maintain and publish a voters list for that Maa-nulth Indian Band as contemplated by 28.3.0;
  - b. prepare, approve and publish the form and content of the ballot to be used in the Band Vote of that Maa-nulth Indian Band at least 14 days before the Band Vote commences;
  - c. authorize and provide general direction to voting officers to be employed in the conduct of that Maa-nulth Indian Band's Band Vote, including the establishment of polling stations and rules that may include advance polling and mail-in ballots;
  - d. conduct each Band Vote on days determined by the Maa-nulth First Nations in all polling stations established by the Ratification Committee;
  - e. ensure that the dates of the Band Vote and location of the polling stations are made publicly available;
  - f. oversee the counting of each Band Vote ballot; and
  - g. within 90 days following the last day of the Band Vote prepare and provide to the Parties a written report on the outcome of the Band Vote.
- 28.2.7 As regards a Maa-nulth First Nation, an Eligible Voter is an individual who:
  - a. has been placed on the Preliminary Enrolment Register of that Maa-nulth First Nation by the Enrolment Committee; and
  - b. is 16 years of age or older on the last scheduled day of the Treaty Vote.
- 28.2.8 An individual whose name is not included on the List of Eligible Voters of a Maa-nulth First Nation may vote in that Maa-nulth First Nation's Treaty Vote if that individual provides a voting officer with:
  - a. a completed application for enrolment in that Maa-nulth First Nation; or
  - b. evidence satisfactory to that voting officer that the individual has submitted to the Enrolment Committee an application form to be enrolled in that Maa-nulth First Nation.

- 28.2.9 The ballot of an individual who votes in accordance with 28.2.8 counts in determining the outcome of the Treaty Vote of a Maa-nulth First Nation only if the Ratification Committee:
- a. determines that the individual is an Eligible Voter; and
  - b. adds the name of the individual to the List of Eligible Voters of that Maa-nulth First Nation in accordance with 28.2.5c.ii.
- 28.2.10 If a majority of the Eligible Voters on the List of Eligible Voters of each Maa-nulth First Nation do not vote in favour of this Agreement in accordance with the Treaty Vote conducted in accordance with the Parties will, within 30 days of the last day of the Treaty Vote, meet to discuss measures that may be necessary to achieve the successful ratification of this Agreement, including:
- a. re-conducting the Treaty Vote;
  - b. potential amendments to the ratification process;
  - c. other potential amendments to this Agreement; and
  - d. such other matters agreed to by the Parties.
- 28.2.11 The Ratification Committee may only agree to the removal of an individual's name from the List of Eligible Voters of a Maa-nulth First Nation in accordance with 28.2.5c.vi. if that Maa-nulth First Nation submits to the Ratification Committee documentation, acceptable to the Ratification Committee, setting out the steps taken by that Maa-nulth First Nation to contact the individual and the Ratification Committee is satisfied that those steps constituted a reasonable effort to contact the individual.

### **28.3.0 RATIFICATION BY A MAA-NULTH INDIAN BAND**

- 28.3.1 Subject to 28.3.5, on the same day or days as the Treaty Vote, the Ratification Committee will conduct, for each Maa-nulth Indian Band, a Band Vote of registered Indians of that Maa-nulth Indian Band seeking their approval that on the Effective Date:
- a. the assets and liabilities of that Maa-nulth Indian Band will be transferred to the applicable Maa-nulth First Nation; and
  - b. that Maa-nulth Indian Band will be dissolved.
- 28.3.2 At least 30 days before the first day of voting in the Band Vote, the Ratification Committee will establish a voters list for the applicable Maa-nulth Indian Band which will consist of all registered Indians of that Maa-nulth Indian Band who will be 16 years of age or older on the last scheduled day of the Band Vote.

28.3.3 As regards the Band Vote of a Maa-nulth Indian Band, the Ratification Committee will update the voters list for that Maa-nulth Indian Band by removing from that list the name of each individual who:

- a. died on or before the last day of the Band Vote, provided the individual has not already voted;
- b. did not vote in the Band Vote of that Maa-nulth Indian Band and for whom certification is provided by the close of polls on the last day of the Band Vote, by a qualified medical practitioner, that the individual was physically or mentally incapacitated to the point that he or she could not have voted on the dates set for the Band Vote;
- c. has applied, or on whose behalf application has been made, by the close of polls on the last day of voting in the Band Vote, to have his or her name removed from the voters list for that Maa-nulth Indian Band of that Maa-nulth First Nation, provided the individual has not already voted; or
- d. has transferred to another Indian Band, where both the council of the applicable Maa-nulth Indian Band and the council of the Indian Band to which the individual has transferred have accepted in writing the transfer, provided the individual has not already voted.

28.3.4 A Band Vote is approved if a majority of the voters casting ballots in the applicable Band Vote have voted to approve and a majority of the individuals on the voters list of the applicable Maa-nulth Indian Band vote.

28.3.5 Notwithstanding 28.3.1, if a majority of the individuals on the voters list of a Maa-nulth Indian Band fail to vote, the applicable Maa-nulth First Nation may provide directions and instruction for the Ratification Committee for the conduct of additional days of voting for that Maa-nulth Indian Band's Band Vote.

28.3.6 Where the Ratification Committee is unable to establish the current address of a registered Indian of a Maa-nulth Indian Band, the Ratification Committee, upon request by the applicable Maa-nulth First Nation may remove that individual from the voters list of that Maa-nulth Indian Band.

#### **28.4.0 RATIFICATION BY CANADA**

28.4.1 Ratification of this Agreement by Canada requires:

- a. that this Agreement be signed by a Minister authorized by the federal Cabinet; and
- b. the coming into force of Federal Settlement Legislation giving effect to this Agreement.

**28.5.0      RATIFICATION BY BRITISH COLUMBIA**

28.5.1      Ratification of this Agreement by British Columbia requires:

- a.          that this Agreement be signed by a Minister authorized to do so; and
- b.          the coming into force of Provincial Settlement Legislation giving effect to this Agreement.





## CHAPTER 29 DEFINITIONS

### 29.1.0 DEFINITIONS

29.1.1 In this Agreement:

**“2005 FDDIPI 1<sup>st</sup> Quarter”** means FDDIPI for the 1<sup>st</sup> quarter of 2005 published at the same time as the value used in Current FDDIPI;

**“2005 FDDIPI 2<sup>nd</sup> Quarter”** means FDDIPI for the 2<sup>nd</sup> quarter of 2005 published at the same time as the value used in Current FDDIPI;

**“Adoption Agency”** means “adoption agency” as defined in the *Adoption Act*;

**“Agreed-Upon Programs and Services”** means those programs and services to be made available by a Maa-nulth First Nation, and towards which Canada or British Columbia agrees to contribute funding, in accordance with a Fiscal Financing Agreement;

**“Agreement”** means this agreement among each Maa-nulth First Nation, Canada and British Columbia;

**“Alberni-Clayoquot Regional District”** means the Alberni-Clayoquot Regional District incorporated or continued under the *Local Government Act*, and its successors;

**“Annual Fishing Plan”** means an Annual Fishing Plan as described in 10.4.29;

**“Appendix”** means an appendix to this Agreement and, where applicable, includes the authoritative version of a map or plan as set out in the Atlas;

**“Aquatic Plants”** includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all marine and freshwater flowering plants, ferns and mosses, growing in water or in soils that are saturated during most of the growing season;

**“Artlish Harvest Area”** means those lands described as the “Artlish Harvest Area” in Plan 1 of Appendix Q-3;

**“Assurance Fund”** means the assurance fund established under Part 19.1 of the *Land Title Act*;

**“Atlas”** means the Maa-nulth First Nations Final Agreement Atlas as signed by the Parties and as amended from time to time in accordance with this Agreement, which consists of the authoritative version of the maps and plans shown at reduced scale for ease of reference in Appendices A, B, C, F, G, H, I, M, N, O, P, Q, R, T, U, V, W and X of this Agreement;

**“Available Flow”** means the volume of flow of water, determined by British Columbia, to be above that required:

- a. to ensure conservation of Fish and Stream habitats;
- b. to continue navigability; and
- c. under Water Licences issued before October 3, 2003 and Water Licences issued under applications made before October 3, 2003,

and taking into account any applicable requirement under Federal Law and Provincial Law;

**“BC Hydro”** means the British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, or its successor;

**“Band Vote”** means the vote of the members of a Maa-nulth Indian Band contemplated by 28.3.0;

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

**“British Columbia Building Code”** means the building code established for British Columbia in accordance with the *Local Government Act*;

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

**“Capital Transfer”** means an amount paid by Canada to a Maa-nulth First Nation under Chapter 16 Capital Transfer and Negotiation Loan Repayment;

**“Capital Transfer Payment Plan”** means the timetable for the payment of a Capital Transfer, described in Schedule 1 of Chapter 16 Capital Transfer and Negotiation Loan Repayment;

**“Chapter”** means a chapter of this Agreement;

**“Child”** means an individual under the age of majority in accordance with Provincial Law;

**“Child Care”** means the care, supervision, social or educational training including preschool education, or physical or mental rehabilitative therapy of children under the age of 13 years with or without charge, by caregivers other than the child’s parent or the individual with whom the child resides and who stands in the place of the child’s mother or father, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a Maa-nulth First Nation Law under 13.20.1;

**“Child in Care”** means a child who is in the custody, care or guardianship of a Director or an individual designated with comparable authority under Maa-nulth First Nation Law;

**“Child in Need of Protection”** means a child in need of protection in accordance with the circumstances described in the *Child, Family and Community Services Act*;

**“Child Protection Service”** means a service that provides for:

- a. the protection of Children from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention;
- b. the custody, care and guardianship responsibilities for Children in Care;
- c. the support of families and caregivers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect or harm; and
- d. the support of kinship ties and a Child's attachment to the extended family;

**“Community Correctional Services”** means:

- a. community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody centre;
- b. preparation of reports for courts, correctional centers, youth custody centres, crown counsel and parole boards;
- c. supervision of diverted offenders and development and operation of diversion programs;
- d. provision of community based programs and interventions for offenders, including alternatives to custody programs;
- e. identification of and referral to appropriate community resources;
- f. assistance in establishing programs to meet the needs of youth in conflict with the law; and
- g. other community correctional and community youth justice services as may be delivered by British Columbia or Canada from time to time;

**“Comox-Strathcona Regional District”** means the Comox-Strathcona Regional District incorporated or continued under the *Local Government Act*, and its successors;

**“Conflict”** means actual conflict in operation or operational incompatibility;

**“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 consultation between or among Parties, 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 person to prepare its views on the matter;
- d. an opportunity for the person to present its views on the matter; and
- e. a full and fair consideration of any views on the matter so presented by the person;

**“Contaminated Site”** means a “contaminated site” as defined in the *Environmental Management Act*;

**“Contamination”** means, for the purposes of Chapter 2 Lands, “contamination” as defined in the *Environmental Management Act*;

**“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 Corridor”** means the lands identified as “Crown Corridors” in Appendix D;

**“Cultural Purposes”** means the use of Monumental Cedar and Cypress for a purpose that:

- a. was integral to the culture of a Maa-nulth First Nation before contact;
- b. is primarily for totem poles, dugout canoes, or long beams and poles to build longhouses, community halls or similar community structures; and
- c. is not carried out for profit, commercial purpose, Trade and Barter, individual or community gain, residential building construction, structures associated with a residential building, or for providing firewood for individual needs;

**“Current FDDIPI”** means FDDIPI for the most recent quarter published by Statistics Canada immediately before a statement is provided to each Maa-nulth First Nation in accordance with 17.1.1 or 17.1.2;

**“Designated Migratory Bird Population”** means a population of a species of Migratory Bird that has been designated by the Minister in accordance with 12.10.1;

**“Designated Wildlife Species”** means a species of Wildlife, or an identifiable population of a species of Wildlife, for which the Minister has determined that there should be a Total Allowable Wildlife Harvest in the Wildlife Harvest Area, or any portion thereof;

**“Diana Island”** means the provincial Crown land described as “Subject Lands” in Appendix W;

**“Direct”**, for the purposes of Chapter 19 Taxation, has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*;

**“Director”** means an individual designated as director by the Minister of Children and Family Development under the *Child, Family and Community Service Act* or the *Adoption Act*;

**“Disagreement”** means any matter to which Chapter 25 Dispute Resolution applies;

**“Dispose”** means, except in Chapter 19 Taxation, to transfer by any method including to assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and to agree to do any of those things;

**“Domestic Fishing Area”** means:

- a. for all species of Fish and Aquatic Plants other than Inter-tidal Bivalves, the area described as the “Maa-nulth Domestic Fishing Area” in Appendix N, and
- b. for Inter-tidal Bivalves, each area described as “Inter-tidal Bivalve Harvest Area” in Part 1 of Appendix P;

**“Domestic Purposes”** means food, social and ceremonial purposes;

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

**“Electoral Area”** means “electoral area” as defined in the *Local Government Act*;

**“Electoral Area Director”** means “electoral area director” as defined in the *Local Government Act*;

**“Eligible Voter”** means an individual who:

- a. is eligible to vote in accordance with 28.2.7; or
- b. votes in accordance with 28.2.8 and whose vote is counted in accordance with 28.2.9;

**“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;

**“Enrolment Appeal Board”** means the appeal board established in accordance with 26.6.2 and 26.6.3;

**“Enrolment Committee”** means the committee established in accordance with 26.4.1;

**“Enrolment Register”** means the register of the Maa-nulth-aht of a Maa-nulth First Nation;

**“Environment”** means the components of the earth including:

- a. air, land and water;
- b. all layers of the atmosphere;
- c. all organic and inorganic matter and living organisms; and
- d. the interacting natural systems that include components referred to in a. to c.;

**“Environmental Assessment”** means an assessment of the environmental effects of a project;

**“Environmental Emergency”** means an uncontrolled, unplanned, or accidental release, or release in contravention of laws or regulations, of a substance into the Environment, or the reasonable likelihood of such a release into the Environment, that:

- a. has or may have an immediate or long term harmful effect on the Environment; or
- b. constitutes or may constitute a danger in Canada to human life or health;

**“FDDIPI”** means the Final Domestic Demand Implicit Price Index for Canada, series D100466, published regularly by Statistics Canada in Matrix 10512: Implicit Price Indexes, Gross Domestic Product or its replacement series as specified by Statistics Canada;

**“Federal Expropriating Authority”** means Canada or any other entity authorized under federal legislation to expropriate land or an Interest in land;

**“Federal Law”** includes federal statutes, regulations, ordinances, Orders-in-Council and the common law;

**“Federal Project”** means a “project” as defined in the *Canadian Environmental Assessment Act*, that is subject to an Environmental Assessment under the *Canadian Environmental Assessment Act*;

**“Federal Settlement Legislation”** means the legislation of Parliament contemplated by 1.1.4;

**“First Nation Government in British Columbia”** means the government of a First Nation in British Columbia which has a treaty or a land claims agreement in effect with Canada and British Columbia;

**“Fiscal Financing Agreement”** means an agreement negotiated among a Maa-nulth First Nation, Canada and British Columbia in accordance with Chapter 18 Fiscal Relations;

**“Fiscal Year”** means a one-year period commencing on April 1 of one calendar year and ending on March 31 of the subsequent calendar year;

**“Fish”** means:

- a. 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;

**“Foreshore Agreement”** means an agreement entered into between British Columbia and a Maa-nulth First Nation in accordance with 14.5.1;

**“Foreshore Area”** means, in relation to a Maa-nulth First Nation, those provincial Crown lands adjacent to its Maa-nulth First Nation Lands identified in a Foreshore Agreement in relation to which that Maa-nulth First Nation will exercise law-making authority in accordance with 14.5.2b;

**“Forest District”** means a “forest district” as established under the *Forest Act*;

**“Forest Practices”** means Timber harvesting, road construction, road maintenance, road use, road deactivation, botanical forest products collecting, fire use and silviculture treatments, including grazing for the purposes of brushing, but does not include Timber marking or scaling, manufacture of Timber or export of Timber;

**“Forest Resources”** means all Timber Resources and Non-Timber Resources, including all biota, but does not include Wildlife, Migratory Birds, water, Groundwater, Fish and Aquatic Plants;

**“Former Federal Lands”** means any lands which are transferred to a Maa-nulth First Nation on the Effective Date which were under the ownership, administration or control of Canada immediately before the Effective Date;

**“Former Indian Reserves”** means the lands described in Part 1(a) of Appendices B-1 to B-5;

**“Fossils”** mean remains, traces or imprints of animals or plants that have been preserved in rocks including bones, shells, casts and tracks;

**“Gathering Plan”** means a plan prepared by a Maa-nulth First Nation in accordance with 24.6.6 and 24.6.7;

**“Geothermal Resources”** 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 and water vapour, but not including:

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

**“Gravel”** means gravel, rock, random borrow materials and sand;

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

**“Groundfish”** means groundfish but does not include Rockfish, halibut, sablefish, skates, tunas, pile perch and hake;

**“Groundwater”** means water below the surface of the ground;

**“Ha’wiih”** means hereditary chiefs who hold their positions in accordance with Nuu-chah-nulth custom;

**“Heritage Site”** means a site of archaeological, historical or cultural significance including graves and burial sites;

**“Huu-ay-aht First Nations”** means that Maa-nulth First Nation referred to as the “Huu-ay-aht First Nations” established as a legal entity in accordance with this Agreement;

**“Implementation Plan”** means the implementation plan described in 27.2.1;

**“Indian”** means an “Indian” as defined in the *Indian Act*;

**“Indian Band”** means a “band” as defined in the *Indian Act*;

**“Indian Reserve”** means a “reserve” as defined in the *Indian Act*;

**“Initial Enrolment Period”** means:

- a. for the purposes of the Enrolment Committee, from April 1, 2005 to the day before the second anniversary of the Effective Date; 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;



**“Intellectual Property”** includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary and artistic fields, including, but not limited to, any rights relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights;

**“Interests”** includes estates, interests, charges, mineral claims, encumbrances, licences and permits;

**“International Legal Obligation”** means an international obligation binding on Canada under international law, including those that are in force before, on, or after the Effective Date;

**“International Treaty”** means an agreement governed by international law and concluded in written form:

- a. between states; or
- b. between one or more states and one or more international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

**“International Tribunal”** means any international court, committee, treaty body, tribunal, arbitral tribunal, or other international mechanism or procedure which has jurisdiction to consider the performance of Canada with regard to the International Legal Obligation in question;

**“Inter-tidal Bivalves”** means manila clams, varnish clams, butter clams, native littleneck clams, razor clams and oysters;

**“Invoiced Resource Amount”** means an amount determined in accordance with the Resource Revenue Sharing Agreement;

**“Joint Fisheries Committee”** means the committee established in accordance with 10.4.3 and 10.4.4;

**“Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations”** means that Maa-nulth First Nation referred to as the “Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations” established as a legal entity in accordance with this Agreement;

**“Land Surveyor”** means a “practicing land surveyor” as defined in the *Land Surveyors Act*;

**“List of Eligible Voters”** means the list of Eligible Voters maintained by the Ratification Committee in accordance with 28.2.5b.;

**“Litigation”** means the Supreme Court of British Columbia Action No. S033335, Vancouver Registry;

**“Local Government”** means “local government” as defined in the *Local Government Act*;

**“Maa-nulth First Nation”** means any of the collectivities of those individuals who are eligible to be enrolled under this Agreement and that become one of the legal entities that is a Party to this Agreement, namely:

- a. Huu-ay-aht First Nations;
- b. Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations;
- c. Toquaht Nation;
- d. Uchucklesaht Tribe; and
- e. Ucluelet First Nation;

**“Maa-nulth First Nation Archaeological Human Remains”** means human remains that are not the subject of a police or a coroner investigation, and are determined to be of aboriginal ancestry of the applicable Maa-nulth First Nation;

**“Maa-nulth First Nation Area”** means, in respect of a Maa-nulth First Nation, the area described as “Maa-nulth First Nation Area” for that Maa-nulth First Nation in Appendix A and **“Maa-nulth First Nation Areas”** means every Maa-nulth First Nation Area;

**“Maa-nulth First Nation Artifact”** means any object created by, traded to, commissioned by, or given as a gift to a Maa-nulth First Nation individual, a Maa-nulth First Nation, or a Maa-nulth First Nation Public Institution or that originated from a Maa-nulth First Nation, past or present, and that has past and ongoing importance to a Maa-nulth First Nation’s culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to another aboriginal group;

**“Maa-nulth First Nation Capital”** means all land, cash and other assets transferred to, or recognized as owned by, a Maa-nulth First Nation under this Agreement;

**“Maa-nulth First Nation Certificate”** means a certificate of a Maa-nulth First Nation Government described in 3.5.1b;

**“Maa-nulth First Nation Child”** means a Maa-nulth-aht under the age of majority in accordance with Provincial Law;

**“Maa-nulth First Nation Citizen”** means an individual who becomes a citizen of a Maa-nulth First Nation under a Maa-nulth First Nation Law;

**“Maa-nulth First Nation Community Watershed Lands”** means the Maa-nulth First Nation Lands described as “Subject Lands” in Appendix T;

**“Maa-nulth First Nation Constitution”** means the constitution of a Maa-nulth First Nation provided for in 13.3.0;

**“Maa-nulth First Nation Corporation”** means a corporation that is incorporated under Federal Law or Provincial Law, all of the shares of which are owned legally and beneficially by a Maa-nulth First Nation, a Maa-nulth First Nation settlement trust, a Maa-nulth First Nation Corporation Intermediary, or any combination of those entities;

**“Maa-nulth First Nation Corporation Intermediary”** means a corporation that is incorporated under Federal Law or Provincial Law, all of the shares of which are owned legally and beneficially by a Maa-nulth First Nation, a Maa-nulth First Nation settlement trust, another Maa-nulth First Nation Corporation Intermediary, or any combination of those entities;

**“Maa-nulth First Nation Family”** means one or both parents or guardians living together with one or more Children where:

- a. at least one of the parents or guardians is a Maa-nulth First Nation Citizen or a Maa-nulth-aht of the applicable Maa-nulth First Nation; or
- b. at least one of the Children is a Maa-nulth First Nation Child;

**“Maa-nulth First Nation Fishing Right”** means the right of a Maa-nulth First Nation to harvest Fish and Aquatic Plants, described in 10.1.1 and **“Maa-nulth First Nation Fishing Rights”** means every Maa-nulth First Nation Fishing Right;

**“Maa-nulth First Nation Government”** means the government of a Maa-nulth First Nation referred to in 13.1.2;

**“Maa-nulth First Nation Lands”** means the lands described in Part 1(a) and Part 2(a) of Appendices B-1 to B-5 and Part 3 of Appendix B-5;

**“Maa-nulth First Nation Law”** means:

- a. any law made by a Maa-nulth First Nation Government under a law-making authority provided for in this Agreement; and
- b. a Maa-nulth First Nation Constitution;

**“Maa-nulth First Nation Private Lands”** means Maa-nulth First Nation Lands that are designated as “Maa-nulth First Nation Private Lands” by the applicable Maa-nulth First Nation in accordance with 5.2.0;

**“Maa-nulth First Nation Public Institution”** means a body, board, commission or any other similar entity established under Maa-nulth First Nation Law, made under 13.11.1a., including a school board or health board;

**“Maa-nulth First Nation Public Lands”** means Maa-nulth First Nation Lands other than Maa-nulth First Nation Private Lands;

**“Maa-nulth First Nation Renewable Resource Harvesting Right”** means the right of a Maa-nulth First Nation to harvest renewable resources described in 23.1.1;

**“Maa-nulth First Nation Right to Gather Plants”** means the right of a Maa-nulth First Nation to gather Plants and the boughs, burls and roots of Timber described in 24.6.0;

**“Maa-nulth First Nation Right to Harvest Migratory Birds”** means the right of a Maa-nulth First Nation to harvest Migratory Birds described in 12.1.1;

**“Maa-nulth First Nation Right to Harvest Wildlife”** means the right of a Maa-nulth First Nation to harvest Wildlife described in 11.1.0;

**“Maa-nulth First Nation Road”** means any road, including the road allowance, that forms part of Maa-nulth First Nation Lands;

**“Maa-nulth First Nation Section 35 Rights”** means the rights, anywhere of a Maa-nulth First Nation, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**“Maa-nulth First Nations”** means every Maa-nulth First Nation;

**“Maa-nulth Fish Allocation”** means, in respect of the Maa-nulth First Nation Fishing Rights:

- a. a defined harvest quantity or quota, of a species of Fish or Aquatic Plant;
- b. a harvest quantity determined by the use of a formula, of a species of Fish or Aquatic Plant; or
- c. a defined harvest area, within the Domestic Fishing Area;

**“Maa-nulth Fisheries Operational Guidelines”** means the guidelines described in 10.4.39;

**“Maa-nulth Harvest Agreement”** means the agreement contemplated by 10.2.1;

**“Maa-nulth Harvest Document”** means any licence, permit or document, or amendment thereto, issued by the Minister under Federal Law or Provincial Law in respect of a Maa-nulth First Nation Fishing Right;

**“Maa-nulth Indian Band”** means any of Huu-ay-aht First Nations, Ka:’yu:’k’t’h’/Che:k:tl̓es7et’h’ First Nations, Toquaht Band, Uchucklesaht Band and Ucluelet First Nation, each of which was, immediately before the Effective Date, a “band” as defined in the *Indian Act*, and **“Maa-nulth Indian Bands”** means every Maa-nulth Indian Band;

**“Maa-nulth Permit”** means any licence, permit or document, or amendment thereto, issued by the Minister under Federal Law in respect of a Maa-nulth First Nation Renewable Resource Harvesting Right;

**“Maa-nulth Wildlife Allocation”** means a defined harvest quantity or quota, or harvest quantity or quota determined by the use of a formula, of a Designated Wildlife Species for the Maa-nulth First Nations in the Wildlife Harvest Area, or any portion thereof;

**“Maa-nulth-aht”** means an individual who is on the Enrolment Register of a Maa-nulth First Nation;

**“Migratory Bird Harvest Area”** means that area described as the “Maa-nulth Migratory Birds Harvest Area” in Appendix R, but does not include land owned by Canada;

**“Migratory Birds”** means migratory birds as defined under Federal Law enacted further to international conventions that are binding on British Columbia, including the eggs of those birds;

**“Mineral”** means an ore of metal or natural substance that can be mined including rock and other materials from mine tailings, dumps and previously mined deposits of minerals;

**“Minister”** means the federal or provincial minister having responsibility, from time to time, for the exercise of powers in relation to the matter in question, and any person with authority to act in respect of the matter in question;

**“Monumental Cedar and Cypress”** means a *Thuja plicata* (western red cedar) or a *Chamaecyparis nootkatensis* (yellow cedar) that is:

- a. 250 years or older; and
- b. at least 100 centimetres diameter at 1.3 meters above germination point;

**“Municipality”** means “municipality” as defined in the *Local Government Act*;

**“Nahmint Harvest Area”** means those lands described as the “Nahmint Harvest Area” in Plan 2 of Appendix Q-3;

**“National Marine Conservation Area”** includes a national marine conservation area reserve and means lands and water areas named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law;

**“National Park”** includes a national park reserve and means lands and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law;

**“Natural Gas”** means all fluid hydrocarbons that are not defined as Petroleum including coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well;

**“Negotiation Loan Repayment Plan”** means the timetable, for the repayment of negotiation loan funding by a Maa-nulth First Nation, described in Schedule 2 of Chapter 16 Capital Transfer and Negotiation Loan Repayment;

**“Neutral”** means an individual appointed to assist the Parties to resolve a Disagreement and, except in 25.6.5 and Appendix Y-5, 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;

**“Non-Member”** means an individual, who has reached the age of majority under Provincial Law, who is ordinarily resident on Maa-nulth First Nation Lands and who is not a Maa-nulth-aht;

**“Non-Timber Resources”** means all Forest Resources, other than Timber Resources, including medicinal plants, fungi, branches, bark, cones, bushes, roots, moss, mushrooms, ferns, floral greens, herbs, berries, seeds and plants associated with grazing;

**“Nuu-chah-nulth Artifact”** means those objects held at the Effective Date in the permanent collections of the Canadian Museum of Civilization, Parks Canada Agency or the Royal British Columbia Museum that are identified as “Nuu-chah-nulth” or “Nootka” in their documentation;

**“Nuu-chah-nulth First Nation”** means Ahousaht First Nation, Ditidaht First Nation, Ehatesaht First Nation, Hesquiat First Nation, Huu-ay-aht First Nations, Hupacasath First Nation, Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations, Mowachaht/Muchalaht First Nation, Nuchatlaht First Nation, Pacheedaht First Nation, Tla-o-qui-aht First Nations, Toquaht Nation, Tseshaht First Nation, Uchucklesaht Tribe or Ucluelet First Nation;

**“Office Holder”** means an elected or appointed member of a Maa-nulth First Nation Government and does not include a Public Officer;

**“Other Maa-nulth First Nation Lands”** means lands owned by a Maa-nulth First Nation that are not Maa-nulth First Nation Lands;

**“Pacific Rim National Park”** means federal Crown lands and waters named and described as “Pacific Rim National Park” in the schedules to the *Canada National Parks Act*;

**“Pacific Rim National Park Reserve”** means the federal Crown lands and waters named and described as “Pacific Rim National Park Reserve” in the schedules to the *Canada National Parks Act*;

**“Participating Party”** means a Party that:

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

a process described in Chapter 25 Dispute Resolution to resolve a Disagreement;

**“Parties”** means each Maa-nulth First Nation, Canada and British Columbia and **“Party”** means any one of them;

**“Periodic Review Date”** means the 15<sup>th</sup> anniversary of the Effective Date or a date that occurs every 15 years after that date;

**“Person”** for the purposes of Chapter 19 Taxation, 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;

**“Petroleum”** means crude petroleum and all other hydrocarbons, regardless of specific gravity, that are or can be recovered in liquid form from a pool or that are or can be recovered from oil sand or oil shale;

**“Placer Mineral”** means ore of metal and every natural substance that can be mined and that is either loose, or found in fragmentary or broken rock that is not talus rock and occurs in loose earth, gravel and sand, including rock or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals;

**“Plants”** means all flora and fungi but does not include Aquatic Plants or Timber Resources except for the bark of Timber Resources;

**“Power Harvest Area”** means those lands described as the “Power Harvest Area” in Plan 3 of Appendix Q-3;

**“Power River Watershed Protected Area”** means the area described as “Subject Lands” in Appendix V;

**“Preliminary Enrolment Register”** means the register maintained by the Enrolment Committee before the Effective Date in accordance with 26.4.4b.;

**“Private Land”** means land that is not Crown land;

**“Provincial Expropriating Authority”** means a provincial ministry or agency or any person who would otherwise have the authority to expropriate land under provincial legislation;

**“Provincial Law”** includes provincial statutes, regulations, ordinances, Orders-in-Council, by-laws and the common law;

**“Provincial Project”** means a “reviewable project” as defined in the British Columbia *Environmental Assessment Act*, that is subject to an Environmental Assessment under the British Columbia *Environmental Assessment Act*;

**“Provincial Protected Area”** means provincial Crown land established or designated as provincial park, ecological reserve, conservancy or protected area under Provincial Law;

**“Provincial Road”** means a road under the administration and control of British Columbia;

**“Provincial Settlement Legislation”** means the legislation of the Legislature of British Columbia contemplated by 1.1.5;

**“Provincial Timber Resources”** means trees, whether living, standing, dead, fallen, limbed, bucked or peeled, other than Christmas trees, harvested on provincial Crown land;

**“Public Officer”** means:

- a. a member, commissioner, director or trustee of a Maa-nulth First Nation Public Institution;
- b. a director of a Maa-nulth First Nation Corporation whose principal function 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;
- c. an officer or employee of a Maa-nulth First Nation, a Maa-nulth First Nation Public Institution, Maa-nulth First Nation Government or a Maa-nulth First Nation Corporation, whose principal function 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;
- d. an election official within the meaning of a Maa-nulth First Nation Law; or
- e. a volunteer who participates in the delivery of services by a Maa-nulth First Nation, a Maa-nulth First Nation Public Institution, Maa-nulth First Nation Government or a body referred to in subparagraph b or c, under the supervision of an officer or employee of a Maa-nulth First Nation, a Maa-nulth First Nation Public Institution, Maa-nulth First Nation Government or a body referred to in subparagraph b or c;

**“Public Utility”** means a person, or the person’s lessee, trustee, receiver or liquidator that owns or operates in British Columbia equipment or facilities for the:

- a. production, gathering, generating, processing, storage, transmission, sale, supply, distribution or delivery of petroleum (including petroleum products or by-products), gas (including natural gas, natural gas liquids, propane and coalbed gas), electricity, steam, water, sewage, or any other agent for the production of light, heat, cold or power; or
- b. emission, conveyance, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation,

and for the purposes of this definition, person includes a partnership or agent of the Crown and, for greater certainty, a corporation, including a Crown corporation;



**“Quin-E-Ex Lands”** means those lands identified as the former Quin-E-Ex Indian Reserve, District Lot 708, Rupert District, Plan 63175, in Appendix B-2, Part 1(a);

**“Range Practices”** means:

- a. grazing of livestock;
- b. cutting of hay;
- c. activities related to grazing of livestock or cutting of hay; or
- d. activities related to constructing, modifying, or maintaining a structure, an excavation, a livestock trail, or an improvement to forage quality or quantity for purposes of range development;

**“Range Resources”** means those plant communities that are associated with grazing;

**“Ratification Committee”** means the committee established in accordance with 28.2.3;

**“Regional District”** means “regional district” as defined in the *Local Government Act*;

**“Regional District Board”** means “board” as defined in the *Local Government Act*;

**“Regional District Board Director”** means “director” as defined in the *Local Government Act*, and in relation to a Maa-nulth First Nation, a member of its Maa-nulth First Nation Government appointed to the Board of the applicable Regional District in accordance with Chapter 14 Regional Government;

**“Registrar”** means the “registrar” as defined in the *Land Title Act*;

**“Registrar of Regulations”** means the “registrar” as defined in the *British Columbia Regulations Act*;

**“Renewable Resource Harvesting Activities”** means:

- a. gathering of traditional foods for Domestic Purposes other than Fish and Aquatic Plants for Domestic Purposes, which are provided for in Chapter 10 Fisheries;
- b. gathering of Plants and Timber Resources for medicinal, ceremonial or artistic purposes;
- c. trapping of fur-bearing land mammals; and
- d. hunting of birds and land mammals for Domestic Purposes,

in accordance with Chapter 23 Federal Parks and Protected Areas;

**“Renewable Resource Harvesting Area”** means, in respect of a Maa-nulth First Nation, the land and non-tidal waters of a National Park or National Marine Conservation Area within its Maa-nulth First Nation Area;

**“Resource Revenue Sharing Agreement”** means the agreement setting out the procedures for arriving at the Invoiced Resource Amount that is signed by the Parties and in effect on Effective Date, as amended from time to time;

**“Responsible Person”** means a “responsible person” as defined in the *Environmental Management Act*;

**“Review Period”** means a time period beginning on a Periodic Review Date, and ending on a date six months later, or such other date as the Parties may agree;

**“Rockfish”** has the same meaning as in the *Pacific Fisheries Regulations, 1993*;

**“Safety and Well-Being of Children”** includes those guiding principles under section 2 of the *Child, Family and Community Service Act*;

**“Schedule”** means a schedule to a Chapter;

**“Settlement Legislation”** means Federal Settlement Legislation and Provincial Settlement Legislation;

**“Site Profile”** means “site profile” as defined in the *Environmental Management Act*;

**“Specific Claim Settlement”** means any sum paid by Canada to a Maa-nulth First Nation in settlement of that Maa-nulth First Nation’s claim brought under the Specific Claims Policy;

**“Specific Claims Policy”** means the policy described in Canada’s “Outstanding Business – A Native Claim Policy: Specific Claims (1982)”;

**“Stewardship Activity”** means an activity conducted for the assessment, monitoring, protection and management of Fish and Fish habitat;

**“Stopper Islands”** means the provincial Crown land described as “Subject Lands” in Appendix X;

**“Stream”** means a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch, but does not include Groundwater;

**“Submerged Lands”** means lands below the “natural boundary” as defined in the *Land Act*;

**“Subsurface Resources”** mean:

- a. earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash, rock, riprap and stone products;
- c. Minerals, including Placer Minerals;
- d. coal, Petroleum and Natural Gas;
- e. Fossils; and
- f. Geothermal Resources;

**“Subsurface Tenures”** means those subsurface tenures:

- a. listed in Appendices E-12, E-13 and E-15; and
- b. that exist on any lands added to Maa-nulth First Nation Lands immediately before the parcel of land becomes Maa-nulth First Nation Lands;

**“Surrendered Lands”** means “surrendered lands” as defined in the *Indian Act*;

**“Survey Protocol”** means the priority to be given to, the timing of, and the order in which, the surveys will be completed in accordance with 2.5.1, having regard to the following:

- a. the priorities of the applicable Maa-nulth First Nation;
- b. efficiency and economy, including the availability of qualified, reasonably priced Land Surveyors; and
- c. the necessity to clarify the boundaries because of imminent public or private development on adjacent lands;

**“Tahsish Harvest Area”** means those lands described as the “Tahsish Harvest Area” in Plan 4 of Appendix Q-3;

**“Telus”** means TELUS Communications Inc., a corporation incorporated under Federal Law, or its successor;

**“Tenured Subsurface Resources”** means those Subsurface Resources subject to Subsurface Tenures;

**“Thunderbird’s Nest (*T’iitsk’in Paawats*) Protected Area”** means the area described as “Subject Lands” in Appendix U;

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

**“Time Limited Federal Funding”** means “Time Limited Federal Funding” as defined in the initial Fiscal Financing Agreement of a Maa-nulth First Nation;

**“Time Limited Provincial Funding”** means “Time Limited Provincial Funding” as defined in the initial Fiscal Financing Agreement of a Maa-nulth First Nation;

**“Toquaht Nation”** means that Maa-nulth First Nation referred to as the “Toquaht Nation” established as a legal entity in accordance with this Agreement;

**“Total Allowable Migratory Bird Harvest”** means the maximum number of a Designated Migratory Bird Population that may be harvested by all harvesters in a specified period of time;

**“Total Allowable Wildlife Harvest”** means the maximum number of a Designated Wildlife Species that may be harvested by all harvesters each year in the Wildlife Harvest Area, or any portion thereof;

**“Trade and Barter”** does not include sale;

**“Transaction Tax”** includes a tax imposed under:

- a. the *Motor Fuel Tax Act*;
- b. the *Social Service Tax Act*, (except those sections pertaining to alcohol);
- c. the *Tobacco Tax Act*;
- d. the *Property Transfer Tax Act*;
- e. the *Hotel Room Tax Act*;
- f. section 4 of the *Insurance Premium Tax Act*; and
- g. Part IX of the *Excise Tax Act*;

**“Transition Date”** means, in respect of each Maa-nulth First Nation, that date which is the earlier of:

- a. the tenth anniversary of the Effective Date; or
- b. the date upon which that Maa-nulth First Nation becomes a member of the applicable Regional District and appoints a Regional District Board Director to the Regional District Board of that Regional District in accordance with 14.3.1;

**“Transition Period”** means, in respect of each Maa-nulth First Nation, the period of time from the Effective Date to the Transition Date of that Maa-nulth First Nation;

**“Treaty Vote”** means the ratification vote by the Eligible Voters on the List of Eligible Voters of a Maa-nulth First Nation on this Agreement in accordance with Chapter 28 Ratification;

**“Uchucklesaht Tribe”** means that Maa-nulth First Nation referred to as the “Uchucklesaht Tribe” established as a legal entity in accordance with this Agreement;

**“Ucluelet First Nation”** means that Maa-nulth First Nation referred to as the “Ucluelet First Nation” established as a legal entity in accordance with this Agreement;

**“Water Licence”** means a licence, approval or other authorization under Provincial Law for the storage, diversion, extraction or use of water and for the construction, maintenance and operation of works;

**“Wildfire Suppression Agreement”** means an agreement entered into by British Columbia, Canada and a Maa-nulth First Nation in accordance with 9.6.2;

**“Wildlife”** means:

- a. all vertebrate and invertebrate animals, including all mammals, birds, 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 Council”** means the wildlife council established by the Maa-nulth First Nations in accordance with 11.4.1;

**“Wildlife Harvest Area”** means the area identified as the “Maa-nulth Wildlife Harvest Area” in Appendix Q, but does not include lands owned by Canada;

**“Wildlife Harvest Plan”** means a harvest plan developed in accordance with 11.8.3 or 11.9.0; and

**“Wildlife Sharing Agreement”** means an agreement between a Maa-nulth First Nation and another First Nation entered into in accordance with 11.1.14.

If you would like more information about the Maa-nulth First Nations Final Agreement contact:

**Canada**

Indian and Northern Affairs Canada  
600 - 1138 Melville Street  
Vancouver BC V6E 4S3  
1-800-567-9604  
[www.ainc-inac.gc.ca](http://www.ainc-inac.gc.ca)  
[infopubs@ainc-inac.gc.ca](mailto:infopubs@ainc-inac.gc.ca)

**Maa-nulth First Nations**

Maa-nulth First Nations  
3019 B 4th Avenue  
Port Alberni BC V9Y 2B8  
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**British Columbia**

Ministry of Aboriginal Relations  
and Reconciliation  
PO Box 9100 Stn Prov Govt  
Victoria BC V8W 9B1  
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