



BRITISH  
COLUMBIA



Canada

# Northern Secwepemc te Qelmucw Treaty Negotiations

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## AGREEMENT IN PRINCIPLE

IN WITNESS WHEREOF the parties hereby execute this Agreement in Principle this 22<sup>nd</sup> day of July, 2018, at Tsq'escen', British Columbia.

**FOR STSWECEM'C XGAT'EM**



Patrick Harry  
Chief



Witnessed by:

**FOR T'EXELC**



Ann Louie  
Chief



Witnessed by:

**FOR TSQ'ESCEN'**



Helen Henderson  
Chief




Witnessed by:

**FOR XATS'ULL**



Andrea Gilbert  
Chief



Witnessed by:



**FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA**



Her Majesty the Queen in Right of  
Canada as represented by:

The Honorable Carolyn Bennett, P.C.,  
M.P.  
Minister of Crown-Indigenous Relations



Witnessed by:

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



Her Majesty the Queen in Right of British  
Columbia as represented by:

The Honorable Scott Fraser,  
Minister of Indigenous Relations and  
Reconciliation



Witnessed by:

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**PREAMBLE**

WHEREAS:

- A. NStQ are aboriginal people of Canada who assert that their culture, language, tradition and identity are tied to Secwepemcul'ecw;
- B. NStQ is part of the Secwepemc Nation, and asserts that it has occupied, protected and benefited from Secwepemcul'ecw since time immemorial;
- C. The *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of aboriginal peoples of Canada and the courts have stated that aboriginal rights include aboriginal title;
- D. NStQ asserts that it has aboriginal title to its Traditional Territory within Secwepemcul'ecw and has never ceded, surrendered, or in any way relinquished that title and will continue to maintain its connection to Secwepemcul'ecw as will be described in the Final Agreement;
- E. NStQ asserts that it has aboriginal rights and has never ceded, surrendered or in any way relinquished those rights and will continue to maintain those rights as will be described in the Final Agreement;
- F. NStQ asserts that it has an inherent right of self-government, and the Government of Canada has asserted that it will negotiate self-government based on its policy that the inherent right to self-government is an existing Aboriginal Right within the meaning of section 35 of the *Constitution Act, 1982*;
- G. The courts have stated that reconciliation of the prior presence of Aboriginal People and the assertion of sovereignty by the Crown is best achieved through negotiation and agreement rather than through litigation;
- H. The Parties intend to negotiate a Final Agreement that will provide a basis for reconciliation and a government to government relationship;

# NORTHERN SECWEPENC TE QELMUCW TREATY NEGOTIATIONS

## DRAFT AGREEMENT IN PRINCIPLE

## Preamble

- I. NStQ will preserve, protect, and enhance the heritage, language, culture, and economy of the NStQ;
- J. The Parties desire certainty in respect of NStQ rights including ownership and use of lands and resources, NStQ law-making authority and the relationship of Federal Law, Provincial Law and NStQ Law;
- K. The Parties intend that the NStQ Final Agreement will achieve certainty by agreeing to the continuation of rights as expressed in the NStQ Final Agreement, rather than by extinguishment or surrender of rights;
- L. The Parties have negotiated this Agreement under the British Columbia Treaty Process;
- M. This Agreement sets out the principles agreed by the Parties as the basis for negotiating a Final Agreement; and
- N. The Parties acknowledge that, following completion of this Agreement, there will be further negotiations on both quantum and content of the components set out in this Agreement prior to the Final Agreement, without pre-judging the nature or extent of those changes.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

## CHAPTER 1 DEFINITIONS

**“Administrative Penalty”** means a sanction or monetary penalty assessed and imposed under a statutory regime in which liability for breach of a regulatory requirement and the sanction or quantum of the monetary penalty is determined through an administrative process, rather than through prosecution or through an action in the civil courts;

**“Agreed-Upon Programs and Services”** means those programs and services agreed to by the Parties to be made available by NStQ, towards which Canada or British Columbia agrees to contribute funding, and set out in a Fiscal Financing Agreement;

**“Agreement”** means this Agreement-in-Principle, including all schedules and appendices;

**“Ancient Human Remains”** means human remains found within the NStQ Territory that are likely of aboriginal ancestry and not the subject of a police or coroner investigation;

**“Aquatic Plants”** includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all freshwater flowering plants, ferns and mosses, growing in water or in soils that are saturated during most of the growing season;

**“Archival Materials”** means documents that have enduring value and include unpublished manuscripts, correspondence, photographs, audiovisual materials or other multimedia, cartographic and pictorial materials regardless of the form in which they are preserved, but does not include institutional records currently in use, publications or other expressive works produced for public consumption;

**“Associated Burial Objects”** means an object that, by its attributes or location, can be demonstrated to have been placed in direct association with the burial or a human being of NStQ ancestry as part of a burial practice or ritual;

**“Assurance Fund”** means the assurance fund as defined under the *Land Title Act*;

**“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;



# NORTHERN SECWEPENC TE QELMUCW TREATY NEGOTIATIONS

## DRAFT AGREEMENT IN PRINCIPLE

## Definitions

- c. under Water Licences issued before, and Water Licences issued under applications made before, a date to be agreed by the Parties prior to the Final Agreement,

and taking into account any applicable requirements under Federal and Provincial Law;

**“Band”** means a ‘band’ as defined in the *Indian Act*;

**“Band List”** means a list of persons that is maintained under section 8 in the *Indian Act*;

**“Best Interests of the NStQ Child”** means: the importance of preserving the child’s cultural identity shall be considered in determining the child’s best interest as well as ensuring:

- a. the child’s safety;
- b. the child’s physical and emotional needs and level of development;
- c. the importance of continuity in the child’s care;
- d. the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- e. the child’s cultural, racial, linguistic and religious heritage;
- f. the child’s views; and
- g. the effect on the child if there is delay in making a decision;

**“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*;

**“British Columbia Hydro and Power Authority”** means the British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, or its successor;

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

**“Capital Transfer”** means an amount paid by Canada and British Columbia under the Capital Transfer and Negotiations Loan Repayment Chapter of the Final Agreement;

**“Child”** means an individual under the age of majority in accordance with Provincial Law;

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**“Child Care”** means the care, supervision, social or educational training, including pre-school 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 person 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 NStQ Law under paragraph 18.2.1 of the Education Chapter;

**“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 NStQ Law;

**“Child in Need of Protection”** means a Child in need of protection under 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 of 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 centers, Crown counsel and parole boards;
- c. supervision of diverted offenders and development and operation of diversion programs;
- d. community-based programs and interventions for offenders, including alternative to custody programs;
- e. identification of and referral to appropriate community resources;
- f. 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;

**“Conflict”** means actual conflict in operation or operational incompatibility;

**“Consult”** and **“Consultation”** mean provision to a Party of:

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## Definitions

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

**“Contaminated Site”** means a contaminated site as defined in the *Environmental Management Act*;

**“Contamination”** means contamination as defined in the *Environmental Management Act*;

**“Crown”** means Canada or British Columbia, as the case may be;

**“Crown Corridor”** means the lands set out in Appendix E;

**“Cultural Site”** means a site of archaeological, historical, cultural or ceremonial significance and a burial site including an individual grave but not including title to Ancient Human Remains;

**“Direct”** 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 a person designated by the Minister as director under the *Child, Family and Community Service Act* or the *Adoption Act*;

**“Disagreement”** means any matter to which the Dispute Resolution Chapter of the Final Agreement applies as set out in that Chapter;

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

**“Domestic Purposes”** means food, social and ceremonial purposes;

**“Effective Date”** means the date, agreed to by the Parties, upon which the Final Agreement takes effect;

**“Eligibility Criteria”** means the criteria listed in paragraph 29.2.1 of the Eligibility and Enrolment Chapter;

**“Eligible Voter”** means an individual who:

- a. is eligible to vote in accordance with section 32.5.0 of the Ratification Chapter; or
- b. votes in accordance with paragraph 32.5.2 and whose vote is counted under paragraph 32.5.3 of the Ratification Chapter;

**“Enrolment Appeal Board”** means the enrolment appeal board established under paragraphs 29.7.1 and 29.7.2 of the Eligibility and Enrolment Chapter;

**“Enrolment Committee”** means the enrolment committee established under paragraph 29.6.1 of the Eligibility and Enrolment Chapter;

**“Enrolment Register”** means a list of individuals who are enrolled in accordance with the Eligibility and Enrolment Chapter;

**“Environment”** means the components of the Earth and includes:

- a. air, land and water, including all layers of the atmosphere;
- b. all organic and inorganic matter and living organisms; and
- c. the interacting natural systems that include components referred to in subparagraphs a and b;

**“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;
- b. constitutes or may constitute a danger to the Environment on which human life depends; or
- c. constitutes or may constitute a danger in Canada to human life or health;

**“Essential Personal Property”** means personal property held by NStQ or an NStQ Public Institution that is:

- a. essential to the day-to-day operations of NStQ or an NStQ Institution; or
- b. essential to the delivery of any programs and services by NStQ or an NStQ Institution;

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## Definitions

“**FDDIPI**” means the Final Domestic Demand Implicit Price Index, published regularly by Statistics Canada in CANSIM Table 380-006: Price Indexes, Gross Domestic Product or replacement series as specified by Statistics Canada;

“**Federal Expropriating Authority**” means the Government of 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, by-laws and the common law;

“**Federal or Provincial Law**” means Federal Law or Provincial Law;

“**Federal Project**” means a project as defined in the *Canadian Environmental Assessment Act, 2012* that is subject to an Environmental Assessment under that Act;

“**Federal Settlement Legislation**” means the Act of Parliament that gives effect to the Final Agreement;

“**Final Agreement**” means the treaty among NStQ, Canada and British Columbia that will be negotiated based on this Agreement;

“**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;

“**First Nation Negotiation Support Agreement**” means any agreement respecting loan funding allocated to NStQ or the NStQ Government by Canada directly, or through the British Columbia Treaty Commission or by British Columbia Treaty Commissioners;

“**Fiscal Financing Agreement**” means an agreement negotiated among the Parties in accordance with the Fiscal Relations Chapter of the Final Agreement;

“**Forest Practices**” means Timber harvesting, road construction, road maintenance, road use, road deactivation, silviculture treatments, for the purposes of brushing, botanical forest products collecting, and fire use, but does not include Timber marking or scaling, manufacture of Timber, or export of Timber;

“**Forest Resources**” means all Timber Resources and Plants, including all biota, but does not include Wildlife, Migratory Birds, water, fish or Aquatic Plants;

“**Former NStQ Indian Reserves**” means the lands that:

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- a. were, on the day before the Effective Date, Indian Reserves set apart for the use and benefit of the NStQ Indian Bands; and
- b. are identified for illustrative purposes in Appendix B-1;

**“Fossils”** means remains, traces or imprints of animals or plants that have been preserved in rocks and includes bones, shells, casts and tracks;

**“Gathering Area”** means an area to be defined in the Final Agreement;

**“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 or water vapour obtained from a subsurface source, but does not include:

- a. water that has a temperature of less than 80°C at the point where it reaches the surface; or
- b. hydrocarbons;

**“Groundwater”** means water below the surface of the ground;

**“Harvest Level”** means:

- a. a defined harvest quantity or quota; or
- b. a formula for calculating a harvest quantity or quota, if required as a conservation measure;

**“Heritage Site”** means a site of archaeological, historical or cultural significance and includes graves and burial sites;

**“Implementation Committee”** means the committee established in accordance with section 30.4.0 of the Implementation Chapter;

**“Indian”** has the same meaning as in the *Indian Act*;

**“Indian Reserve”** means “reserve” as defined in the *Indian Act*;

**“Initial Enrolment Period”** means the period of up to 2 years time, prior to the Effective Date;

**“Intellectual Property”** means any intangible property right resulting from intellectual activity in the industrial, scientific, literary, or artistic fields, including, but not limited to, any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders’ rights;

**“Interest”** includes estates, interests, charges, mineral claims, encumbrances, licences and permits;

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## Definitions

“**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;

“**Land Title Office**” means the Land Title Office as established and described in the *Land Title Act*;

“**Local Government**” means “local government” as defined in the *Local Government Act*;

“**Membership List**” means a list maintained by a Band which has control of its membership under section 10 of the *Indian Act*;

“**Migratory Birds**” means migratory birds as defined under Federal Law enacted further to international conventions, and, for greater certainty, includes their eggs and inedible by-products, such as feathers and down;

“**Migratory Bird Harvest Area**” means an area to be defined in the Final Agreement;

“**Minerals**” means an ore of metal or a natural substance that can be mined and includes:

- a. rock and other materials from mine tailings, dumps and previously mined deposits of minerals.
- b. dimension stone; and
- c. precious and base minerals;

“**Minister**” means the federal or provincial minister having responsibility 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;

“**National Park**” means the lands and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law and includes a national park reserve;

“**Natural Gas**” means all fluid hydrocarbons that are not defined as Petroleum, and includes coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well;

“**NAV CANADA**” means the “Corporation” as that term is defined in the *Civil Air Navigation Services and Commercialization Act*;

“**Neutral**” means an individual appointed to assist the Parties to resolve a Disagreement and, except in subparagraph 28.5.5 e of the Dispute Resolution Chapter, includes an arbitrator;

# NORTHERN SECWEPEMC TE QELMUCW TREATY NEGOTIATIONS

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“**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-Citizen**” means an individual who has reached the age of majority under Provincial Law, who is ordinarily resident on NStQ Treaty Settlement Lands and who is not an NStQ Citizen;

“**Northern Secwepemc te Qelmucw**” or “**NStQ**” means the collectivity of those individuals eligible to be enrolled under the Final Agreement;

“**NStQ Capital**” means all land, cash, and other assets transferred, or recognized as owned by, NStQ under the Final Agreement;

“**NStQ Certificate**” means a certificate of the NStQ Government described in subsections 25.3 and section 27 of Schedule 1 of the *Land Title Act*;

“**NStQ Child**” means a Child who is an NStQ Citizen;

“**NStQ Citizen**” means an individual who is enrolled in accordance with the Eligibility and Enrolment Chapter of the Final Agreement;

“**NStQ Community**” means any one of the following:

- a. Canim Lake Indian Band (Tsq’escen’);
- b. Soda Creek Indian Band (Xat’sull);
- c. Stswecem’c / Xgat’tem First Nation (Canoe Creek – Dog Creek);or
- d. Williams Lake Indian Band (T’exelc or Sugarcane);

“**NStQ Community Watershed Lands**” means the NStQ Treaty Settlement Lands described as “Community Watershed” in Appendix N;

“**NStQ Constitution**” means the Constitution of NStQ described in the Governance Chapter of the Final Agreement;

“**NStQ Corporation**” means a corporation that is incorporated under Federal or Provincial Law, all of the shares of which are owned legally and beneficially, directly or indirectly, by NStQ or an NStQ settlement trust, or any combination of those entities;

“**NStQ Cultural Materials**” means objects or collections of objects created by, traded to, commissioned by or given as a gift to an NStQ Citizen or an NStQ Community, or that originated from an NStQ Community or an NStQ Cultural Site and that has past importance to Secwepemc culture or spiritual practices, but



does not include any object traded to, commissioned by or given as a gift to an individual;

**“NStQ Cultural Sites”** means sites of archaeological, historical, cultural or ceremonial significance and burial sites including individual graves;

**“NStQ 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 an NStQ Citizen; or
- b. at least one of the Children is an NStQ Child;

**“NStQ Government”** means the government provided for under the NStQ Constitution and the Governance Chapter of the Final Agreement;

**“NStQ Indian Band”** means one of the Canim Lake Indian Band, the Soda Creek Indian Band, the Stswecem’c Xgat’tem First Nation and the Williams Lake Indian Band, as each of which was immediately before the Effective Date a “band” as defined in the *Indian Act*;

**“NStQ Indian Bands”** means every NStQ Indian Band;

**“NStQ Institution”** means the NStQ Government or an NStQ Public Institution;

**“NStQ Law”** means a law made under an NStQ law-making authority set out in the Final Agreement and includes the NStQ Constitution;

**“NStQ People”** means those individuals who are eligible to be enrolled under the Final Agreement in accordance with the Eligibility and Enrolment Chapter;

**“NStQ Private Lands”** means NStQ Treaty Settlement Lands that are designated as private lands by NStQ in accordance with the Final Agreement;

**“NStQ Project”** means a “project” on NStQ Treaty Settlement Lands that is subject to an Environmental Assessment under NStQ Law, but does not include a Provincial Project;

**“NStQ Public Institution”** means an NStQ Government body, board, commission or any other similar entity established pursuant to NStQ Law, including a school board or health board;

**“NStQ Public Lands”** means NStQ Treaty Settlement Lands other than NStQ Private Lands;

**“NStQ Public Officer”** means:

- a. a member, commissioner, director, or trustee of an NStQ Public Institution;

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- b. a director, officer or employee of an NStQ 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 NStQ or an NStQ Institution;
- d. an election official within the meaning of NStQ Law; or
- e. a volunteer who participates in the delivery of programs or services by a body referred to in subparagraph b. and c. under the supervision of a director, officer or employee that body;

**“NStQ Right to Gather Plants”** means the right to gather Plants under the Final Agreement;

**“NStQ Right to Harvest Migratory Birds”** means the right to harvest Migratory Birds under the Final Agreement;

**“NStQ Right to Harvest Wildlife”** means the right to harvest Wildlife under the Final Agreement;

**“NStQ Road”** means any road, including the Road Allowance, that forms part of NStQ Treaty Settlement Lands;

**“NStQ Section 35 Rights”** means the rights, anywhere in Canada, of NStQ, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**“NStQ Territory”** means the area as set out in Appendix A;

**“NStQ Treaty Settlement Lands”** means the lands identified in paragraph 3.1.1 of the Lands Chapter and as identified for illustrative purposes in Appendix B;

**“Official Voters List”** means the list of Eligible Voters delineated by NStQ Community, prepared by the Ratification Committee under paragraph 32.4.3;

**“Other NStQ Lands”** means the lands owned by NStQ that are not NStQ Treaty Settlement Lands;

**“Parties”** mean NStQ, Canada and British Columbia and **“Party”** means any one of them;

**“Person”**, for the purposes of the Taxation Chapter, 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;

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**“Placer Minerals”** means an ore of metal, including all base and precious metals, 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, and includes rock or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals;

**“Plants”** means all flora and fungi, including medicinal plants, bushes, roots, moss, mushrooms, ferns, floral greens, herbs, berries, spices and seeds, but does not include:

- a. Aquatic Plants, except for those gathered for medicinal purposes; or
- b. Timber Resources, except for bark, boughs, burls, branches, sap, cones and roots of Timber Resources;

**“Private Lands”** means land other than Crown land;

**“Provincial Expropriating Authority”** means a provincial ministry or agency or any person who has the authority to expropriate land or an Interest in land under provincial legislation;

**“Provincial Law”** includes provincial statutes, regulations, ordinances, Orders-in-Council, by-laws and the common law;

**“Provincial Protected Area”** means provincial Crown land established or designated as a provincial park, ecological reserve, conservancy or protected area under Provincial Law;

**“Provincial Project”** means a reviewable project, as defined in the British Columbia *Environmental Assessment Act*, that is subject to an Environmental Assessment under that Act;

**“Provincial Road”** means a road under the administration and control of British Columbia;

**“Provincial Settlement Legislation”** means the Act of the Legislature of British Columbia that gives effect to the Final Agreement;

**“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 coal bed gas), electricity, steam, water, sewage, or any other agent for the production of light, heat, cold or power; or

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## Definitions

- 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 and a corporation, including a Crown corporation or agent of the Crown;

**“Railway”** means a company, established under Federal or Provincial Law, authorized to construct, own or operate a railway, including:

- a. all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels or other structures connected with the railway; and
- b. communications or signaling systems and related facilities and equipment used for railway purposes;

**“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 or fence, 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 livestock grazing, foraging and browsing;

**“Ratification Committee”** means the committee established under the Ratification Chapter of the Final Agreement;

**“Registrar”** means a “registrar” as defined under the *Land Title Act*;

**“Regional Hospital District”** means the applicable regional hospital district as established under the *Hospital District Act*;

**“Right of Way”** means an interest in a defined area of NStQ Treaty Settlement Land on which a grant is given by NStQ for a specified use, including use for a road, Public Utility or Railway;

**“Road Allowance”** means the land used for a road or a highway, as surveyed, and includes the travelled portion, the shoulders and adjacent ditches, if any;

“**Safety and Well-Being of Children**” includes the principle that in determining the child’s best interest the cultural identity of aboriginal children must be considered along with other principles that include:

- a. children are entitled to be protected from abuse, neglect and harm or threat of harm;
- b. a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
- c. if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- d. the child’s views should be taken into account when decisions relating to a child are made;
- e. kinship ties and a child’s attachment to the extended family should be preserved if possible; and
- f. decisions relating to children should be made and implemented in a timely manner;

“**Secwepemctsin**” means the language of the Secwepemc people;

“**Settlement Legislation**” means the Federal Settlement Legislation and the Provincial Settlement Legislation;

“**Site Profile**” means a “site profile” as defined in the *Environmental Management Act*;

“**Specific Claim Policy**” means the policy described in Canada’s *Specific Claims Policy and Process Guide (2009)*;

“**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**” include the following:

- a. earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash and rock;
- c. Minerals, including Placer Minerals;
- d. coal, Petroleum and Natural Gas;
- e. Geothermal Resources; and

f. Fossils;

“**Subsurface Tenures**” means those tenures listed in Part 4 of Appendix F-8;

“**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;

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

“**Trade and Barter**” does not include sale;

“**Treaty First Nation Director**” means an elected member of a First Nation government who is qualified under Provincial Law to be appointed to a regional district board;

“**Trapline**” means a “trapline” registered under Provincial Law;

“**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 Canada, British Columbia and NStQ under the Forest and Range Resources Chapter of the Final Agreement;

“**Wildlife**” means:

- a. all vertebrate and invertebrate animals, including 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 Harvest Area**” means an area to be defined in the Final Agreement; and

“**Wildlife Management Area**” means provincial Crown land established as a Wildlife management area under Provincial Law.

**NORTHERN SECWEPENC TE QELMUCW TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Definitions**

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## CHAPTER 2 GENERAL PROVISIONS

### 2.1.0 NATURE OF AGREEMENT IN PRINCIPLE

- 2.1.1 This Agreement will form the basis for concluding the Final Agreement.
- 2.1.2 As soon as practicable after the approval of this Agreement, the Parties will begin to negotiate the Final Agreement.
- 2.1.3 This Agreement, and for greater certainty any of its provisions, are not legally binding on any of the Parties and are without prejudice to the respective legal positions of the Parties prior to the Effective Date. Neither this Agreement nor any related communications over the course of these negotiations will be used against any of the Parties in any court proceeding or any other forum, including international fora, or be construed as creating, abrogating, negating, denying, recognizing, defining or amending any rights or obligations of any of the Parties except as expressly provided for in the Final Agreement and only upon the Effective Date.
- 2.1.4 Prior to the Final Agreement, the Parties will address matters relating to fish and Aquatic Plants, and the Parties will review other parts of the Final Agreement that may be affected and make any necessary changes, and the Final Agreement will reflect the agreement of the Parties.

### 2.2.0 NATURE OF THE FINAL AGREEMENT

- 2.2.1 Upon ratification of the Final Agreement by the Parties, the Final Agreement will be a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 2.2.2 Upon ratification of the Final Agreement by the Parties, the Final Agreement will be binding on the Parties and on all persons, and can be relied upon by the Parties and all persons. Unless and until ratified, the Final Agreement will have no force or effect.
- 2.2.3 Canada will recommend to Parliament that the Federal Settlement Legislation provide that the Final Agreement is approved, given effect, declared valid, and has the force of law.
- 2.2.4 British Columbia will recommend to the Legislature of British Columbia that the Provincial Settlement Legislation provide that the Final Agreement is approved, given effect, declared valid, and has the force of law.



**2.3.0 REPRESENTATION AND WARRANTY**

- 2.3.1 NStQ represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, NStQ has the authority to enter into the Final Agreement on behalf of all NStQ People who, through NStQ, have or may exercise any aboriginal rights, including aboriginal title, in Canada, or who may make any claim in respect of those rights.
- 2.3.2 Canada and British Columbia represent and warrant to NStQ that, in respect of the matters dealt with in the Final Agreement, they have the authority to enter into the Final Agreement, within their respective authorities.
- 2.3.3 NStQ will pursue discussions with neighbouring First Nations and will seek to resolve any boundary disputes before the Final Agreement.

**2.4.0 CONSTITUTION OF CANADA**

- 2.4.1 The Final Agreement will not alter the Constitution of Canada, including:
- a. the distribution of powers between Canada and British Columbia;
  - b. the identity of NStQ as aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.
- 2.4.2 The *Canadian Charter of Rights and Freedoms*, including sections 1 and 25, will apply to NStQ in respect of all matters within its authority.
- 2.4.3 The Final Agreement will provide that there will be no “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for NStQ, and that there will be no “reserves” as defined in the *Indian Act* for the use and benefit of NStQ and, for greater certainty, that NStQ Treaty Settlement Lands will not be “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867*, and will not be “reserves” as defined in the *Indian Act*.

**2.5.0 INTERNATIONAL LEGAL OBLIGATIONS**

- 2.5.1 The Final Agreement will provide for the consistency of NStQ Law and other exercises of power with Canada’s International Legal Obligations.
- 2.5.2 The Final Agreement will address consultation with NStQ within the International Legal Obligation provisions.

**2.6.0 APPLICATION OF LAWS**

- 2.6.1 If an authority of British Columbia referred to in the Final Agreement is delegated from Canada and:
- a. the delegation of that authority is revoked; or
  - b. if a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- the reference to British Columbia will be deemed to be a reference to Canada.
- 2.6.2 If an authority of Canada referred to in the Final Agreement is delegated from British Columbia and:
- a. the delegation of that authority is revoked; or
  - b. if a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- the reference to Canada will be deemed to be a reference to British Columbia.
- 2.6.3 Federal Law, Provincial Law, and NStQ Law will apply to NStQ, the NStQ Government, NStQ Corporations, NStQ Public Institutions, NStQ Citizens and NStQ Treaty Settlement Lands as provided for in the Final Agreement.
- 2.6.4 Unless otherwise provided in the Final Agreement, NStQ Law will not apply to Canada or British Columbia.
- 2.6.5 The Final Agreement will prevail to the extent of any inconsistency with Federal or Provincial Law.
- 2.6.6 Federal and Provincial Law and NStQ Law may apply concurrently as provided for in the Final Agreement.
- 2.6.7 For greater certainty, any NStQ Law that is inconsistent with the Final Agreement is of no force or effect to the extent of that inconsistency.
- 2.6.8 The Final Agreement will confirm that Federal Settlement Legislation will prevail over other Federal Law to the extent of any Conflict, and Provincial Settlement Legislation will prevail over other Provincial Law to the extent of any Conflict.

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- 2.6.9 Any licence, permit or other authorization, to be issued by Canada or British Columbia as a result of the Final Agreement, will be issued under Federal or Provincial Law, as the case may be, and will not form part of the Final Agreement, but the Final Agreement will prevail to the extent of any inconsistency with the licence, permit or other authorization.
- 2.6.10 Notwithstanding any other rule of priority in the Final Agreement, Federal and Provincial Law will prevail over NStQ Law to the extent of a Conflict involving a provision of NStQ Law that has a double aspect with or an incidental impact on:
- a. any area of federal or provincial jurisdiction for which NStQ does not have any law-making authority set out in the Final Agreement; or
  - b. any area of jurisdiction for which Federal or Provincial Law prevails as set out in the Final Agreement.
- 2.6.11 Notwithstanding any other rule of priority in the Final 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, will prevail to the extent of a Conflict with NStQ Law.
- 2.6.12 For greater certainty, the law-making authority of NStQ, set out in the Final Agreement, will not include the power to make laws in respect of criminal law, criminal procedure, Intellectual Property, the official languages of Canada, aeronautics, navigation and shipping, or labour relations and working conditions.
- 2.6.13 In relation to lands administered or occupied by the Minister of National Defence, nothing in the Final Agreement will limit or affect:
- a. the authority of Canada to regulate access and use; or
  - b. the authority of the Minister of National Defence to grant or deny access.
- 2.6.14 Nothing in the Final Agreement will provide NStQ a right to access, a right to harvest Forest Resources, fish, Plants, Wildlife, or Migratory Birds, or a right to use surface water or any other resource on lands that are administered or occupied by the Minister of National Defence, or in areas temporarily being used for military exercises from the time that notice has been given to the NStQ Government until the temporary use is completed.
- 2.6.15 The Final Agreement will not preclude NStQ from entering into an agreement with a federal department or agency in respect of access and

natural resource harvesting by NStQ Citizens on lands administered or in use by that department or agency in accordance with that agreement and Federal and Provincial Law.

**2.7.0 OTHER RIGHTS, BENEFITS AND PROGRAMS**

- 2.7.1 The Final Agreement will not affect the ability of NStQ Citizens who are Canadian citizens or permanent residents of Canada to enjoy the rights and benefits for which they would otherwise be eligible as Canadian citizens or permanent residents of Canada.
- 2.7.2 Subject to paragraph 2.7.3, nothing in the Final Agreement will affect the ability of NStQ, the NStQ Government, NStQ Public Institutions, NStQ Corporations, or NStQ Citizens to participate in, or benefit from, federal or provincial programs for aboriginal people, registered Indians or other Indians, in accordance with general criteria established for those programs from time to time.
- 2.7.3 NStQ Citizens will be eligible to participate in programs established by Canada or British Columbia and to receive public services from Canada or British Columbia, in accordance with general criteria established for those programs or services from time to time, to the extent that NStQ has not assumed responsibility for those programs or public services under a Fiscal Financial Agreement or other funding agreement.
- 2.7.4 Nothing in the Final Agreement will affect the ability of NStQ, NStQ Citizens, or NStQ Corporations to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
- 2.7.5 As of the Effective Date, the *Indian Act* will not apply to NStQ, the NStQ Government, NStQ Public Institutions, NStQ Corporations, and NStQ Citizens, except for the purpose of determining whether an individual is an “Indian” and except as set out in the Transition Chapter and Taxation Chapter.

**2.8.0 JUDICIAL DETERMINATIONS IN RESPECT OF VALIDITY**

- 2.8.1 If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines any provision of the Final Agreement to be invalid or unenforceable:
  - a. the Parties will make best efforts to amend the Final Agreement to remedy or replace the provision; and

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b. the provision will be severable from the Final Agreement to the extent of the invalidity or unenforceability and the remainder of the Final Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.

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

2.8.3 A breach of the Final Agreement by a Party will not relieve any Party from its obligations under the Final Agreement.

### 2.9.0 SPECIFIC CLAIMS

2.9.1 Notwithstanding any other provision of the Final Agreement, nothing in the Final Agreement will preclude NStQ from pursuing claims in accordance with Canada's Specific Claims Policy.

2.9.2 For greater certainty, claims referred to in paragraph 2.9.1 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 NStQ, or an Indian Reserve for the use and benefit of NStQ.

### 2.10.0 CERTAINTY

2.10.1 The Final Agreement will constitute the full and final settlement in respect of any aboriginal rights, including aboriginal title, in Canada that NStQ may have.

2.10.2 The Final Agreement will exhaustively set out the NStQ Section 35 Rights, their attributes, and the geographic extent of those rights, and the limitations to those rights, to which the Parties will have agreed, and those rights will be:

a. any aboriginal rights, including aboriginal title, in Canada, modified as a result of the Final Agreement and the Settlement Legislation, of NStQ in and to NStQ Treaty Settlement Lands and other lands and resources in Canada;

b. the jurisdictions, authorities and rights of NStQ; and

c. the other NStQ Section 35 Rights.

2.10.3 Notwithstanding the common law, as a result of the Final Agreement and the Settlement Legislation, any aboriginal rights, including any aboriginal title, of NStQ, as they may have existed anywhere in Canada before the Effective Date, including their attributes and the geographic extent of

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those rights, will be modified, and will continue as modified, as set out in the Final Agreement.

- 2.10.4 For greater certainty, any aboriginal title of NStQ anywhere that it may have existed in Canada before the Effective Date, including its attributes and geographic extent of those rights, will be modified and continue as the estates in fee simple to those areas identified in the Final Agreement as NStQ Treaty Settlement Lands.
- 2.10.5 The purpose of modification referred to in paragraph 2.10.3 will be to ensure that as of the Effective Date:
- a. NStQ has, and can exercise, the NStQ Section 35 Rights as set out in the Final Agreement, including the attributes and geographic extent of those rights, and the limitations to those rights, to which the Parties will have agreed;
  - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with the Final Agreement; and
  - c. Canada, British Columbia and all other persons do not have any obligations with respect to any aboriginal rights, including aboriginal title, that NStQ may have to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, the NStQ Section 35 Rights set out in the Final Agreement.
- 2.10.6 NStQ will release Canada, British Columbia and all other persons from all suits, actions, claims, proceedings or demands, of whatever kind, whether known or unknown, that NStQ 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 NStQ as it may have existed anywhere in Canada before the Effective Date.
- 2.10.7 The Final Agreement will provide that NStQ 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. 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 NStQ as it may have existed anywhere in Canada before the Effective Date; or
- b. the existence in Canada of an aboriginal right, including aboriginal title, of NStQ that is determined to be other than, or different in attributes or geographic extent from, the NStQ Section 35 Rights set out in the Final Agreement.
- 2.10.8 The Final Agreement will provide that 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 under an indemnity as set out in the Final 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.
- 2.10.9 Approval of this Agreement, based on the modification of NStQ Section 35 Rights certainty technique as described in section 2.10.0, does not preclude the Parties from discussing and agreeing to a different certainty technique prior to the Final Agreement. Any agreement to a different technique may require changes to other provisions of the Final Agreement that may be affected.

### 2.11.0 CONSULTATION

- 2.11.1 In respect of an NStQ Section 35 Right, the following is an exhaustive list of the consultation obligations of Canada and British Columbia:
- a. as provided in the Final Agreement;
- b. as may be provided in federal or provincial legislation;
- c. as may be provided in an agreement with NStQ other than the Final Agreement; and
- d. as may be required under the common law in relation to an infringement of that right.
- 2.11.2 Prior to the Final Agreement, the Parties will negotiate any outstanding issues relating to consultation processes that may form part of the Final Agreement or other agreements between the Parties, including consultation on any future treaty or land claims agreements with any other aboriginal people.

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- 2.11.3 Nothing in the Final Agreement, nor any action or authority taken, exercised or carried out by Canada or British Columbia in accordance with the Final Agreement will be, or will be interpreted to be, an infringement of an NStQ Section 35 Right.

### 2.12.0 PROVINCIAL LAW

- 2.12.1 The Final Agreement will provide that 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 NStQ, the NStQ Government, NStQ Corporations, NStQ Public Institutions, NStQ Treaty Settlement Lands or NStQ Citizens, that Provincial Law, subject to the Federal Settlement Legislation, any other Act of Parliament will apply in accordance with the Final Agreement to NStQ, the NStQ Government, NStQ Corporations, NStQ Public Institutions, NStQ Treaty Settlement Lands or NStQ Citizens, as the case may be.

### 2.13.0 OTHER ABORIGINAL PEOPLE

- 2.13.1 Nothing in the Final Agreement will affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than NStQ.
- 2.13.2 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 NStQ, have a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of the Final Agreement:
- a. the provision of the Final Agreement will operate and have effect to the extent that it does not adversely affect those rights; and
  - b. if the provision of the Final Agreement cannot operate and have effect in a way that it does not adversely affect those rights, the Parties will make best efforts to amend the Final Agreement to remedy or replace the provision.
- 2.13.3 The Final Agreement will provide that 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 NStQ Section 35 Rights as set out in the Final Agreement:
- a. Canada or British Columbia, as the case may be, will provide NStQ with additional or replacement rights or other appropriate remedies;



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- b. at the request of NStQ, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies; and
- c. the dispute resolution process in relation to additional or replacement rights or other appropriate remedies will be negotiated prior to the Final Agreement.

### 2.14.0 AMENDMENT

- 2.14.1 Any Party may propose an amendment to the Final Agreement.
- 2.14.2 Before proceeding with an amendment to the Final Agreement, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.
- 2.14.3 If all Parties agree to amend the Final Agreement, the Parties will proceed as soon as practicable to agree on the wording of such an amendment.
- 2.14.4 Except where expressly provided otherwise in the Final Agreement, the provisions of the Final Agreement will only be amended by the consent of all Parties to the Final Agreement.
- 2.14.5 Except where expressly provided otherwise in the Final Agreement, the Parties will provide consent to an amendment to the Final Agreement in the following manner:
  - a. Canada, by order of the Governor-in-Council;
  - b. British Columbia, by resolution of the Legislative Assembly of British Columbia; and
  - c. NStQ, by a resolution adopted by a majority of elected members of the NStQ Government.
- 2.14.6 Where federal or provincial legislation is required to give effect to an amendment to the Final Agreement, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.
- 2.14.7 Each Party will give notice to the other Parties when consent in accordance with paragraph 2.14.4 has been given and, if applicable, when any legislation referred to in paragraph 2.14.5 has been brought into force.
- 2.14.8 Unless the Parties agree otherwise, an amendment to the Final Agreement takes effect and has the force of law on the date that the last

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Party required to give consent to the amendment satisfies the notice requirement in paragraph 2.14.7.

2.14.9 The Parties will agree to take the necessary steps to implement amended provisions of the Final Agreement after the amendment takes effect.

2.14.10 Amendments to the Final Agreement will be:

- a. published by Canada in the Canada Gazette;
- b. published by British Columbia in the British Columbia Gazette; and
- c. deposited by NStQ in the NStQ registry of laws established pursuant to the Final Agreement.

2.14.11 Where the Final Agreement provides that the Parties will amend the Final Agreement upon the happening of an event:

- a. the requirements for consent referred to in paragraphs 2.14.4 and 2.14.5 will not apply;
- b. paragraph 2.14.8 will not apply;
- c. as soon as possible after the happening of the event:
  - i. the Parties will take all steps necessary to conclude and give effect to the amendment including those steps referred to in paragraph 2.14.3 and, if applicable, paragraph 2.14.6; and
  - ii. each Party will provide notice to the other Parties when it has completed all of its respective requirements to conclude and give effect to the amendment; and
- d. the amendment will take effect on the date agreed by the Parties, but if no date is agreed to, on the date that the last Party provides notice to the other Parties that it has completed all of its requirements to conclude and give effect to the amendment.

2.14.12 Notwithstanding paragraphs 2.14.2 to 2.14.10, where:

- a. the Final Agreement will provide that:
  - i. the Parties, or any two of them, will negotiate and attempt to reach agreement in respect of a matter that will result in an amendment to the Final Agreement; and
  - ii. if agreement is not reached, the matter will be finally determined by arbitration in accordance with the Dispute Resolution Chapter of the Final Agreement; and,

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- b. those Parties have reached an agreement or the matter has been finally determined by arbitration,

the Final Agreement will be deemed to be amended on the date that the agreement or the decision of the arbitrator takes effect, as the case may be.

2.14.13 In respect of amendments contemplated by paragraph 2.14.12 the applicable Parties will:

- a. provide notice to the other Party of any agreement reached or any arbitrator's decision under paragraph 2.14.12; and
- b. agree on the wording or form of the amendment.

### 2.15.0 PERIODIC REVIEW

2.15.1 Prior to the Final Agreement, the Parties will negotiate language respecting the periodic review of the Final Agreement.

### 2.16.0 NOTICE

2.16.1 In paragraphs 2.16.1 to 2.16.6, "communication" includes a notice, document, request, response, approval, authorization, confirmation or consent.

2.16.2 Except as otherwise provided in the Final Agreement, a communication will be in writing and will be:

- a. delivered personally or by courier;
- b. transmitted by fax or email; or
- c. delivered by any method for which confirmation of delivery is provided.

2.16.3 A communication will be considered to have been given, made or delivered, and received:

- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- b. if transmitted by fax or email 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 delivered by any other method for which confirmation of delivery is provided at the start of business on the next business day after the

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business day on which it was received by the addressee or a responsible representative of the addressee.

- 2.16.4 In addition to paragraphs 2.16.1 and 2.16.2, the Parties may agree to give, make, or deliver a communication by means other than those provided in paragraph 2.16.3.
- 2.16.5 The Parties will provide to each other addresses for delivery of communications under the Final Agreement, and will deliver a communication to the address provided by each Party.
- 2.16.6 If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address, or transmitted to the fax number, of the intended recipient as set out below:

For: Canada  
Attention: Minister of Aboriginal Affairs and Northern Development  
Canada  
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, BC  
V8W 9E2  
Fax Number: (250) 953-4856

For: Northern Shuswap te Quel  
Attention:  
17 South 1<sup>st</sup> Avenue  
Williams Lake, BC V2G 1H4  
Fax: (250) 392-6158

### 2.17.0 FREEDOM OF INFORMATION AND PRIVACY

- 2.17.1 The Final Agreement will provide that, for the purposes of federal and provincial access to information and privacy legislation, information that NStQ provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.

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- 2.17.2 The Final Agreement will provide that if NStQ 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 NStQ information that is only available to a particular province or particular provinces or that is not available to any provinces.
- 2.17.3 The Final Agreement will provide that the Parties may enter into agreements with 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 legislation.
- 2.17.4 The Final Agreement will provide that Canada or British Columbia may provide information to NStQ in confidence, if NStQ has made a law or NStQ 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.
- 2.17.5 Notwithstanding any other provision of the Final Agreement:
- a. Canada and British Columbia are not required to disclose any information that they are required or authorized to withhold under any Federal 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 will not be 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 rule of privilege at law.

### 2.18.0 OBLIGATION TO NEGOTIATE

- 2.18.1 The Final Agreement will provide that whenever the Parties are obliged under any provision of the Final Agreement to negotiate and attempt to reach agreement, unless the Parties otherwise agree, all Parties will participate in the negotiations.
- 2.18.2 Where the Final Agreement provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in the Dispute Resolution Chapter, but none of the Parties are obliged to proceed to Stage Three under the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28.8.1 of the Dispute Resolution Chapter.

**2.19.0 ENTIRE AGREEMENT**

- 2.19.1 The Final Agreement will be the entire agreement among the Parties in respect of the subject matter of the Final Agreement and, except as set out in the Final Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting the Final Agreement.
- 2.19.2 The Schedules and Appendices to the Final Agreement form part of the Final Agreement.

**2.20.0 INTERPRETATION**

- 2.20.1 Except as set out in the Final Agreement, the provisions of the General Provisions Chapter of the Final Agreement will prevail over the provisions of the other Chapters of the Final Agreement to the extent of any inconsistency.
- 2.20.2 The Final Agreement will provide that there will be no presumption that doubtful expressions, terms or provisions in the Final Agreement are to be resolved in favour of any particular Party.
- 2.20.3 In the Final Agreement, unless the context requires otherwise,:
- a. the use of the word “will” will denote an obligation that, unless the Final Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
  - b. the word “may” will be construed as permissive and empowering;
  - c. the use of the word “including” will mean “including, but not limited to”, and the use of the word “includes” will mean “includes, but is not limited to”;
  - d. a reference in the Final Agreement to a “Chapter”, “paragraph”, “Schedule” or “Appendix” will mean a chapter, paragraph, schedule or appendix, respectively, of the Final Agreement;
  - e. a reference in a Chapter of the Final Agreement to a “paragraph”, “subparagraph” or “Schedule” will mean a paragraph, subparagraph or schedule to that Chapter;
  - f. headings and subheadings will be for convenience only, do not form a part of the Final Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of the Final Agreement;

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- g. a reference to a statute will include every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- h. the use of the singular will include the plural, and the use of the plural will include the singular;
- i. a reference to “Canada’s International Legal Obligations” will include those which are in effect on the Effective Date;
- j. a reference to “harvest” will include an attempt to harvest; and
- k. where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.

2.20.4 The interpretive provisions in section 2.20.0 apply to this Agreement with necessary changes as the context requires.

### 2.21.0 OFFICIAL LANGUAGES

2.21.1 For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to the Final Agreement, including the execution of the Final Agreement.

### 2.22.0 NO IMPLIED WAIVER

2.22.1 The Final Agreement will provide that a provision of the Final Agreement, or the performance by a Party of an obligation under the Final Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

2.22.2 The Final Agreement will provide that no written waiver of a provision of the Final Agreement, of performance by a Party of an obligation under the Final Agreement or of default by a Party of an obligation under the Final Agreement, will be a waiver of any other provision, obligation or subsequent default.

### 2.23.0 OTHER AGREEMENTS

2.23.1 No agreement, plan, guideline or other document made by a Party or Parties that is referred to in, or contemplated by, the Final Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by the Final Agreement is:

- a. part of the Final 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*.

**2.24.0 ASSIGNMENT**

2.24.1 Unless the Parties otherwise agree, the Final Agreement may not be assigned, either in whole or in part, by any Party.



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## CHAPTER 3 LANDS

### 3.1.0 GENERAL

- 3.1.1 On the Effective Date, NStQ Treaty Settlement Lands will comprise approximately 82,129.6 hectares, including:
- a. 11,643 hectares, more or less, of Former NStQ Indian Reserves, identified for illustrative purposes in Part 1 of Appendix B-1 as “Former NStQ Indian Reserve”, and legally described in Part 2 of Appendix B-1;
  - b. 70,486.6 hectares, more or less, of former provincial Crown land identified in Appendix B-2; and
  - c. former fee simple land in Appendix B-3.
- 3.1.2 In addition to the lands set out in paragraph 3.1.1, on the Effective Date, NStQ will own lands comprising approximately 175.5 hectares, including:
- a. 0.5 hectares, more or less, of former federal Crown land identified for illustrative purposes in Appendix C-1; and
  - b. 175 hectares, more or less, of former provincial Crown land identified for illustrative purposes in Appendix C-2.
- 3.1.3 Prior to the Final Agreement, the Parties will negotiate the status of lands illustrated in Appendices C-1 and C-2 as either NStQ Treaty Settlement Lands or Other NStQ Lands.

### 3.2.0 LAW-MAKING

- 3.2.1 NStQ may make laws in respect of:
- a. the use of NStQ Treaty Settlement Lands including management, planning, zoning and development; and
  - b. the creation, allocation, ownership and Disposition of Interests in NStQ Treaty Settlement Lands, including:
    - i. fee simple estates or any lesser Interest;
    - ii. mortgages;
    - iii. leases, licences, permits, easements and Rights of Way, including Rights of Way and covenants similar to those in sections 218 and 219 of the *Land Title Act*, and

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- iv. any conditions, provisos, restrictions, including restrictions on alienation, exceptions or reservations on such Interests.
- 3.2.2 NStQ may make laws in respect of the establishment and operation of an NStQ land title or land registry system for NStQ Treaty Settlement Lands that are not registered in the Land Title Office or for Interests that are not recognized under Federal or Provincial Law.
- 3.2.3 NStQ Law under paragraphs 3.2.1 and 3.2.2 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 3.2.4 NStQ Law under subparagraph 3.2.1.b. in respect of Interests that are recognized under Federal or Provincial Law will be consistent with Federal and Provincial Law in respect of Interests in land.

### 3.3.0 NSTQ TREATY SETTLEMENT LANDS

- 3.3.1 On the Effective Date, NStQ will own NStQ Treaty Settlement Lands in fee simple, and such estate will not be subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act* or any comparable limitation under Federal or Provincial Law. The estate in fee simple is the greatest estate known in common law.
- 3.3.2 NStQ may, in accordance with the Final Agreement, the NStQ Constitution, and NStQ Law, Dispose of Interests in NStQ Treaty Settlement Lands without the consent of Canada or British Columbia.
- 3.3.3 Before the Effective Date, the Parties will update Appendix B to reflect any additions, deletions or amendments to the land parcels set out in Appendix B that may result from further land-statusing or boundary delineations work undertaken by the Parties.
- 3.3.4 Except as provided in paragraph 14 of Appendix L-1, and paragraph 16 of Appendix L-2, or with the consent of Canada and British Columbia in accordance with paragraphs 3.10.1, 3.10.2, and 3.10.3, a parcel of NStQ Treaty Settlement Lands will not cease to be NStQ Treaty Settlement Lands as a result of the Disposition of an Interest in such parcel.
- 3.3.5 Where NStQ wishes to Dispose of a fee simple estate in a parcel of NStQ Treaty Settlement Lands, it will, prior to the Disposition, register the indefeasible title to that parcel under the *Land Title Act* in accordance with the Final Agreement.
- 3.3.6 If NStQ Disposes of the fee simple estate in a parcel of NStQ Treaty Settlement Lands to any person other than to an:

- a. NStQ Citizen;
- b. NStQ Corporation; or
- c. NStQ Public Institution,

expropriation by a Provincial Expropriating Authority of such land may occur in accordance with Provincial Law and will not be subject to the Provincial Expropriation provisions, except paragraph 14 of Appendix L-1.

- 3.3.7 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, will be abolished in respect of NStQ Treaty Settlement Lands.
- 3.3.8 If, at any time, any parcel of NStQ Treaty Settlement Lands, or any Interest in a parcel of NStQ Treaty Settlement Lands, finally escheats to the Crown, the Crown will transfer, at no charge, that parcel, Interest to NStQ and that parcel of land will become NStQ Treaty Settlement Lands and the Final Agreement will be deemed to be amended in accordance with the amendment process set out in paragraph 2.14.11 of the General Provisions Chapter.

#### **3.4.0 ADDITIONS TO NSTQ TREATY SETTLEMENT LANDS**

- 3.4.1 At any time after the Effective Date, with the agreement of Canada and British Columbia, NStQ may add to NStQ Treaty Settlement Lands, land that is:
  - a. within the area set out in Appendix A;
  - b. in areas that are not areas of overlap with:
    - i. other First Nations that have claims of legal interests;
    - ii. areas subject to treaty negotiations; or
    - iii. areas subject to treaties,unless consent is obtained from the First Nation that has made the claim of legal interest or is a party to the treaty negotiation or treaty;
  - c. outside of municipal boundaries or within municipal boundaries, if the municipality consents; and
  - d. owned in fee simple by NStQ.
- 3.4.2 Nothing in paragraph 3.4.1 will obligate Canada or British Columbia to pay any costs associated with the purchase, transfer or related costs concerning the addition of lands to NStQ Treaty Settlement Lands.

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- 3.4.3 When making a decision under paragraph 3.4.1, Canada and British Columbia may take into account other matters that Canada or British Columbia considers relevant.
- 3.4.4 If NStQ adds a parcel of land to NStQ Treaty Settlement Lands under paragraph 3.4.1, the land will, if necessary, be surveyed in accordance with the Final Agreement, and Appendix B will be amended to reflect the addition to the boundaries of NStQ Treaty Settlement Lands and the land will become NStQ Treaty Settlement Lands when the amendment takes effect.
- 3.4.5 NStQ will own the Subsurface Resources on land that is added to NStQ Treaty Settlement Lands under paragraph 3.4.1 if:
- a. the fee simple title includes ownership of the Subsurface Resources; or
  - b. British Columbia owns the Subsurface Resources and British Columbia and NStQ agree.
- 3.4.6 If British Columbia and Canada consent to a request made in accordance with paragraph 3.4.1, each will provide notice of its consent to the other Parties and that parcel of land will become NStQ Treaty Settlement Lands upon receipt by NStQ. On the notice of consent of British Columbia and Canada, the Final Agreement will be deemed to be amended in accordance with the amendment process set out in paragraph 2.14.11 of the General Provisions Chapter.
- 3.4.7 A parcel of land added to NStQ Treaty Settlement Lands in accordance with section 3.4.0 will continue to be subject to any interest existing immediately before the parcel of land becomes NStQ Treaty Settlement Lands, unless the holder of such Interest otherwise agrees in writing.
- 3.4.8 For greater certainty, NStQ's ownership of Subsurface Resources will be subject to any Subsurface Tenures existing immediately before the acquisition of the parcel of land by NStQ and those Subsurface Tenures continue to be administered by British Columbia in accordance with paragraphs 5.1.2 to 5.1.8 and 5.2.1 to 5.2.4 of the Subsurface Resources Chapter.

### 3.5.0 LANDS NEAR WILLIAMS LAKE AIRPORT

- 3.5.1 Prior to the Final Agreement, the Parties will discuss the issue of NStQ land use and the continued safe operation of the Williams Lake Airport, and make any changes necessary to the Final Agreement to reflect the agreement of the Parties.

**3.6.0 ACQUISITION AND ADDITION OF SPECIFIED PROVINCIAL CROWN LANDS**

- 3.6.1 If NStQ wishes to acquire any parcel of land, or any portion thereof, described as “Subject Lands” in Appendix H-1, NStQ will, within an agreed upon time frame to be negotiated by the Parties prior to the Final Agreement, provide notice to British Columbia.
- 3.6.2 As soon as practicable following receipt of notice in accordance with paragraph 3.6.1, British Columbia will prepare and forward to NStQ 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 NStQ 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.
- 3.6.3 An offer to sell provincial Crown land made in accordance with paragraph 3.6.2 will be open for acceptance by NStQ for a period of one year from the receipt of such offer, after which NStQ is deemed to have refused the offer to sell and the offer to sell expires.
- 3.6.4 For greater certainty, in the event that an offer to sell expires in accordance with paragraph 3.6.3, NStQ may provide subsequent notices to British Columbia in relation to that parcel within the agreed upon time frame provided within paragraph 3.6.1.
- 3.6.5 If NStQ acquires provincial Crown land in accordance with paragraph 3.6.1, such land will be added to NStQ Treaty Settlement Lands upon NStQ becoming the owner of such lands and Appendix B will be deemed to be amended in accordance with the amendment process set out in paragraph 2.14.11 of the General Provisions Chapter.
- 3.6.6 If British Columbia and NStQ disagree on the fair market value of any provincial Crown land identified in Appendix H-1 offered for sale in accordance with paragraph 3.6.1, NStQ may refer the issue to be finally determined by arbitration in accordance with the Dispute Resolution Chapter without having to proceed through Stages One and Two.
- 3.6.7 Subject to paragraph 3.6.8, British Columbia will continue to manage and use the provincial Crown lands identified in Appendix H-1 at its sole

discretion and, for greater certainty, nothing in the Final 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 H-1 before the acquisition of the estate in fee simple in such lands by NStQ.

- 3.6.8 For a period of time to be negotiated by the Parties prior to the Final Agreement, British Columbia will not, in respect of the provincial Crown lands described as “Subject Lands” in Appendix H-1:
- a. grant an estate in fee simple; or
  - b. grant a lease that, with any rights of renewal, may exceed a period of time to be negotiated by the Parties prior to the Final Agreement,
- without the consent of NStQ.

### 3.7.0 ENGAGEMENT ON APPENDIX H-1 LANDS

- 3.7.1 Prior to the Final Agreement, NStQ and British Columbia will negotiate and attempt to reach agreement on an additional provision to be included in the Final Agreement setting out how, until the earlier of a time frame to be negotiated by British Columbia and NStQ prior to the Final Agreement or such time as NStQ acquires the fee simple estate in the lands identified in Appendix H-1, British Columbia and NStQ will engage regarding any application for the use or Disposition of Forest Resources or Subsurface Resources, other than any mineral or placer claim registered in accordance with the *Mineral Tenure Act*, on any lands identified in Appendix H-1.

### 3.8.0 ACQUISITION AND ADDITION OF EXCLUDED PROVINCIAL CROWN LANDS

- 3.8.1 Prior to the Final Agreement, the Parties will review any exclusions of provincial Crown land from NStQ Treaty Settlement Land and, if applicable, may agree to provisions that would enable NStQ to acquire the excluded lands at fair market value should British Columbia determine that the lands are surplus to provincial requirements and add the acquired lands to NStQ Treaty Settlement Lands.

### 3.9.0 ACQUISITION AND ADDITION OF FEE SIMPLE LANDS

- 3.9.1 If, within a period of time to be negotiated by the Parties prior to the Final Agreement, NStQ or an NStQ Corporation, NStQ Public Institution or NStQ Citizen, becomes the registered owner of the fee simple estate in a

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parcel of land, or any portion thereof, identified for illustrative purposes as “Subject Lands” and legally described in Appendix H-2, and:

- a. where the owner of such parcel is an NStQ Corporation, NStQ Public Institution or NStQ Citizen, such owner provides written consent; and
- b. the registered holder of any financial charge or encumbrance provides written consent,

then NStQ may provide notice to British Columbia and Canada that the parcel of land is to be added to NStQ Treaty Settlement Lands.

3.9.2 After receipt of notice in accordance with paragraph 3.9.1, British Columbia and Canada will each, upon satisfactory review of the consents referred to in subparagraph 3.9.1.b, provide confirmation that such parcel of land is to be added to NStQ Treaty Settlement Lands.

3.9.3 If British Columbia and Canada provide confirmation in accordance with paragraph 3.9.2, then that parcel of land will become NStQ Treaty Settlement Land and Appendix B will be deemed to be amended in accordance with the deemed amendment process set out in paragraph 2.14.11 of the General Provisions Chapter.

### 3.10.0 REMOVAL OF LANDS FROM NSTQ TREATY SETTLEMENT LANDS

3.10.1 NStQ may remove a parcel of land from NStQ Treaty Settlement Lands with the consent of Canada and British Columbia.

3.10.2 In considering whether to consent to the removal of a parcel of land from NStQ Treaty Settlement Lands in accordance with a request under paragraph 3.10.1, 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 NStQ 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.

3.10.3 If Canada and British Columbia consent to the removal of a parcel of land from NStQ Treaty Settlement Lands in accordance with paragraphs



3.10.1 and 3.10.2, on NStQ's receipt of Canada's and British Columbia's written consent:

- a. NStQ will register the parcel of land in the Land Title Office, if it is not registered;
- b. the parcel will cease to be NStQ Treaty Settlement Lands; and
- c. Appendix B will be deemed to be amended in accordance with the amendment process set out in paragraph 2.14.11 of the General Provisions Chapter.

### **3.11.0 PROVINCIAL EXPROPRIATION OF NSTQ TREATY SETTLEMENT LANDS**

- 3.11.1 British Columbia acknowledges that it is of fundamental importance to maintain the size and integrity of NStQ Treaty Settlement Lands and, therefore, as a general principle, Interests in NStQ Treaty Settlement Lands will not be expropriated under Provincial Law.
- 3.11.2 If a Provincial Expropriating Authority has determined that it requires an Interest in NStQ Treaty Settlement Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire the Interest through agreement with NStQ.
- 3.11.3 Notwithstanding paragraphs 3.11.1 and 3.11.2, and subparagraph 26.4.2 of the Environmental Management Chapter, a Provincial Expropriating Authority may expropriate NStQ Treaty Settlement Lands in accordance with Appendix L-1, Provincial Law, and with the consent and by the order of the Lieutenant-Governor-in-Council.

### **3.12.0 FEDERAL EXPROPRIATION OF NSTQ TREATY SETTLEMENT LAND**

- 3.12.1 Canada and NStQ agree that as a general principle NStQ Treaty Settlement Lands will not be subject to expropriation.
- 3.12.2 Notwithstanding paragraph 3.12.1, any interest in NStQ Treaty Settlement Lands may be expropriated by a Federal Expropriating Authority in accordance with Appendix L-2, Federal Law and with the consent of the Governor-in-Council.
- 3.12.3 Nothing in this Agreement affects or limits the application of the *Emergencies Act* and the *Emergency Management Act*, and that will continue to apply in all aspects to NStQ Treaty Settlement Lands.

**3.13.0 NSTQ EXPROPRIATION**

3.13.1 NStQ may make laws in respect of expropriation for public purposes and public works by NStQ of Interests in NStQ Treaty Settlement Lands other than:

- a. Interests granted or continued on the Effective Date unless specifically provided otherwise in the Final Agreement;
- b. Interests expropriated by Canada or British Columbia in accordance with Appendices L-1 and L-2;
- c. Rights of Way held by Canada, British Columbia or a Public Utility on the Effective Date; and
- d. any other Interests upon which the Parties may agree in the Final Agreement,

if NStQ provides fair compensation to the owner of the Interest and expropriation is of the smallest Interest necessary for the public purpose or public work.

**3.14.0 SUBMERGED LANDS**

3.14.1 Subject to paragraph 3.14.2, Submerged Lands will not form part of NStQ Treaty Settlement Lands and nothing in the Final Agreement will affect British Columbia's ownership in Submerged Lands.

3.14.2 Submerged Lands which are part of Former NStQ Indian Reserves will form part of NStQ Treaty Settlement Lands.

3.14.3 No transfer of Submerged Lands to NStQ in accordance with the Final Agreement will include the exclusive right to fish, property rights in fish or the right to allocate fish.

**3.15.0 ACCRETIONS TO NSTQ TREATY SETTLEMENT LANDS**

3.15.1 NStQ will own lawful accretions to NStQ Treaty Settlement Lands.

3.15.2 Where NStQ provides Canada and British Columbia with a certificate issued by the Surveyor General of British Columbia confirming there has been a lawful accretion under paragraph 3.15.1, upon receipt of the certificate by Canada and British Columbia, the accreted land will become NStQ Treaty Settlement Land and Appendix B will be deemed to be amended in accordance with the process set out in paragraph 2.14.11 of the General Provisions Chapter.

**3.16.0 INTERESTS ON NSTQ TREATY SETTLEMENT LANDS**

- 3.16.1 On the Effective Date, title to NStQ Treaty Settlement Land will be free and clear of all Interests, except as listed in:
- a. Appendix F-1 in respect of replacement Interests;
  - b. Appendix F-3 in respect of Interests to be created on the Effective Date;
  - c. Appendix F-5 in respect of Interests on Former NStQ Indian Reserves;
  - d. Appendix F-8 in respect of Interests to continue in accordance with Provincial Law; and
  - e. Appendix F-9 in respect of existing foreshore Interests requiring upland owner consents.
- 3.16.2 Subject to paragraphs 3.16.1 and 10.13.1, on the Effective Date, every Interest that encumbered or applied to NStQ Treaty Settlement Lands before the Effective Date will cease to exist.
- 3.16.3 On the Effective Date, NStQ, an NStQ Corporation or an NStQ Public Institution will:
- a. grant or issue Interests to those persons who are named in Appendices F-1, F-3, F-5 and F-9 as set out in those Appendices; and
  - b. execute and deliver documents granting or issuing to each person named in Appendices F-1, F-3, F-5 and F-9 that person's Interest as set out in those Appendices.
- 3.16.4 Documents executed under subparagraph 3.16.3 b will be in the applicable form set out in Appendices F-2, F-4, F-6, F-7 and Part 2 of Appendix F-9, and will include any modifications agreed upon in writing before the Effective Date by NStQ and the person entitled to the Interest.
- 3.16.5 Documents referred to in subparagraph 3.16.3 and paragraph 3.16.4 will be deemed to be:
- a. prepared, executed, and delivered by NStQ, an NStQ Corporation or an NStQ Public Institution on the Effective Date; and
  - b. executed and delivered by each person referred to in those paragraphs on the Effective Date, whether or not the document is actually executed or delivered by that person.

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- 3.16.6 NStQ, an NStQ Corporation or an NStQ Public Institution will physically deliver the applicable document:
- a. to each person named in Appendices F-1, F-3, F-5 and F-9; or
  - b. to any person who, before the Effective Date, was identified in writing to the Parties as the person who, instead of a person named in Appendices F-1, F-3, F-5 and F-9, should receive an Interest referred to in Appendices F-1, F-3, F-5 and F-9 for any reason, including death, any form of transfer, error or operation of law.
- 3.16.7 If Canada or British Columbia notifies NStQ that an Interest granted under paragraph 3.16.3:
- 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.
- 3.16.8 Any Rights of Way of the nature described in section 218 of the *Land Title Act* that is granted by NStQ under the Final Agreement will be legally binding and enforceable notwithstanding those NStQ Treaty Settlement Lands to which the Rights of Way applies are not registered under the *Land Title Act*.
- 3.16.9 The Interests listed in Appendix F-8 are retained by the persons who hold those Interests on the Effective Date in accordance with the existing terms and conditions of the Interests on the Effective Date, modified where appropriate to reflect ownership of the land by NStQ 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.

### 3.17.0 INDEMNITIES

- 3.17.1 British Columbia will indemnify and forever save harmless NStQ from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that NStQ 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 the Final Agreement of the name of a person who, immediately before the Effective Date, had an Interest in NStQ Treaty Settlement Lands that had been granted by British Columbia; or
  - b. the incorrect naming of a person in the Final Agreement as a person entitled to an Interest, where another person was actually entitled,

immediately before the Effective Date, to the Interest in NStQ Treaty Settlement Lands that had been granted by British Columbia.

**3.18.0 SITE REMEDIATION ON NSTQ TREATY SETTLEMENT LANDS**

- 3.18.1 If, after the Effective Date, NStQ decides to develop a site described as “Subject Lands” in Appendix I, it will provide notice of such development to British Columbia.
- 3.18.2 After receiving notice in accordance with paragraph 3.18.1, 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 paragraph 3.18.3.
- 3.18.3 In determining whether a site referred to in paragraph 3.18.1 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 1.
- 3.18.4 British Columbia or any person undertaking the inspection or remediation of a site in accordance with paragraph 3.18.2, will provide NStQ with:
  - a. notice before commencing any inspection or remediation; and
  - b. the opportunity to observe any inspection or remediation.
- 3.18.5 Nothing in the Final Agreement will limit the ability of British Columbia to recover the costs incurred in inspecting and remediating a site referred to in paragraph 3.18.1 from any third party determined to be a responsible person in respect of the Contamination of any such site.
- 3.18.6 British Columbia will not be liable in respect of the Contamination of any site referred to in paragraph 3.18.1, if the Contamination occurs after the Effective Date.
- 3.18.7 The transfer of former federal Crown lands to NStQ in accordance with the Final Agreement will 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 Crown lands.
- 3.18.8 British Columbia will not be required to prepare and provide a Site Profile for any lands transferred to NStQ in accordance with the Final Agreement.

**3.19.0 INITIAL DESCRIPTIONS AND EXTERIOR BOUNDARY SURVEYS**

- 3.19.1 Prior to the Final Agreement, the Parties will determine the need for any exterior boundary surveys of NStQ Treaty Settlement Lands, and the timing, order and priority of any such surveys.
- 3.19.2 Canada and British Columbia will, as agreed between them, pay the costs of any exterior boundary surveys of NStQ Treaty Settlement Lands.

**3.20.0 AGRICULTURAL LAND RESERVE**

- 3.20.1 Prior to the Final Agreement, British Columbia and NStQ will discuss the status of lands designated as part of the agricultural land reserve under the *Agricultural Land Commission Act* on NStQ Treaty Settlement Lands.

**3.21.0 NStQ COMMUNITY WATERSHED LANDS**

- 3.21.1 NStQ acknowledges that, on the Effective Date, the NStQ 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 licenced waterwork.
- 3.21.2 NStQ will manage, use and develop the NStQ 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.
- 3.21.3 British Columbia will Consult with NStQ before discontinuing a community watershed designation which applies to the NStQ Community Watershed Lands.
- 3.21.4 If British Columbia determines that any NStQ Community Watershed Lands are no longer required for the purpose of protecting water being diverted for human consumption, British Columbia will notify NStQ and the obligation to manage, use and develop such lands in accordance with paragraph 3.21.2 will terminate.
- 3.21.5 For greater certainty, nothing in the Final Agreement will limit the application of the *Drinking Water Protection Act* to NStQ Community Watershed Lands.

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**Lands**

**SCHEDULE 1 – CONTAMINATED SITE REMEDIATION**

SITE DESCRIPTION	DEEMED USE OF SITE AS PER ENVIRONMENTAL MANAGEMENT ACT

## CHAPTER 4 LAND TITLE

### 4.1.0 FEDERAL TITLE REGISTRATION

- 4.1.1 Federal land title and land registry laws will not apply to any parcel of NStQ Treaty Settlement Lands, other than laws in respect of the survey and recording of estates that are owned by Canada and are in NStQ Treaty Settlement Lands.

### 4.2.0 APPLICATION OF THE LAND TITLES SYSTEM

- 4.2.1 If NStQ applies under the *Land Title Act* in accordance with the Final Agreement, for the registration of an indefeasible title to a parcel of NStQ Treaty Settlement 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*, but not any NStQ Law in respect of land title or land registration made pursuant to the Final Agreement will apply to the parcel.
- 4.2.2 The *Land Title Act* will not apply to a parcel of NStQ Treaty Settlement Lands for which:
- a. no application has been made under that Act in accordance with the Final Agreement for the registration of an indefeasible title;
  - b. an application has been made under that Act in accordance with the Final Agreement for the registration of an indefeasible title and that application has been withdrawn or rejected; or
  - c. the indefeasible title is cancelled in accordance with that Act.
- 4.2.3 No title adverse to, or in derogation of, the title of the registered owner of a parcel of NStQ Treaty Settlement Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* will not apply in respect of NStQ Treaty Settlement Lands.
- 4.2.4 Notwithstanding paragraph 3.2.3 of the Lands Chapter, where the *Land Title Act* applies to a parcel of NStQ Treaty Settlement Lands, that Act will prevail to the extent of a Conflict with NStQ Law under paragraphs 3.2.1 and 3.2.2 of the Lands Chapter in respect of that parcel.
- 4.2.5 The Registrar is entitled to rely on, and is not required to make any inquiries in respect of, the matters certified in the NStQ Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation, in or to a parcel of NStQ Treaty Settlement



Lands as a result of the reliance by the Registrar on the NStQ Certificate, and the issuance by the Registrar of an indefeasible title based on the NStQ Certificate, will have no recourse, at law or in equity, against the Registrar, the Assurance Fund, British Columbia or Canada.

#### 4.3.0 APPLICATION FOR REGISTRATION OF INDEFEASIBLE TITLE

- 4.3.1 NStQ, and no other person, may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of NStQ Treaty Settlement Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of NStQ or on behalf of another person.
- 4.3.2 Subject to the Final Agreement, to the extent that the following instruments are applicable to a parcel of land registered under paragraph 4.5.1, the Parties will make an application for registration for the following instruments in the following order of priority:
- a. any Right of Way in favour of NStQ;
  - b. any distribution and transmission Rights of Way in favour of British Columbia Hydro and Power Authority;
  - c. any distribution Rights of Way in favour of Telus; and
  - d. any other instruments.
- 4.3.3 NStQ, Canada or British Columbia, in its own capacity or as an agent for the holder of an instrument referred to in paragraph 4.3.2, may make such changes to the instruments, whether executed or not, as may be necessary in order to ensure that the instruments are in registrable form.

#### 4.4.0 LAND TITLE FEES

- 4.4.1 Canada and NStQ will be exempt from registration and survey fees in accordance with section 34 of Schedule 1 of the *Land Title Act* and section 109.1 of the *Land Act* as in effect on the date of initialing of the Final Agreement.

#### 4.5.0 REGISTRATION OF INDEFEASIBLE TITLE AND INTERESTS ON EFFECTIVE DATE

- 4.5.1 On the Effective Date:
- a. an indefeasible title in the name of NStQ to those parcels of NStQ Treaty Settlement Lands identified as:

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## Land Title

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- i. Former NStQ Indian Reserves, identified for illustrative purposes in Part 1 of Appendix B-1 as “Former NStQ Indian Reserves”, and legally described in Part 2 of Appendix B-1;
  - ii. former provincial Crown land identified in Appendix B-2;
- b. an indefeasible title in the name of NStQ to Other NStQ Lands;
- c. the Interests referred to in Part 5 of Appendix F-8, unless that Interest holder has agreed in writing that the Interest does not need to be registered;
- d. the fee simple estates referred to in Appendix B-3; and
- e. any other Interest in NStQ Treaty Settlement Lands already registered in the Land Title Office,

will be registered in the Land Title Office in accordance with the Final Agreement and in a manner consistent with the requirements of the *Land Title Act*.

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**DRAFT AGREEMENT IN PRINCIPLE**

**Land Title**

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## CHAPTER 5 SUBSURFACE RESOURCES

### 5.1.0 NSTQ TREATY SETTLEMENT LANDS

- 5.1.1 NStQ will own all Subsurface Resources on or beneath the surface of NStQ Treaty Settlement Lands.
- 5.1.2 NStQ ownership of Subsurface Resources described in paragraph 5.1.1 will be subject to the applicable Subsurface Tenures listed in Part 4 of Appendix F-8.
- 5.1.3 The Subsurface Tenures:
  - a. will continue, as contemplated in paragraph 5.1.2, in accordance with Provincial Law and the Final Agreement; and
  - b. will be administered by British Columbia in accordance with Provincial Law and the Final Agreement.
- 5.1.4 Provincial Law will apply to any exploration, development, extraction and production of Tenured Subsurface Resources as if the Tenured Subsurface Resources were owned by British Columbia.
- 5.1.5 Prior to the Final Agreement, the Parties will discuss the administration of the Subsurface Tenures and Tenured Subsurface Resources as well as any related extensions, renewals, continuations, replacements or issue any further rights as the Tenured Subsurface Resources are developed.
- 5.1.6 NStQ Treaty Settlement Lands will be treated as private lands under Provincial Law respecting Subsurface Resources for the purpose of determining access issues and compensation rights associated with any proposed entrance, occupation or use of the surface by holders of Subsurface Tenures.
- 5.1.7 For greater certainty, any disagreements between holders of Subsurface Tenures and owners of NStQ Treaty Settlement Lands respecting entrance, occupation or use of an area of NStQ Treaty Settlement Lands may be resolved under Provincial Law relating to entrance and compensation disputes involving Subsurface Resources.
- 5.1.8 If a Subsurface Tenure is forfeited, cancelled or expires under Provincial Law, NStQ Treaty Settlement Lands will no longer be subject to that Subsurface Tenure.
- 5.1.9 Nothing in the Final Agreement will confer authority on NStQ to make laws in respect of:

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## Subsurface Resources

- a. the exploration for, development, production, use and application of nuclear energy and atomic energy and the production, possession and use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment and prescribed information. For purposes of clarification, prescribed in subparagraph 5.1.9.a means prescribed by regulations created pursuant to the *Nuclear Safety and Control Act*; and
  - b. occupational health and safety and labour standards with respect to the exploration, development and production of nuclear energy and atomic energy.
- 5.1.10 Nothing in the Final Agreement will confer authority on NStQ to make laws in respect of:
- a. spacing and target areas related to Petroleum and Natural Gas, and conservation and allocation of Petroleum and Natural Gas among parties having interests in the same reservoir;
  - b. occupational health and safety and labour standards with respect to Subsurface Resources exploration, development, production and site reclamation; and
  - c. Subsurface Tenures and Tenured Subsurface Resources.
- 5.1.11 Under paragraph 3.2.1, NStQ may make laws on NStQ Treaty Settlement Lands in respect of mine development activity, permitting and approval.
- 5.1.12 For greater certainty, no mine will be developed on NStQ Treaty Settlement Lands unless:
- a. the mine has been approved by NStQ; or
  - b. the mine is or will be the development of Subsurface Tenures and Tenured Subsurface Resources.

### 5.2.0 FEES, RENTS, ROYALTIES, AND OTHER CHARGES

- 5.2.1 Subject to paragraph 5.2.4, NStQ, as owner of Subsurface Resources, will have authority to set fees, rents, royalties and other charges, except taxes, for exploration, development, extraction and production of Subsurface Resources owned by NStQ.
- 5.2.2 In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia will notify NStQ before changing or eliminating any rents or royalties applicable to the Tenured Subsurface Resources.

- 5.2.3 British Columbia will:
- a. ensure that any rents and royalties applicable to Tenured Subsurface Resources that British Columbia would be 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, are paid to NStQ; and
  - b. retain any fees, charges or other payments reasonably required for administrative purposes applicable to Subsurface Tenures and Tenured Subsurface Resources under Provincial Law.
- 5.2.4 NStQ will 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.

**NORTHERN SECWEPENC TE QELMUCW TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Subsurface Resources**

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## CHAPTER 6 ACCESS

### 6.1.0 GENERAL

- 6.1.1 NStQ will have access to Crown lands as provided in the Final Agreement.
- 6.1.2 Except as modified by the Final Agreement, NStQ, as owner of NStQ Treaty Settlement Lands, has the same rights and obligations in respect of public access to NStQ Treaty Settlement Lands as other owners of estates in fee simple have in respect of public access to their land.
- 6.1.3 Except as modified by the Final Agreement, NStQ liabilities in respect of unoccupied NStQ Treaty Settlement Lands will be comparable to the liabilities of the provincial Crown in respect of unoccupied provincial Crown lands.

### 6.2.0 DESIGNATION OF NSTQ PRIVATE LANDS

- 6.2.1 On the Effective Date, the NStQ Treaty Settlement Lands identified for illustrative purposes as “Subject Lands” in Appendix D will be designated as NStQ Private Lands.
- 6.2.2 After the Effective Date, NStQ may designate portions of NStQ Treaty Settlement Lands as NStQ Private Lands where:
  - a. NStQ authorizes a use or Disposition of those portions that is comparable to an Interest granted by British Columbia on provincial Crown lands that is incompatible with public access; or
  - b. NStQ authorizes the use of NStQ Treaty Settlement Lands for commercial, cultural, resource development or other uses that are incompatible with public access.
- 6.2.3 If NStQ intends to designate NStQ Treaty Settlement Lands as NStQ Private Lands in accordance with paragraph 6.2.2, NStQ 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.
- 6.2.4 If NStQ intends to change the locations or boundaries of NStQ Private Land, NStQ 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.
- 6.2.5 If the designation of NStQ Treaty Settlement Land as NStQ Private Land has the effect of preventing public access to an area or location to which there is a public right of access under Federal or Provincial Law, such as navigable waters or Crown roads, NStQ will provide reasonable alternative means of public access to that area or location.
- 6.2.6 For greater certainty, paragraph 6.2.5 will not apply where British Columbia and NStQ agree that a reasonable alternative means of public access to an area or location to which a public right of access under Federal or Provincial Law across provincial Crown land already exists.

**6.3.0 PUBLIC ACCESS ON NSTQ TREATY SETTLEMENT LANDS**

- 6.3.1 NStQ will allow reasonable public access on NStQ Public Lands for temporary recreational and non-commercial purposes, including opportunities for the public to hunt and fish on NStQ Public Lands, provided that this access does not interfere with uses authorized by NStQ or the ability of NStQ to authorize uses or Dispose of NStQ Public Lands in accordance with NStQ Law.
- 6.3.2 Public access under paragraph 6.3.1 will not include:
- a. harvesting or extracting resources unless authorized by NStQ or in accordance with the Final Agreement;
  - b. causing damage to NStQ Treaty Settlement Lands or resources on NStQ Treaty Settlement Lands; or
  - c. causing nuisance.
- 6.3.3 For greater certainty, public access contemplated by paragraph 6.3.1 and 6.3.2 will be in accordance with applicable NStQ Law regulating public access to NStQ Treaty Settlement Lands.
- 6.3.4 NStQ will take reasonable measures to notify the public of the terms and conditions respecting public access to NStQ Treaty Settlement Lands.
- 6.3.5 Hunting on NStQ Treaty Settlement Land by the public will be in accordance with Federal and Provincial Law, NStQ Law and section 6.3.0.

**6.4.0 LAW-MAKING AUTHORITY**

- 6.4.1 NStQ may make laws in respect of public access on NStQ Treaty Settlement Lands for:
- a. the prevention of harvesting or extracting resources owned by NStQ; and
  - b. the protection of NStQ Cultural Sites.
- 6.4.2 NStQ Law under paragraph 6.4.1 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 6.4.3 NStQ may make laws in respect of public access on NStQ Treaty Settlement Lands for:
- a. purposes of public safety;
  - b. the prevention of nuisance or damage, including forest fire prevention; and
  - c. the protection of sensitive habitat.
- 6.4.4 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 6.4.3.
- 6.4.5 NStQ will notify British Columbia and Canada in respect of any proposed NStQ Law that would significantly affect public access to NStQ Treaty Settlement Lands.

**6.5.0 NAVIGABLE WATERS**

- 6.5.1 Nothing in the Final Agreement will affect the right of navigation of the public, which includes NStQ Citizens.

**6.6.0 CROWN ACCESS TO NSTQ TREATY SETTLEMENT LANDS**

- 6.6.1 Agents, employees, contractors, subcontractors and other representatives of Canada or British Columbia, Local Governments, Public Utilities, Railways, NAV CANADA, or any successor entity as well as members of the Canadian Armed Forces and any members of foreign armed forces serving with or under the operational control of, the Canadian Armed Forces, peace officers or investigators appointed under Federal and Provincial Law, may, in accordance with Federal and Provincial Law, enter, cross and stay temporarily on NStQ Treaty Settlement Lands at no cost to:
- a. enforce laws;

- b. carry out inspections;
  - c. carry out duties and authorities under Federal and Provincial Law;
  - d. respond to emergencies and natural disasters;
  - e. deliver and manage programs and services; or
  - f. carry out other specified purposes as set out in the Final Agreement.
- 6.6.2 Any access under paragraph 6.6.1 will be in accordance with Federal and Provincial Law, including the payment of compensation to the owner of NStQ Treaty Settlement Lands for any damage to NStQ Treaty Settlement Lands as may be required by Federal and Provincial Law.
- 6.6.3 The Final Agreement will not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence or national security on NStQ Treaty Settlement Lands, without payment of any fees or other charges to NStQ except as provided for under Federal Law.
- 6.6.4 Unless otherwise agreed, Canada or British Columbia, as the case may be, will provide reasonable notice of entry onto NStQ Treaty Settlement Lands under paragraphs 6.6.1 to 6.6.3 to NStQ:
- a. before the entry, if it is practicable to do so; or
  - b. as soon as practicable after the entry.
- 6.6.5 The requirement to provide reasonable notice under paragraph 6.6.4 will not apply to peace officers, investigators, or federal and provincial law enforcement officers carrying out duties under Federal and Provincial Law or where providing such notice would be contrary to the interests of national defence or national security.

**6.7.0 NSTQ ACCESS TO CROWN LAND**

- 6.7.1 NStQ will have access to provincial Crown lands to allow for the exercise of NStQ rights set out in the Final Agreement, provided that such access is in accordance with Federal or Provincial Law and does not interfere with authorized uses or the ability of British Columbia to authorize uses or Dispose of provincial Crown lands.
- 6.7.2 If an authorized use or Disposition of provincial Crown land would deny NStQ reasonable access to NStQ Treaty Settlement Lands, British Columbia will provide NStQ with reasonable alternative means of access to NStQ Treaty Settlement Lands.

# NORTHERN SECWPEMC TE QELMUCW TREATY NEGOTIATIONS

## DRAFT AGREEMENT IN PRINCIPLE

## Access

6.7.3 Agents, employees, contractors, subcontractors and other representatives of NStQ, may have access, in accordance with Federal and Provincial Law and at no cost, to provincial Crown lands to:

- a. enforce laws;
- b. carry out inspections in accordance with NStQ Law;
- c. carry out duties and authorities under NStQ Law;
- d. deliver programs and services under NStQ Law;
- e. carry out specified purposes as set out in the Final Agreement; or
- f. respond to emergencies.

6.7.4 Unless otherwise agreed, NStQ will provide reasonable notice of entry under paragraph 6.7.3 to British Columbia as the case may be:

- a. before the entry, if it is practicable to do so; or
- b. as soon as practicable after the entry.

6.7.5 Any person exercising a right of access under paragraph 6.7.3 will act in accordance with Federal and Provincial Law, including the payment of compensation for any damage to Crown lands as may be required by Federal and Provincial Law.

### 6.8.0 ACCESS TO TENURES AND ESTATES IN FEE SIMPLE

6.8.1 NStQ will allow reasonable access across NStQ Treaty Settlement Lands, at no cost, to the Interests listed in Appendices F-1, F-3, F-5, F-8, and F-9, consistent with the terms and conditions of those Interests.

6.8.2 For greater certainty, nothing in paragraph 6.8.1 will obligate NStQ to pay any costs associated with access to an Interest referred to in paragraph 6.8.1.

6.8.3 NStQ will allow reasonable access, including access on NStQ Roads, at least as favourable as that which exists immediately before the Effective Date across NStQ Treaty Settlement Lands, at no cost, to the lands described in Appendix J or any subdivided portions thereof.

6.8.4 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 paragraph 6.8.3, NStQ 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 NStQ agree on the terms of access.

6.8.5 British Columbia or NStQ may refer any Disagreement with respect to paragraphs 6.8.1, 6.8.3, and 6.8.4 to be finally determined by arbitration under the Dispute Resolution Chapter.

**6.9.0 OTHER NStQ ACCESS MATTERS**

6.9.1 Prior to the Final Agreement, the Parties will review and discuss NStQ interests regarding access, including road access, from and across lands adjacent to NStQ Treaty Settlement Lands.

## CHAPTER 7 CROWN CORRIDORS AND ROADS

### 7.1.0 GENERAL

- 7.1.1 Crown Corridors, as set out in Appendix E, will not be part of NStQ Treaty Settlement Lands and will be owned by British Columbia. The widths of Crown Corridors are set out in Appendix E.
- 7.1.2 British Columbia will Consult with NStQ regarding new uses or major road construction within Crown Corridors adjacent to NStQ Treaty Settlement Lands.
- 7.1.3 For the purposes of this Chapter, the term Railway does not apply to federally-regulated railways.

### 7.2.0 ENTRY ON NSTQ TREATY SETTLEMENT LANDS OUTSIDE PROVINCIAL CROWN CORRIDORS

- 7.2.1 In addition to the provisions of the Access Chapter, British Columbia, a Public Utility, or Railway, their respective employees, agents, contractors, or representatives may enter, cross and stay temporarily on NStQ Treaty Settlement Lands, at no cost, for the purpose of undertaking works, including:
- a. constructing drainage works;
  - b. carrying out normal or emergency repairs;
  - c. maintaining slope stability;
  - d. removing dangerous trees or other hazards; or
  - e. carrying out vegetation management,
- where that work is necessary for constructing, operating, maintaining, repairing, replacing, removing or protecting Crown Corridors, municipal roads, Rights of Way, Railway works, or works located on Crown Corridors, municipal roads, Rights of Way or Railways, or Public Utility works that are on or adjacent to NStQ Treaty Settlement Lands.
- 7.2.2 Unless otherwise agreed to by NStQ, Timber removed from NStQ Treaty Settlement Lands under paragraph 7.2.1 will remain the property of NStQ.

**7.3.0 WORK PLANS**

- 7.3.1 Upon request of NStQ, before British Columbia, a Public Utility, or a Railway commences any work referred to in paragraph 7.2.1, British Columbia, the Public Utility, or the Railway will deliver a written work plan describing the effect and extent of the proposed work on NStQ Treaty Settlement Lands to NStQ for approval which will not be unreasonably withheld.
- 7.3.2 If, within 30 days of the delivery of a work plan delivered in accordance with paragraph 7.3.1, NStQ does not approve the content of the work plan, either British Columbia or NStQ may refer the Disagreement to be finally determined by Stage Three under the Dispute Resolution Chapter without having to proceed through Stages One and Two.

**7.4.0 UNDERTAKING OF WORKS**

- 7.4.1 In undertaking works referred to in paragraph 7.2.1, British Columbia, a Public Utility or a Railway, as the case may be, will:
- a. minimize the damage to, and time spent on, NStQ Treaty Settlement Lands; and
  - b. pay compensation to NStQ for any interference with, or damage to, NStQ Treaty Settlement Lands resulting from the works.
- 7.4.2 Paragraph 7.4.1 will be subject to the terms of any grant issued by NStQ to British Columbia, a Public Utility, or a Railway.
- 7.4.3 British Columbia or NStQ may refer a Disagreement in respect of compensation to be paid under paragraph 7.4.1 to be finally determined by Stage Three under the Dispute Resolution Chapter without having to proceed through Stages One and Two.

**7.5.0 EMERGENCY WORKS**

- 7.5.1 Notwithstanding any other provision of the Final Agreement, British Columbia, a Public Utility, or a Railway may undertake works and take steps on NStQ Treaty Settlement Lands that are urgently required in order to protect works constructed on provincial Crown Corridors, or to protect persons or vehicles using provincial Crown Corridors.
- 7.5.2 British Columbia, a Public Utility, or a Railway, as the case may be, will, as soon as practicable contact and notify NStQ in writing that it has undertaken works on NStQ Treaty Settlement Lands under paragraph 7.5.1.

**7.6.0 CONSULTATION REGARDING TRAFFIC REGULATION**

- 7.6.1 Upon the request of NStQ, British Columbia will Consult with NStQ with respect to regulation of traffic and transportation on a Crown Corridor that is adjacent to a developed area on NStQ Treaty Settlement Lands.

**7.7.0 ACCESS AND SAFETY REGULATION**

- 7.7.1 British Columbia will retain the authority to regulate all matters relating to:
- a. the location and design of intersecting NStQ Roads giving access to provincial Crown Corridors from NStQ Treaty Settlement Lands, including:
    - i. regulating or requiring signs, signals, or other traffic control devices on provincial Crown Corridors;
    - ii. regulating or requiring merging lanes, on ramps and off ramps; or
    - iii. requiring contributions to the cost of the matters referred to in subparagraph 7.7.1 a.i and 7.7.1 a. ii; and
  - b. the height and location of structures on NStQ Treaty Settlement Lands immediately adjacent to provincial Crown Corridors, but only to the extent reasonably required to protect the safety of the users of provincial Crown Corridors.
- 7.7.2 British Columbia will provide NStQ with any licence, permit or approval required under Provincial Law to join or intersect a Provincial Road with an NStQ Road if:
- a. the application for the required licence, permit or approval complies with Provincial Law, including the payment of prescribed fees; and
  - b. the intersecting NStQ Road complies with standards established under Provincial Law for equivalent Provincial Roads.
- 7.7.3 NStQ will Consult with British Columbia on any access or public safety issue associated with land use decisions relating to the development of NStQ Treaty Settlement Lands adjacent to provincial Crown Corridors.

**7.8.0 REALIGNMENT OF CROWN CORRIDORS**

- 7.8.1 British Columbia may request that a portion of a Crown Corridor be realigned onto NStQ Treaty Settlement Lands, and if:
- a. the realignment is reasonably suitable for use as a Crown Corridor;



- b. British Columbia pays all reasonable costs associated with decommissioning that portion of the Crown Corridor; and
- c. British Columbia and NStQ reach agreement on the value of the land exchange,

NStQ will not unreasonably refuse to provide its consent to the realignment.

7.8.2 If NStQ requires a portion of a Crown Corridor for another purpose, NStQ may request that a portion of a Crown Corridor be realigned, and if:

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

British Columbia will not unreasonably refuse to undertake the realignment.

7.8.3 If a Crown Corridor is realigned as a result of consent provided by NStQ or British Columbia under paragraphs 7.8.1 or 7.8.2:

- a. any portion of a Crown Corridor transferred to NStQ will cease to be a Crown Corridor and will become NStQ Treaty Settlement Lands; and
- b. any NStQ Treaty Settlement Lands transferred to British Columbia will cease to be NStQ Treaty Settlement Lands and will become a Crown Corridor,

and, upon any such transfer, Appendices B and E will be deemed to be amended in accordance with the amendment process set out in paragraph 2.14.11 of the General Provisions Chapter.

7.8.4 Prior to the Final Agreement, NStQ and British Columbia will consider and address any additional provisions which may be included pertaining to the procedures set out in section 7.8.0.

## 7.9.0 NSTQ ROADS

7.9.1 NStQ Roads will be part of NStQ Treaty Settlement Lands.

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## DRAFT AGREEMENT IN PRINCIPLE

## Crown Corridor and Roads

- 7.9.2 Subject to the terms of the Final Agreement, NStQ Roads will be open to the public unless designated otherwise by NStQ.
- 7.9.3 NStQ Roads will be owned by NStQ and will be administered, maintained and controlled by NStQ.
- 7.9.4 NStQ may temporarily close NStQ Roads for reasons of safety, public order, or cultural reasons.
- 7.9.5 NStQ may permanently close an NStQ Road.
- 7.9.6 Before NStQ permanently closes an NStQ Road, NStQ will:
  - a. provide public notice and an opportunity for affected persons to make representations to NStQ; and
  - b. notify Public Utilities whose facilities or works may be affected.

### 7.10.0 PUBLIC UTILITIES

- 7.10.1 NStQ will issue grants for Public Utility Rights of Way identified in Part 1 of Appendix F-1 and Part 2 of Appendix F-5 on NStQ Treaty Settlement Lands, as provided for in paragraph 3.16.3 of the Lands Chapter.
- 7.10.2 With the prior written approval of NStQ, a Public Utility may extend or locate and install new distribution works on NStQ Treaty Settlement Lands on substantially the same terms and conditions as contained in Appendix F-7 where extended or new works are necessary to meet demand for service on or off NStQ Treaty Settlement Lands.
- 7.10.3 NStQ will not unreasonably withhold approval for works referred to in paragraph 7.10.2.
- 7.10.4 Nothing in paragraph 7.10.2 will require a Public Utility to obtain the approval of NStQ for usual service extensions or connections to Public Utility works or to deliver and manage service to customers of a Public Utility.
- 7.10.5 NStQ Law will not apply to the regulation of the business of a Public Utility, or the planning, development, construction, repair, maintenance, operation or decommissioning of a Public Utility's authorized works.
- 7.10.6 Without limiting the generality of paragraph 7.10.5, NStQ Law and NStQ use or occupation of NStQ Treaty Settlement Lands will not impair or frustrate:

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## DRAFT AGREEMENT IN PRINCIPLE

## Crown Corridor and Roads

- a. a Public Utility's authorized use or occupation of its Public Utility Right of Way or the Public Utility's works located on its Public Utility Right of Way; or
  - b. a Public Utility's authorized use or occupation of NStQ Treaty Settlement Lands or the Public Utility's works located on NStQ Treaty Settlement Lands.
- 7.10.7 Public Utility Rights of Way established after the Effective Date on or adjacent to NStQ Treaty Settlement Lands will be subject to the Final Agreement.
- 7.10.8 Prior to the Final Agreement, the Parties will review the provisions of the Final Agreement addressing Public Utility Rights of Way and access for present and future Public Utility works and the Parties may agree to include additional provisions in the Final Agreement accordingly.

### 7.11.0 CROWN CORRIDORS

- 7.11.1 If British Columbia no longer requires any portion of a Crown Corridor adjacent to NStQ Treaty Settlement Lands, British Columbia will give NStQ the right of first refusal to acquire the lands, on a mutually acceptable basis and upon reaching such agreement British Columbia will transfer the estate in fee simple, including any Subsurface Resources owned by British Columbia, for that portion of the Crown Corridor to NStQ.
- 7.11.2 If NStQ acquires a portion of a Crown Corridor in accordance with paragraph 7.11.1, such a parcel of land will be added to NStQ Treaty Settlement Lands upon NStQ becoming the owner of such parcel of land and Appendix E will be deemed to be amended in accordance with the amendment process set out in paragraph 2.14.11 of the General Provisions Chapter, unless NStQ provides notice to British Columbia and Canada before it becomes the owner of such a parcel that such lands are not to be added to NStQ Treaty Settlement Lands.
- 7.11.3 The Parties agree that any lands on which federally regulated railways operate will not be part of NStQ Treaty Settlement Lands and that during Final Agreement negotiations they will make the necessary changes to identify and exclude federal railway corridors.

## CHAPTER 8 SHARED DECISION MAKING

### 8.1.0 GENERAL

- 8.1.1 The Parties recognize and respect that NStQ has an interest in land and resource use decisions particularly to the extent that these land and resource use decisions have the potential to impact upon the NStQ rights set out in the Final Agreement.
- 8.1.2 Prior to the Final Agreement, British Columbia and NStQ will negotiate cooperative approaches to land and resource decision-making and management of Crown land within the NStQ Territory and, as part of these discussions, British Columbia and NStQ will consider whether their treaty-related interests can be met under existing agreements or other non-treaty agreements.
- 8.1.3 Any land and resource use shared decision-making and management agreement contemplated in paragraph 8.1.2 will not form part of the Final Agreement.

### 8.2.0 GUIDING PRINCIPLES

- 8.2.1 In negotiating any land and resource use shared decision-making and management agreement contemplated in paragraph 8.1.2, British Columbia and NStQ may include the following principles:
- a. the relationship between British Columbia and NStQ will be government-to-government;
  - b. it is British Columbia's and NStQ's intention that the agreement will be ongoing;
  - c. the agreement will address the potential impact of land and resource use decisions on the exercise of NStQ rights set out in the Final Agreement;
  - d. use of a coordinated approach by British Columbia and NStQ to identify land and resource issues within the NStQ Territory to which the model will apply;
  - e. use of:
    - i. available information, including both scientific and NStQ traditional knowledge;
    - ii. standards and guidelines agreed upon by NStQ and British Columbia, including direction provided through land use plans; and

- iii. input and direction from relevant provincial agencies and NStQ; and,
- f. identification of procedures for dispute resolution, periodic review and amendment.

### **8.3.0 IMPLEMENTATION**

- 8.3.1 The Parties recognize the importance of taking early steps prior to the Final Agreement to begin implementing aspects of shared decision-making and land use planning.

### **8.4.0 FUTURE RELATIONSHIP**

- 8.4.1 Nothing in the Final Agreement will preclude NStQ from participating in a provincial process or initiative including a process or initiative that may address matters of shared decision making and revenue and benefit sharing, or benefiting from any future provincial program, policy or initiative of general application to First Nations as British Columbia develops a new relationship with First Nations.
- 8.4.2 Nothing in the Final Agreement will preclude NStQ from entering into arrangements for economic opportunities with third parties, provided that those arrangements are consistent with the Final Agreement.

## CHAPTER 9 WATER

### 9.1.0 GENERAL

- 9.1.1 The Final Agreement will not alter Federal or Provincial Law in respect of proprietary interests in water.
- 9.1.2 Storage, diversion, extraction or use of water by NStQ will be in accordance with Federal and Provincial Law.

### 9.2.0 LAW-MAKING AUTHORITY

- 9.2.1 NStQ may make laws in respect of:
  - a. the consent of NStQ under subparagraph 9.3.5.a to applications for Water Licences to be applied against the NStQ water reservation established in accordance with paragraph 9.3.1; and
  - b. the supply and the use of water from a Water Licence issued to NStQ in accordance with paragraph 9.3.5.
- 9.2.2 NStQ Law under subparagraph 9.2.1.a will prevail to the extent of a Conflict with Federal or Provincial Law.
- 9.2.3 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under subparagraph 9.2.1.b.

### 9.3.0 NSTQ WATER RESERVATION

- 9.3.1 Subject to there being sufficient Available Flows, the Final Agreement will provide that an NStQ water reservation be established under the *Water Act* for all purposes including domestic, agricultural, and industrial uses of water, but excluding hydro power purposes, on NStQ Treaty Settlement Lands.
- 9.3.2 The NStQ water reservation established under the *Water Act* will specify a volume of unrecorded water, the Streams that are subject to the water reserves, and the extent to which the water reservation applies to particular Streams.
- 9.3.3 The NStQ water reservation will have priority over all Water Licences on that Stream, other than existing Water Licences on that Stream, Water Licences applied for on that Stream before the Effective Date, and Water Licences issued from a water reservation established on that Stream before the Effective Date.

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## DRAFT AGREEMENT IN PRINCIPLE

## Water

- 9.3.4 Any person seeking a Water Licence for volumes of water to be applied against the NStQ water reservation must obtain written consent from NStQ before submitting that application to British Columbia.
- 9.3.5 If a person applies for a Water Licence to be applied against the NStQ water reservation and:
- a. NStQ has consented to the application in accordance with NStQ law-making authority and approval processes;
  - b. the application conforms to provincial regulatory requirements, including safety standards;
  - c. there is sufficient unrecorded volume of flow in the NStQ water reservation;
  - d. where required, the application will include provisions for storage where the monthly Available Flow during periods of low flow is insufficient to meet proposed demand; and
  - e. the application is for a volume of flow that, together with the total volume of flow licenced for that Stream under the Final Agreement, does not exceed the percentage of Available Flow for that Stream as set out in the Final Agreement,
- then British Columbia will approve the application and issue the Water Licence.
- 9.3.6 A Water Licence issued to a person for use on NStQ Treaty Settlement Lands under paragraph 9.3.5 will not be subject to any rentals or fees by British Columbia.
- 9.3.7 The total volume of flow of water under the Water Licences to be applied against an NStQ water reservation under paragraph 9.3.2 for each Stream will not exceed the monthly percentage of the Available Flow for that Stream as set out in the Final Agreement.
- 9.3.8 For greater certainty, a person may apply for Water Licences under paragraph 9.3.5 for use of water off NStQ Treaty Settlement Lands.
- 9.3.9 The volume of flow approved in a Water Licence issued under paragraph 9.3.5 will be deducted from the unrecorded volume of flow in the NStQ water reservation.
- 9.3.10 If a Water Licence issued from the water reservation referred to in paragraph 9.3.2 is cancelled, expires or is otherwise terminated, the volume of flow in that Water Licence will be added back to the unrecorded volume of flow in the NStQ water reservation.

- 9.3.11 If a person other than NStQ, an NStQ Public Institution, an NStQ Corporation, or an NStQ Citizen has a Water Licence and reasonably requires access across, or an Interest in NStQ Treaty Settlement Lands for the construction, maintenance, improvement or operation of works authorized under the licence, NStQ may not unreasonably withhold consent, and will take reasonable steps to ensure that access or the granting of that Interest, if the licence holder offers fair compensation to the owner of the Interest affected.
- 9.3.12 Sections 27, 28, 29 and 30 of the *Water Act* respecting a licensee's right to expropriate land will not apply on NStQ Treaty Settlement Lands.
- 9.3.13 British Columbia or NStQ may refer a dispute arising under paragraph 9.3.11 to be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
- 9.3.14 If NStQ, an NStQ Public Institution, an NStQ Corporation, or an NStQ Citizen has a Water Licence approved under paragraph 9.3.5 and reasonably requires access across, or an Interest in, Crown land for the construction, maintenance, improvement or operation of work authorized under the Licence, British Columbia or Canada, as the case may be, will grant the access or Interest on reasonable terms.
- 9.3.15 Prior to the Final Agreement, the Parties will review the adequacy of the provisions to be included in the Final Agreement that address access for present and future water works on NStQ Treaty Settlement Lands.

**9.4.0 NStQ WATER LICENCE OFF NSTQ TREATY SETTLEMENT LANDS**

- 9.4.1 Nothing in the Final Agreement will prevent NStQ or NStQ Citizens from applying for Water Licences for the storage, diversion, extraction or use of water off NStQ Treaty Settlement Lands.

**9.5.0 WATER MANAGEMENT**

- 9.5.1 NStQ may participate in water planning processes in the NStQ Territory.
- 9.5.2 In respect of the management of water within the NStQ Territory, NStQ and Canada or British Columbia may negotiate agreements to:
- a. define respective roles and responsibilities of the Parties;
  - b. coordinate activities related to:
    - i. flood response and public safety;
    - ii. protection of water quality;



- iii. Groundwater management and regulation;
  - iv. resource inventory;
  - v. monitoring of water quality and quantity;
  - vi. management of and access to information;
  - vii. water conservation;
  - viii. water management objectives and planning; and
  - ix. and any other matters as agreed to by the Parties, and
- c. identify watersheds that require water management planning.
- 9.5.3 If a water management plan is required for any part of the mid-Fraser River watershed, the Parties will negotiate a management process agreement which will include:
- a. water management objectives;
  - b. timely and effective development of a plan;
  - c. identifying the respective roles of the Parties; and
  - d. an approval process for the plan and its implementation.
- 9.5.4 Where a watershed includes both NStQ Treaty Settlement Lands and other provincial Crown land in British Columbia, and if NStQ or British Columbia considers that the watershed is an important source of drinking water, British Columbia and NStQ may negotiate agreements on the protection of drinking water in the area.

#### **9.6.0 GROUND WATER**

- 9.6.1 If British Columbia brings into force Provincial Law and regulations regarding the amount of Groundwater under NStQ Treaty Settlement Lands which may be extracted and used and, if Groundwater is reasonably available, British Columbia and NStQ will negotiate and attempt to reach agreement on the volume of Groundwater which may be extracted and used for domestic, agricultural and industrial purposes by NStQ for as long as such Provincial Law is in effect.
- 9.6.2 If British Columbia and NStQ are unable to reach agreement in accordance with paragraph 9.6.1 on the volume of Groundwater which may be extracted and used by NStQ, British Columbia or NStQ may refer the matter to be finally determined by arbitration in accordance with the Dispute Resolution Chapter without having to proceed through Stages One and Two.

- 9.6.3 Access to extract Groundwater on NStQ Treaty Settlement Lands will require the consent of NStQ.
- 9.6.4 Prior to the Final Agreement, the Parties will attempt to address any outstanding subject matter associated with the Water Chapter including water management and subsurface water.

### **9.7.0 NStQ HYDRO POWER RESERVATION**

- 9.7.1 In addition to the NStQ water reservation referred to in paragraph 9.3.1, British Columbia will, subject to Available Flow, establish a water reservation of the unrecorded water of specific Streams identified in the Final Agreement in favour of NStQ for a term to be set out in the Final Agreement to enable NStQ to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.
- 9.7.2 If NStQ applies for a water reservation for hydro power purposes on a Stream subject to the NStQ hydro power reservation under paragraph 9.7.1, and the proposed hydro power project conforms to Federal or Provincial Law, British Columbia, after considering the results of any investigation referred to in paragraph 9.7.1 and subject to Available Flow, will establish an NStQ water reservation for hydro power purposes and any related storage purposes on that Stream if it considers that Stream to be suitable for hydro power purposes.
- 9.7.3 If British Columbia establishes a water reservation for hydro power purposes on a Stream referred to in paragraph 9.7.2, the NStQ water reservation referred to in paragraph 9.7.1 will terminate in respect of that Stream.
- 9.7.4 If, after British Columbia establishes a water reservation for hydro power purposes under paragraph 9.7.1, NStQ applies for a Water Licence for hydro power purposes and any related storage purposes for a volume of flow from the Stream subject to that water reservation, British Columbia will grant the Water Licence to NStQ if the proposed hydro power project conforms to Federal and Provincial Law, and there is sufficient Available Flow in the Stream.
- 9.7.5 If British Columbia issues a Water Licence referred to in paragraph 9.7.4, the water reservation referred to in paragraph 9.7.1 will terminate in respect of that Stream.

### **9.8.0 SALE OF WATER**

- 9.8.1 If Federal and Provincial Law permit the sale of water, NStQ may sell water in accordance with those laws.

**NORTHERN SECWPEMC TE QELMUCW TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Water**

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## **CHAPTER 10 FOREST AND RANGE RESOURCES**

### **10.1.0 OWNERSHIP**

10.1.1 On the Effective Date, NStQ will own all Forest Resources and Range Resources on NStQ Treaty Settlement Lands.

10.1.2 NStQ, as owner, will have exclusive authority to determine, collect and administer any fees, rents or other similar charges, except taxes, relating to Forest Resources on NStQ Treaty Settlement Lands, in accordance with the Final Agreement.

### **10.2.0 MANAGEMENT**

10.2.1 NStQ will manage all Forest Resources on NStQ Treaty Settlement Lands in accordance with the Final Agreement.

### **10.3.0 LAW-MAKING AUTHORITY**

10.3.1 NStQ may make laws in respect of Forest Resources and Forest Practices on NStQ Treaty Settlement Lands, in accordance with the Final Agreement.

10.3.2 Forest standards prescribed by NStQ Law under paragraph 10.3.1 will meet or exceed provincial forest standards applicable to Private Lands under Provincial Law.

10.3.3 Forest standards prescribed by NStQ Law under paragraph 10.3.1 will be deemed to meet or exceed forest standards established under Provincial Law applicable to Private Lands if they are no more intrusive to the environment than the forest standards established under Provincial Law for Private Lands.

10.3.4 Subject to paragraph 10.3.5, NStQ Law under paragraph 10.3.1 will prevail to the extent of a Conflict with Federal or Provincial Law.

10.3.5 Federal or Provincial Law relating to wildfire and forest health will prevail to the extent of a Conflict with NStQ Law.

10.3.6 Nothing in the Final Agreement will confer authority on NStQ to make laws applicable to timber marks and scaling and, for greater certainty, Provincial Law in respect of timber marking and scaling will apply to timber harvested on, if transported, off NStQ Treaty Settlement Lands.

# NORTHERN SECWEPEMC TE QELMUCW TREATY NEGOTIATIONS

## DRAFT AGREEMENT IN PRINCIPLE

## Forest Resources

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- 10.3.7 British Columbia will, on application by NStQ, issue a certificate describing the timber mark for NStQ Treaty Settlement Lands provided the application complies with Provincial Law.
- 10.3.8 British Columbia will not cancel the certificate referred to in paragraph 10.3.7 without first notifying NStQ and providing NStQ with an opportunity to be heard, which will include the opportunity for NStQ to be heard in person. Nothing in this paragraph is intended to limit any remedies that are available under Provincial Law.
- 10.3.9 Prior to the Final Agreement, the Parties will review any issues relating to timber marks.

### 10.4.0 MANUFACTURE OF TIMBER

- 10.4.1 Timber harvested from NStQ Treaty Settlement Lands will not be subject to any legal requirement for use or manufacturing in British Columbia.
- 10.4.2 Logs from NStQ Treaty Settlement Lands may be proposed for export pursuant to Federal Law and federal policy as if the logs had been harvested from an Indian Reserve in British Columbia.
- 10.4.3 British Columbia and NStQ agree to share information with respect to Forest Practices on NStQ Treaty Settlement Lands and on provincial Crown land within the NStQ Territory.
- 10.4.4 NStQ and British Columbia may enter into agreements with each other to achieve coordination and administrative efficiencies in respect of Forest Resources.

### 10.5.0 FOREST AND RANGE HEALTH

- 10.5.1 If Canada, British Columbia or NStQ becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Crown land or NStQ Treaty Settlement Lands that may threaten the health of Forest Resources or Range Resources on Crown land or NStQ Treaty Settlement Lands, Canada, British Columbia or NStQ, as the case may be, will notify the other Parties.
- 10.5.2 Following notification under paragraph 10.5.1, NStQ and British Columbia may develop an appropriate and reasonable co-operative response to minimize the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources or Range Resources on NStQ Treaty Settlement Lands or provincial Crown land.

# NORTHERN SECWEPENC TE QELMUCW TREATY NEGOTIATIONS

## DRAFT AGREEMENT IN PRINCIPLE

## Forest Resources

- 10.5.3 For greater certainty nothing in the Final Agreement will limit the application of Federal or Provincial Law in relation to the health of Forest Resources or Range Resources.

### 10.6.0 WILDFIRE SUPPRESSION AND CONTROL

- 10.6.1 Subject to the Wildfire Suppression Agreement entered into in accordance with paragraph 10.6.2, and subject to paragraphs 10.6.3 and 10.6.6, Provincial Law in respect of the protection of resources from wildfire and for wildfire prevention and control will apply to NStQ Treaty Settlement Lands as Private Land.
- 10.6.2 On the Effective Date, the Parties will enter into a Wildfire Suppression Agreement that will set out how the costs incurred by British Columbia for wildfire control on NStQ Treaty Settlement Lands for wildfires that originate on such lands will be shared by British Columbia, Canada and NStQ.
- 10.6.3 Subject to paragraph 10.6.4 and subject to the limitations on the scope of NStQ's responsibility to pay wildfire control costs set out in the Wildfire Suppression Agreement, NStQ will be responsible for one third of the costs incurred by British Columbia for wildfire control on NStQ Treaty Settlement Lands for wildfires that originate on such lands.
- 10.6.4 If NStQ caused or contributed to the spread of any wildfire due to its own negligence or willful misconduct, NStQ's responsibility for costs will not be limited by paragraph 10.6.3.
- 10.6.5 For greater certainty, the responsibility of NStQ under paragraph 10.6.3 for the cost incurred by British Columbia for wildfire control will not include responsibility for any costs associated with wildfire control off NStQ Treaty Settlement Lands.
- 10.6.6 British Columbia will respond to a wildfire originating on NStQ Treaty Settlement Lands on the same priority basis as for provincial Crown land and in accordance with any priorities as set by the Minister.
- 10.6.7 For the purposes of paragraph 10.6.2:
- a. unless terminated at the written request of NStQ, the Wildfire Suppression Agreement will remain in effect between NStQ and British Columbia, on the same terms, subject to those terms that NStQ and British Columbia negotiate on a periodic basis; and
  - b. Canada's participation in the Wildfire Suppression Agreement will be limited to assuming a share of costs under that agreement for a period of 10 years commencing on the Effective Date.

# NORTHERN SECWPEMC TE QELMUCW TREATY NEGOTIATIONS

## DRAFT AGREEMENT IN PRINCIPLE

## Forest Resources

- 10.6.8 Subject to any cost-sharing arrangement that 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 the Wildfire Suppression Agreement following the 10 year period referred to in subparagraph 10.6.7 b.
- 10.6.9 Nothing in paragraphs 10.6.2 or 10.6.3 will limit the ability of any Party to pursue legal action against third parties.
- 10.6.10 At the request of NStQ, or in accordance with Provincial Law, British Columbia may enter on NStQ Treaty Settlement Lands and assist in the provision of, or carry out, wildfire control.

### 10.7.0 FOREST RESEARCH

- 10.7.1 NStQ may enter into agreements with British Columbia:
- a. to share research and facilities related to forests;
  - b. to share NStQ traditional knowledge;
  - c. to participate in forest research programs; and
  - d. regarding other matters, as agreed by the Parties.

### 10.8.0 DOMESTIC TIMBER

- 10.8.1 Prior to the Final Agreement, the Parties will review and may negotiate provisions for NStQ to harvest Timber for domestic purposes.

### 10.9.0 ECONOMIC OPPORTUNITIES

- 10.9.1 Prior to the Final Agreement, the Parties will explore each other's interests for economic opportunities within the forestry sector.

### 10.10.0 DISPOSITION OF THIRD-PARTY RIGHTS

- 10.10.1 British Columbia will ensure that on the Effective Date, any portion of any agreement under the *Forest Act* that applies to NStQ Treaty Settlement Lands will cease to be valid.

### 10.11.0 OBLIGATIONS EXISTING PRIOR TO THE EFFECTIVE DATE

- 10.11.1 Unless otherwise requested in writing by NStQ, British Columbia will ensure that on the Effective Date, or as soon as practicable, all obligations on NStQ Treaty Settlement Lands in respect of Forest

Practices, including road deactivation, will be fulfilled in accordance with Provincial Law.

- 10.11.2 NStQ will allow access to NStQ Treaty Settlement Lands at no cost to British Columbia, and to any tenure holder whose rights to Forest Resources under paragraph 10.10.1 ceases to be valid and to their respective employees, agents, contractors, successors or assigns, so that they may fulfill the obligations referred to in paragraph 10.11.1.

**10.12.0 RANGE PRINCIPLES**

- 10.12.1 The Parties acknowledge that the ranching industry forms an important part of the regional economy.
- 10.12.2 British Columbia and Canada acknowledge NStQ's interest in advancing their involvement in the ranching industry within the NStQ Territory.

**10.13.0 MANAGEMENT OF RANGE PRACTICES AND TENURES**

- 10.13.1 Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement on range management and administration on NStQ Treaty Settlement Lands for the range tenures listed in Appendix G.
- 10.13.2 The negotiations undertaken in accordance with paragraph 10.13.1 will include the following matters:
- a. management and administration of Range Practices and range tenures associated with NStQ Treaty Settlement Lands and adjacent provincial Crown lands;
  - b. infrastructure costs and maintenance;
  - c. harmonization of Range Practices with other land uses; and
  - d. access to Range Resources and water.
- 10.13.3 In addition to section 10.5.0, prior to the Final Agreement, NStQ and British Columbia agree to explore range health and stewardship on both NStQ Treaty Settlement Lands or adjacent provincial Crown land.



**NORTHERN SECWPEMC TE QELMUCW TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Forest Resources**

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## CHAPTER 11 FISH

- 11.1.1 As set out in paragraph 2.1.4 of the General Provisions Chapter, this Agreement does not address fisheries matters.



## CHAPTER 12 GATHERING

### 12.1.0 GENERAL

- 12.1.1 NStQ will have the right to gather Plants for Domestic Purposes on Crown lands within the Gathering Area in accordance with the Final Agreement.
- 12.1.2 The NStQ Right to Gather Plants is limited by:
- a. measures necessary for conservation; and
  - b. measures necessary for the purposes of public health or public safety.
- 12.1.3 The NStQ Right to Gather Plants is held by NStQ and cannot be Disposed.
- 12.1.4 Except as otherwise provided under NStQ Law, all NStQ Citizens may exercise the NStQ Right to Gather Plants.
- 12.1.5 NStQ Citizens are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia relating to the NStQ Right to Gather Plants.
- 12.1.6 NStQ Citizens may use resources, including surface water, on Crown land within the Gathering Area for purposes reasonably incidental to the exercise of the NStQ Right to Gather Plants subject to Federal and Provincial Law.
- 12.1.7 The Final Agreement will not alter Federal or Provincial Law in respect to proprietary interest in Plants.
- 12.1.8 Prior to the Final Agreement, the Parties will negotiate any outstanding subject matter associated with the Gathering Chapter, including reasonable opportunity or other similar measures. This will include a review of other parts of the Final Agreement that have been revised and where agreed, the Gathering Chapter will be modified to reflect agreement of the Parties.

### 12.2.0 CONSULTATION:

- 12.2.1 The Minister will Consult with NStQ regarding a conservation measure proposed by the Minister or NStQ, in respect of a Plant species within the Gathering Area.

12.2.2 When considering the establishment, variance or cancellation of a conservation measure in respect of a Plant species within the Gathering Area, the Minister will take into account:

- a. the conservation risk and population of Plants;
- b. the necessity for, and the nature of, the proposed conservation measure; and
- c. NStQ's role in the development and implementation of the conservation measure.

12.2.3 Prior to authorizing the establishment, variance or cancellation of a conservation measure, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the NStQ Right to Gather Plants.

### **12.3.0 TRADE AND BARTER**

12.3.1 NStQ has the right to Trade and Barter Plants, and household goods and apparel or products made from that gathering under the NStQ Right to Gather Plants:

- a. among themselves; and
- b. with other aboriginal people of Canada.

12.3.2 The NStQ right to Trade and Barter under paragraph 12.3.1 is held by NStQ and cannot be Disposed.

12.3.3 NStQ Citizens may exercise the right to Trade and Barter under paragraph 12.3.1 except as otherwise provided under NStQ Law.

### **12.4.0 LAW-MAKING**

12.4.1 NStQ may make laws in respect of the NStQ Right to Gather Plants for:

- a. the designation of NStQ Citizens to gather Plants;
- b. the distribution of gathering Plants among NStQ Citizens; and
- c. the Trade and Barter of Plants gathered under the NStQ Right to Gather Plants.

12.4.2 NStQ Law under paragraph 12.4.1 will prevail to the extent of a Conflict with Federal or Provincial Law.

12.4.3 NStQ may make laws in respect of the documentation of NStQ Citizens who have been designated under subparagraph 12.4.1 a.

12.4.4 NStQ will make laws to require NStQ Citizens gathering under the NStQ Right to Gather Plants to comply with any conservation measures that affect the NStQ Right to Gather Plants.

12.4.5 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 12.4.3.

**12.5.0 DOCUMENTATION**

12.5.1 NStQ will issue documentation to NStQ Citizens who gather or transport Plants under the NStQ Right to Gather Plants, if documentation is required for gathering under Federal or Provincial Law.

12.5.2 NStQ Citizens who gather or transport Plants under the NStQ Right to Gather Plants will be required to carry documentation issued by NStQ and to produce that documentation on request by an authorized individual, if documentation is required under Federal or Provincial Law.

12.5.3 Documentation issued by NStQ under paragraph 12.5.1 will:

- a. be in the English language which will be the authoritative version and, at the discretion of NStQ, in Secwepemctsin;
- b. include the name of the NStQ Citizen; and
- c. meet any other requirements to which NStQ and British Columbia may agree.

**12.6.0 TRANSPORT AND EXPORT**

12.6.1 NStQ Citizens may, in accordance with Federal and Provincial Law, transport and export Plants gathered under the NStQ Right to Gather Plants.

**NORTHERN SECWPEMC TE QELMUCW TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Gathering**

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## CHAPTER 13 WILDLIFE

### 13.1.0 WILDLIFE HARVESTING

- 13.1.1 NStQ will have the right to harvest Wildlife for Domestic Purposes within the Wildlife Harvest Area throughout the year in accordance with the Final Agreement.
- 13.1.2 The NStQ Right to Harvest Wildlife is held by NStQ and cannot be Disposed.
- 13.1.3 Except as otherwise provided under NStQ Law, all NStQ Citizens may exercise the NStQ Right to Harvest Wildlife.
- 13.1.4 The NStQ Right to Harvest Wildlife will be limited by measures necessary for conservation, public health, or public safety.
- 13.1.5 Subject to paragraph 13.1.8, NStQ Citizens will not be required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the NStQ Right to Harvest Wildlife.
- 13.1.6 The Final Agreement will not preclude NStQ Citizens from harvesting Wildlife elsewhere in Canada in accordance with Federal or Provincial Law and the laws of other aboriginal governments.
- 13.1.7 The Final Agreement will not alter Federal or Provincial Law in respect to proprietary interests in Wildlife.
- 13.1.8 Nothing in the Final Agreement will affect Canada's ability to require NStQ Citizens to obtain licences for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
- 13.1.9 NStQ Citizens may use resources, including surface water, on Crown land within the Wildlife Harvest Area for purposes reasonably incidental to the exercise of the NStQ Right to Harvest Wildlife subject to Federal and Provincial Law.
- 13.1.10 Prior to the Final Agreement, the Parties will negotiate any outstanding subject matter associated with the Wildlife Chapter, including reasonable opportunity or other similar measures. This will include a review of other parts of the Final Agreement that have been revised and where agreed, the Wildlife Chapter will be modified to reflect agreement of the Parties.



**13.2.0 JURISDICTION**

- 13.2.1 The Minister will retain authority and responsibility to manage and conserve Wildlife and Wildlife habitat and will exercise that authority in accordance with the Final Agreement.
- 13.2.2 NStQ may make laws in respect of the NStQ Right to Harvest Wildlife for:
- a. the distribution of harvested Wildlife among NStQ Citizens;
  - b. the designation of NStQ Citizens to harvest Wildlife in accordance with the Final Agreement;
  - c. the administration of documentation to identify NStQ Citizens and other individuals in accordance with paragraph 13.5.1 as harvesters of Wildlife;
  - d. the methods, timing and location of the harvesting, under the NStQ Right to Harvest Wildlife, and individual NStQ Citizen Harvest Levels of Wildlife; and
  - e. Trade and Barter of Wildlife under paragraph 13.9.1.
- 13.2.3 NStQ Law under paragraph 13.2.2 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 13.2.4 NStQ will make laws to require all NStQ harvesters to comply with any conservation measures established by the Minister that affect the NStQ Right to Harvest Wildlife.
- 13.2.5 NStQ will make laws to require all NStQ Citizens who harvest Wildlife under the Final Agreement, or transport Wildlife harvested under the Final Agreement, to carry documentation issued by NStQ and produce that documentation on request by an authorized individual.
- 13.2.6 NStQ will make laws requiring all NStQ Citizens to report to NStQ the harvest of any Wildlife species that are subject to a conservation measure.

**13.3.0 HARVESTING BY OTHER INDIVIDUALS**

- 13.3.1 NStQ may authorize individuals other than NStQ Citizens to exercise the NStQ Right to Harvest Wildlife on behalf of an NStQ Citizen who is unable to exercise the NStQ Right to Harvest Wildlife if:
- a. the individual:
    - i. possesses a valid British Columbia resident hunting licence; or

- ii. is a British Columbia resident as defined under the *Wildlife Act* and is exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia;
  - b. the individual has not been prohibited from hunting or carrying a firearm;
  - c. the individual has provided to NStQ a signed agreement to provide harvested Wildlife to NStQ Citizens for Domestic Purposes; and
  - d. no remuneration is paid by the individual harvesting Wildlife to NStQ, the NStQ Government or an NStQ Citizen.
- 13.3.2 The designated individual must:
  - a. be the spouse, a child or a grandchild of an NStQ Citizen;
  - b. carry on his or her person and present to an authorized person upon request, documentation issued by the NStQ Government; and
  - c. harvest in accordance with the Final Agreement.
- 13.3.3 Each year, NStQ will verify eligibility and provide to British Columbia a list of all individuals who are authorized under paragraph 13.3.1.

#### 13.4.0 ENFORCEMENT

- 13.4.1 The Parties may enter into agreements between themselves or other appropriate enforcement agencies concerning enforcement of Federal Law, Provincial Law, and NStQ Law in respect of Wildlife.

#### 13.5.0 DOCUMENTATION

- 13.5.1 NStQ will issue documentation to NStQ Citizens to harvest or attempt to harvest Wildlife under the NStQ Right to Harvest Wildlife.
- 13.5.2 All persons who harvest or attempt to harvest Wildlife under the NStQ Right to Harvest Wildlife will carry documentation issued by NStQ and produce that documentation on request by an authorized person.
- 13.5.3 Documentation issued by NStQ to a person who harvests or attempts to harvest Wildlife under the NStQ Right to Harvest Wildlife will:
  - a. be in the English language which will be the authoritative version and, at the discretion of NStQ, in Secwepemctsin; and
  - b. include the name, address, and picture of the person.

**13.6.0 INITIAL CONSERVATION MEASURES**

- 13.6.1 Prior to the Final Agreement, the Parties will negotiate any initial conservation measures prescribed for a Wildlife species within the Wildlife Harvest Area.

**13.7.0 CONSERVATION MEASURES OF A WILDLIFE SPECIES**

- 13.7.1 The Minister will Consult with NStQ regarding a conservation measure, proposed by the Minister or NStQ, related to a Wildlife species within the Wildlife Harvest Area.

- 13.7.2 When considering the establishment, variance or cancellation of a conservation measure in respect of a Wildlife species within the Wildlife Harvest Area, the Minister will take into account:

- a. the conservation risk to the Wildlife species;
- b. the population of the Wildlife species:
  - i. within the Wildlife Harvest Area; and
  - ii. within its normal range or area of movement outside the Wildlife Harvest Area;
- c. the necessity for, and the nature of, the proposed conservation measure; and
- d. NStQ's role in the development and implementation of the conservation measure.

- 13.7.3 Prior to authorizing the establishment, variance or cancellation of a conservation measure which will affect the NStQ Right to Harvest Wildlife, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the NStQ Right to Harvest Wildlife.

- 13.7.4 The Minister will provide to NStQ:
- a. a copy of any approved conservation measure in respect of a Wildlife species within the Wildlife Harvest Area; and
  - b. at the request of NStQ, written reasons for the establishment, variance or cancellation of that conservation measure.

**13.8.0 HARVEST LEVELS**

- 13.8.1 Where the Minister determines that establishing or varying of a Harvest Level is a necessary conservation measure under section 13.7.0, British

Columbia and NStQ will negotiate and attempt to reach agreement on the Harvest Levels of that Wildlife species.

- 13.8.2 If British Columbia and NStQ fail to agree on the NStQ Harvest Levels for a Wildlife species under paragraph 13.8.1, the Harvest Levels will be finally determined by arbitration under the Dispute Resolution Chapter.
- 13.8.3 In determining the Harvest Level under paragraph 13.8.2, the arbitrator must take into account all relevant information provided by NStQ and British Columbia.

**13.9.0 TRADE, BARTER AND SALE**

- 13.9.1 NStQ has the right to Trade or Barter Wildlife or Wildlife parts, including meat and furs harvested under the NStQ Right to Harvest Wildlife:
- a. among themselves; and
  - b. with other aboriginal people of Canada.
- 13.9.2 Except as otherwise provided under NStQ Law, NStQ Citizens may Trade or Barter Wildlife or Wildlife parts, including meat and furs, under paragraph 13.9.1.
- 13.9.3 Any sale of Wildlife, Wildlife parts, including meat and furs harvested under the NStQ Right to Harvest Wildlife will be subject to any Federal and Provincial Law that permit sale.

**13.10.0 TRANSPORT AND EXPORT**

- 13.10.1 NStQ Citizens may, in accordance with:
- a. Federal and Provincial Law; and
  - b. NStQ Law under paragraph 13.2.5,
- transport Wildlife or Wildlife parts, including meat and furs, harvested under the NStQ Right to Harvest Wildlife.
- 13.10.2 Any export of Wildlife or Wildlife parts, including meat and furs harvested under the NStQ Right to Harvest Wildlife will be in accordance with Federal and Provincial Law.

**13.11.0 MANAGEMENT ADVISORY PROCESS**

13.11.1 NStQ may participate in any Wildlife management advisory processes established by British Columbia that covers some or all of the Wildlife Harvest Area.

**13.12.0 TRAPPING**

13.12.1 Commercial registered Traplines that exist on the Effective Date, and that are located wholly or partially on NStQ Treaty Settlement Lands, will be set out in an Appendix to the Final Agreement. They will be retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.

13.12.2 NStQ will allow reasonable access on NStQ Public Lands to the registered holder of the commercial registered Trapline in Part 1 of Appendix F-8 or any renewal or replacement of such Traplines, or to any person who has written permission from a commercial registered Trapline holder to trap within the commercial registered Trapline area for the purpose of carrying out commercial trapping activities.

13.12.3 If the holder of a commercial registered Trapline set out in Part 1 of Appendix F-8 to the Final Agreement agrees to transfer the commercial registered Trapline to NStQ, British Columbia will consent to and register the transfer.

13.12.4 If a commercial registered Trapline set out in Part 1 of Appendix F-8 to the Final Agreement becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration to that portion of the commercial registered Trapline located on NStQ Treaty Settlement Lands without the consent of NStQ.

13.12.5 The Minister will Consult with NStQ regarding the grant or Disposition of any new, vacant or abandoned Trapline in the Wildlife Harvest Area.

**13.13.0 GUIDING**

13.13.1 Guide outfitter licences and certificates that exist on the Effective Date, and that are located wholly or partially on NStQ Treaty Settlement Lands, will be set out in Part 2 of Appendix F-8 to the Final Agreement. The privileges conferred by those interests may be transferred or renewed in accordance with Provincial Law.

13.13.2 NStQ will allow reasonable access on NStQ Public Lands to the registered holders of guide outfitter licences and certificates as set out in Part 2 of Appendix F-8 to the Final Agreement, or any renewal or

replacement of such guide outfitter licences and certificates, and their respective employees, agents and other representatives for the purpose of carrying out guiding activities.

- 13.13.3 The Minister will Consult with NStQ regarding the issuance or Disposition of any new, vacant or abandoned guiding territory certificate in the Wildlife Harvest Area.
- 13.13.4 Prior to the Final Agreement, the Parties will negotiate Consultation obligations regarding guiding licences.
- 13.13.5 British Columbia will not grant the privilege of guiding for game on any portion of NStQ Treaty Settlement Lands not included in a guide outfitter licence or guide outfitter certificate on the Effective Date without the consent of NStQ.
- 13.13.6 If a privilege of guiding for game exercisable in an area that is wholly or partially on NStQ Treaty Settlement Lands ceases by reason of non-renewal of the privilege or operation of law, including by exercise of administrative discretion, British Columbia will not grant a privilege of guiding for game on that portion included in NStQ Treaty Settlement Lands without the consent of NStQ.

**NORTHERN SECWEPENC TE QELMUCW TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Wildlife**

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## CHAPTER 14 MIGRATORY BIRDS

### 14.1.0 GENERAL

- 14.1.1 NStQ will have the right to harvest Migratory Birds within the Migratory Bird Harvest Area for Domestic Purposes throughout the year in accordance with the Final Agreement.
- 14.1.2 The NStQ Right to Harvest Migratory Birds is held by NStQ and cannot be Disposed.
- 14.1.3 NStQ Citizens may use resources, including surface water, on Crown land within the Migratory Bird Harvest Area for purposes reasonably incidental to the exercise of the NStQ Right to Harvest Migratory Birds subject to Federal and Provincial Law.
- 14.1.4 NStQ Citizens may exercise the NStQ Right to Harvest Migratory Birds except as otherwise provided under NStQ Law.
- 14.1.5 The NStQ Right to Harvest Migratory Birds will be limited by measures necessary for conservation, public health, or public safety.
- 14.1.6 The Minister will retain authority for managing and conserving Migratory Birds and Migratory Bird habitat and will exercise that authority in a manner consistent with the Final Agreement.
- 14.1.7 The Final Agreement will not alter Federal or Provincial Law in respect to proprietary interests in Migratory Birds.
- 14.1.8 Prior to the Final Agreement, the Parties will address all outstanding subject matter associated with the Migratory Birds Chapter, including reasonable opportunity or other similar measures, export, law-making authorities and negotiation of and consultation on conservation measures. This will include a review of other parts of the Final Agreement to reflect the above discussions.

### 14.2.0 HARVEST

- 14.2.1 The NStQ Right to Harvest Migratory Birds may be exercised on Private Lands within the Migratory Bird Harvest Area but that harvesting is subject to Federal and Provincial Law in respect of access to Private Lands.



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- 14.2.2 The Final Agreement will not preclude NStQ Citizens from harvesting Migratory Birds outside of the Migratory Bird Harvest Area throughout Canada in accordance with:
- a. Federal and Provincial Law; or
  - b. Federal and Provincial Law, and:
    - i. any agreements between NStQ and other aboriginal people; or
    - ii. any arrangements between another aboriginal group and Canada or British Columbia.
- 14.2.3 Notwithstanding paragraph 14.2.1, NStQ Citizens may exercise the NStQ Right to Harvest Migratory Birds on an Indian Reserve within the Migratory Birds Harvest Area, if the Indian Band for whom the Indian Reserve was set aside agrees in writing to provide such access, but any such agreement:
- a. will not cause an Indian Reserve to be included within the Migratory Bird Harvest Area; and
  - b. does not prevent the Indian Band for whom the Indian Reserve is set aside from revoking access to the Indian Reserve in accordance with that agreement.

### 14.3.0 LICENCES AND FEES

- 14.3.1 Subject to paragraph 14.3.2, NStQ Citizens are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the exercise of the NStQ Right to Harvest Migratory Birds.
- 14.3.2 Nothing in the Final Agreement will affect the application of Federal or Provincial Law with respect to the possession, use and regulation of firearms.

### 14.4.0 TRADE AND BARTER

- 14.4.1 NStQ may, in accordance with any NStQ Law made under paragraph 14.7.1, Trade and Barter Migratory Birds, harvested under the NStQ Right to Harvest Migratory Birds:
- a. among themselves; and
  - b. with other aboriginal people in Canada.

**14.5.0 SALE OF MIGRATORY BIRDS**

- 14.5.1 NStQ and NStQ Citizens may sell Migratory Birds harvested under the NStQ Right to Harvest Migratory Birds if the sale of Migratory Birds is permitted under Federal and Provincial Law, and any such sale of Migratory Birds is in accordance with Federal and Provincial Law and any NStQ Law enacted under paragraph 14.7.3.b.
- 14.5.2 Notwithstanding paragraph 14.5.1, NStQ and NStQ Citizens may sell inedible by-products, including down, of Migratory Birds harvested under the NStQ Right to Harvest Migratory Birds in accordance with NStQ Law enacted under paragraph 14.7.1 f.

**14.6.0 TRANSPORT AND EXPORT**

- 14.6.1 NStQ and NStQ Citizens will transport or export Migratory Birds and their inedible by-products, including down, harvested under the NStQ Right to Harvest Migratory Birds in accordance with Federal and Provincial Law.
- 14.6.2 Notwithstanding paragraph 14.6.1, Migratory Birds harvested in accordance with the Final Agreement may be transported within Canada throughout the year.

**14.7.0 LAW-MAKING AUTHORITY**

- 14.7.1 NStQ may make laws in respect of the NStQ Right to Harvest Migratory Birds for:
- a. the distribution among NStQ Citizens of Migratory Birds harvested;
  - b. the designation of NStQ Citizens who may harvest Migratory Birds;
  - c. the administration of documentation to identify individuals who are designated to harvest under the NStQ Right to Harvest Migratory Birds;
  - d. the methods, timing, and location of the harvest of Migratory Birds;
  - e. the Trade and Barter of Migratory Birds harvested; and
  - f. the sale of inedible by-products, including down, of Migratory Birds harvested.
- 14.7.2 NStQ Law under paragraph 14.7.1 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 14.7.3 NStQ may make laws in respect of the NStQ Right to Harvest Migratory Birds for:

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- a. the management of Migratory Birds, Migratory Birds species at risk and their habitats on NStQ Treaty Settlement Lands; and
- b. the sale of Migratory Birds, other than inedible by-products, if permitted by Federal and Provincial Law.

14.7.4 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 14.7.3.

### 14.8.0 DESIGNATION OF NON-CITIZEN HARVESTERS

14.8.1 NStQ may designate an individual to exercise the NStQ Right to Harvest Migratory Birds.

14.8.2 Any designation will be in writing by NStQ and will be in effect for no more than one year. No fees will be charged or paid in connection with the designation.

14.8.3 The designated individual can be either:

- a. the spouse or a child of an NStQ Citizen; or
- b. an aboriginal person of Canada,

and will be provided appropriate documentation by NStQ.

14.8.4 The designated individual must:

- a. be qualified to possess and operate a firearm;
- b. harvest in accordance with the Final Agreement; and
- c. carry on his or her person and present to an authorized person upon request, any documentation issued by NStQ as evidence of the designation.

14.8.5 NStQ may authorize individuals other than an NStQ Citizen to exercise the NStQ right to Harvest Migratory Birds on behalf of an NStQ Citizen who is unable to exercise the NStQ Right to Harvest Migratory Birds personally due to disability or cultural observances if the individual:

- a. possesses a valid British Columbia resident hunting licence; or
- b. is a British Columbia resident as defined under the *Wildlife Act* and is exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia.

**14.9.0 DOCUMENTATION**

- 14.9.1 NStQ will issue documentation to identify NStQ Citizens and individuals designated under paragraph 14.8.1 who are authorized to harvest or transport Migratory Birds under the NStQ Right to Harvest Migratory Birds.
- 14.9.2 NStQ Citizens or individuals designated under paragraph 14.8.1 issued documentation under paragraph 14.9.1 will be required, on request by an authorized person, to produce that documentation when exercising the NStQ Right to Harvest Migratory Birds.
- 14.9.3 Documentation issued under paragraph 14.9.1 will:
- a. be in the English language, which will be the authoritative version, and, at the discretion of NStQ, also in Secwepemctsin;
  - b. include the name and address of the individual harvester; and
  - c. meet any other requirements under NStQ Law.

**14.10.0 ENFORCEMENT**

- 14.10.1 The Parties may negotiate agreements concerning enforcement of Federal or Provincial Law or NStQ Law in respect of Migratory Birds. Those agreements will not be part of the Final Agreement.

**14.11.0 CONSERVATION AND MANAGEMENT**

- 14.11.1 The Parties may enter into conservation and management agreements to address matters of common concern in respect of Migratory Birds including:
- a. setting local conservation objectives;
  - b. implementing conservation measures;
  - c. matters related to stewardship and recovery of species at risk, such as: determining the occurrence and range of species; monitoring the status of species; developing and implementing education and public awareness programs; developing and implementing recovery strategies, action plans and management plans; protecting and enhancing species' habitats; and undertaking research projects in support of stewardship and recovery efforts for species;
  - d. information sharing;
  - e. licence and permit requirements; and
  - f. Migratory Birds habitat within the NStQ Territory.

**14.12.0 CONSULTATION ON CONSERVATION MEASURES**

- 14.12.1 In establishing a conservation measure for a Migratory Bird population, the Minister will take into account, among other things, the NStQ Right to Harvest Migratory Birds.
- 14.12.2 If, in the opinion of the Minister, conservation measures are needed to protect a particular population of Migratory Bird that is harvested by NStQ under the NStQ Right to Harvest Migratory Birds, and those measures are likely to affect the NStQ Right to Harvest Migratory Birds, the Minister will Consult with NStQ in respect of:
- a. the necessity of the conservation measures;
  - b. the nature of the conservation measures;
  - c. measures to minimize or mitigate restrictions or limitations on the NStQ Right to Harvest Migratory Birds resulting from the proposed conservation measures; and
  - d. if applicable, the NStQ role in the development and the implementation of the conservation measures.
- 14.12.3 If NStQ is of the opinion that conservation measures are needed in respect of a species of Migratory Bird that is harvested by NStQ under the NStQ Right to Harvest Migratory Birds, NStQ may present its views to the Minister in respect of the need for such conservation measures and its proposed role in the development and implementation of them, and the Minister will give full and fair consideration to NStQ's proposal.
- 14.12.4 Where the Minister has authorized the implementation of conservation measures and the conservation measures will affect the NStQ Right to Harvest Migratory Birds:
- a. the Minister will use reasonable efforts to avoid, minimize, or mitigate restrictions or limitations on the NStQ Right to Harvest Migratory Birds to the extent possible; and
  - b. the Minister, if requested, will provide written reasons to NStQ on the conservation measures adopted.
- 14.12.5 If the Minister believes on reasonable grounds that an emergency exists it may act without first Consulting NStQ. However, as soon as practicable thereafter, the Minister will inform NStQ of the impact of its actions.

## CHAPTER 15 GOVERNANCE

### 15.1.0 GENERAL

- 15.1.1 Canada will negotiate self-government in the Final Agreement with NStQ and British Columbia based on the policy of Canada that the inherent right to self-government is an existing aboriginal right under section 35 of the *Constitution Act, 1982*.
- 15.1.2 The NStQ Government, as provided for under the NStQ Constitution and the Final Agreement, will be the government of NStQ.
- 15.1.3 NStQ will have the right to self-government, and the authority to make laws, as set out in the Final Agreement.
- 15.1.4 The exercise of the NStQ Government jurisdiction and authority set out in the Final Agreement will evolve over time.

### 15.2.0 NSTQ GOVERNMENT STRUCTURE

- 15.2.1 The NStQ Government will consist of elected members as set out in the NStQ Constitution and the Final Agreement, and may include appointed members and elements of traditional Secwepemc governance.
- 15.2.2 Subject to subparagraph 15.4.1.c, the NStQ Constitution may provide for the appointment of members of the NStQ Government, including the process for appointment, duties and other related matters.
- 15.2.3 NStQ will act through the NStQ Government in exercising its rights, powers, privileges and authorities and in carrying out its duties, functions and obligations.
- 15.2.4 For greater certainty, the authority of the NStQ Government to make laws in respect of a subject matter as set out in the Final Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.
- 15.2.5 The NStQ Government may adopt Federal or Provincial Law in respect of matters within NStQ Government law-making authority set out in the Final Agreement.
- 15.2.6 The Provincial Court of British Columbia or the Supreme Court of British Columbia as the case may be, has jurisdiction to hear applications challenging the validity of NStQ Laws.

**15.3.0 LEGAL STATUS AND CAPACITY**

- 15.3.1 The rights, powers, privileges and authorities of NStQ will be exercised in accordance with:
- a. the NStQ Constitution and other NStQ Law; and
  - b. the Final Agreement.
- 15.3.2 NStQ will be a 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.

**15.4.0 NStQ CONSTITUTION**

- 15.4.1 NStQ will have an NStQ Constitution that is consistent with the Final Agreement, which will:
- a. provide that every person who is enrolled under the Final Agreement is entitled to be an NStQ Citizen;
  - b. provide that any NStQ Law is inconsistent with the NStQ Constitution is, to the extent of the inconsistency, of no force or effect;
  - c. provide that a majority of members of the NStQ Government will be elected;
  - d. provide conditions for the Disposition of NStQ Treaty Settlement Lands and Interests;
  - e. provide for interim or transitional NStQ Government from the Effective Date until the first elected NStQ Government takes office;
  - f. provide for a democratic NStQ Government including its duties, composition, and membership;
  - g. provide for the establishment of NStQ Public Institutions;
  - h. require the NStQ Government to be democratically accountable to NStQ Citizens with elections at least every five years;

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- i. require financial accountability to NStQ Citizens through a system of financial administration with standards comparable to those generally accepted for governments in Canada;
- j. provide conflict of interest rules with standards comparable to those generally accepted for governments of similar size in Canada;
- k. recognize and protect rights and freedoms of NStQ Citizens;
- l. provide for an amendment process for the NStQ Constitution;
- m. provide the process for the enactment of laws by NStQ acting through the NStQ Government;
- n. provide a process for removal from office of members of the NStQ Government;
- o. provide for challenging the validity of NStQ Law; and
- p. include other provisions, as determined by NStQ.

15.4.2 The NStQ Constitution, once ratified in accordance with the Final Agreement, will come into force for the purposes of the Final Agreement on the Effective Date.

### 15.5.0 TRANSITIONAL PROVISIONS

15.5.1 The Chiefs and Band Councillors of the NStQ Indian Bands on the day immediately before the Effective Date will be the elected members of the NStQ Government from the Effective Date until the office holders elected in the first elections take office.

15.5.2 The first elections for the officers of the NStQ Government will be held no later than six months after the Effective Date and the elected officers will take office no later than one year after Effective Date.

### 15.6.0 NSTQ ELECTIONS

15.6.1 Elections for NStQ Government will be held in accordance with the NStQ Constitution and other NStQ Law.

### 15.7.0 APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS

15.7.1 NStQ will establish processes for appeal or review of administrative decisions made by NStQ Institutions and if those processes provide for a right of appeal to a court, the Supreme Court of British Columbia will have jurisdiction to hear those appeals.



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- 15.7.2 The Supreme Court of British Columbia will have jurisdiction to hear applications for judicial review of administrative decisions taken by NStQ Institutions under an NStQ Law.
- 15.7.3 An application for judicial review under paragraph 15.7.2 may not be brought until all processes for appeal or review established by the NStQ Government, and applicable to that decision, have been exhausted.

### 15.8.0 REGISTRY OF LAWS

- 15.8.1 NStQ will:
- a. maintain a public registry of NStQ Law in the English language, which will be the authoritative version and, at the discretion of the NStQ Government, in Secwepemctsin;
  - b. provide Canada and British Columbia with copies of NStQ Law as soon as practicable after they are enacted; and
  - c. establish procedures for the coming into force and publication of NStQ Law.

### 15.9.0 INDIVIDUALS WHO ARE NOT NSTQ CITIZENS

- 15.9.1 The Final Agreement will provide that NStQ Institutions will Consult with Non-Citizens about NStQ Institution decisions which directly and significantly affect those Non-Citizens.
- 15.9.2 In addition to the requirement to Consult under paragraph 15.9.1, NStQ will provide Non-Citizens with the opportunity to participate in the decision-making processes of an NStQ Public Institution, in accordance with criteria to be established under the Final Agreement, if the activities of that NStQ Public Institution directly and significantly affect Non-Citizens.
- 15.9.3 For the purposes of paragraph 15.9.1, an NStQ Institution will provide:
- a. notice of the matter to be decided;
  - b. sufficient information with respect to the matter to permit Non-Citizens to prepare their views on the matter;
  - c. a reasonable period of time to permit Non-Citizens to prepare their views on the matter;
  - d. an opportunity for Non-Citizens to present their views on the matter; and

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- e. a full and fair consideration of any views on the matter so presented by Non-Citizens.
- 15.9.4 NStQ will establish the means of participation under paragraph 15.9.2 by NStQ Law at the same time that it establishes an NStQ Public Institution whose activities may directly and significantly affect Non-Citizens.
- 15.9.5 NStQ will provide Non-Citizens with access to the review and appeal processes established under paragraph 15.7.1 in respect of the administrative decisions that directly and significantly affect them.

### 15.10.0 LAW-MAKING TRANSITION

- 15.10.1 Before NStQ brings into force any NStQ Law in respect of adoption, Child Protection Services, health services, family and social services, Child Care services, or kindergarten to grade 12 education, NStQ will give at least six months written notice of the proposed NStQ Law to Canada and British Columbia.
- 15.10.2 Upon agreement of the Parties, NStQ may exercise a law-making authority under paragraph 15.10.1 before the expiration of the six months notice period under that paragraph.
- 15.10.3 At the written request of any Party made within three months of notice being provided under paragraph 15.10.1, the relevant Parties will discuss:
- a. options to address the interests of NStQ through methods other than the exercise of NStQ law-making authority;
  - b. any transfer of cases and related documentation from federal or provincial institutions to NStQ Institutions, including any confidentiality and privacy considerations;
  - c. any transfer of assets from federal or provincial institutions to NStQ Institutions;
  - d. any appropriate amendments to Federal or Provincial Law, including amendments to address duplicate licensing requirements;
  - e. immunity of individuals providing services or exercising authority under NStQ Law; and
  - f. other matters agreed to by the Parties.
- 15.10.4 The Parties may enter into agreements regarding any of the matters set out in paragraph 15.10.3, but an agreement under this paragraph will not be a condition precedent to the exercise of law-making authority by NStQ, and such authority may be exercised immediately following the

expiration of the six month notice period or the notice period under paragraph 15.10.1 agreed upon under paragraph 15.10.2.

**15.11.0 NOTIFICATION OF PROVINCIAL LEGISLATION**

15.11.1 Subject to paragraph 15.11.6, or an agreement under paragraph 15.11.4, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council, British Columbia will notify NStQ if:

- a. the Final Agreement provides NStQ with law-making authority in respect of the subject matter of the legislation or regulation;
- b. the legislation or regulation may affect the protections, immunities, or limitations in respect of liability, remedies over, and rights referred to in paragraphs 15.17.1, 15.17.4 and 15.18.1; or
- c. the legislation or regulation may affect:
  - i. the rights, powers, duties or obligations; or
  - ii. the protections, immunities, or limitations in respect of liability referred to in paragraph 15.27.1,

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

15.11.2 If British Columbia does not notify NStQ under paragraph 15.11.1 for reasons of emergency or confidentiality, British Columbia will notify NStQ, that the legislation has been introduced in the Legislative Assembly, or the regulation has been deposited with the Registrar of Regulations, as the case may be.

15.11.3 Notifications under paragraphs 15.11.1 and 15.11.2 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.

15.11.4 NStQ and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 15.11.1 to 15.11.3.

15.11.5 Subject to paragraph 15.11.6, or an agreement under paragraph 15.11.4, if, within 30 days after notice is given under paragraphs 15.11.1 or 15.11.2, or by agreement under paragraph 15.11.4, NStQ makes a written request to British Columbia, then British Columbia and NStQ will discuss the effect of the legislation or regulation, if any, on:

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- a. a law which has been enacted by NStQ under the Final Agreement;  
or
  - b. a matter referred to in paragraphs 15.11.1b or 15.11.1c.
- 15.11.6 If NStQ is a member of a representative body and NStQ agrees to participate with British Columbia through that body to engage in collective discussions in respect of matters under paragraphs 15.11.1 and 15.11.2, then consultations in respect of a particular matter will be deemed to satisfy British Columbia's obligations for notification under paragraphs 15.11.1 and 15.11.2.
- 15.11.7 Unless British Columbia agrees otherwise, NStQ will retain the information provided under paragraphs 15.11.1 to 15.11.6 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.
- 15.11.8 The Parties acknowledge that nothing in paragraphs 15.11.1 to 15.11.6 is intended to interfere with British Columbia's legislative process.
- 15.11.9 If provincial legislation or a regulation referred to in paragraph 15.11.1 affects the validity of an NStQ Law, then, notwithstanding any other provision of the Final Agreement, the NStQ Law will be deemed to be valid for a period of 6 months or until amended, whichever is the shorter period, after the coming into force of the provincial legislation or regulation.

### 15.12.0 DELEGATION

- 15.12.1 Any law-making authority of NStQ under the Final Agreement may be delegated by NStQ Law to:
- a. an NStQ Public Institution;
  - 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 Final Agreement and the NStQ Constitution.

15.12.2 Any authority of NStQ under the Final Agreement other than a law-making authority may be delegated by NStQ Law to:

- a. any body set out in subparagraph 15.12.1 a;
- b. any body set out in subparagraphs 15.12.1 b to 15.12.1 g; or
- c. a legal entity in Canada,

if the delegation and the exercise of any delegated authority is in accordance with the Final Agreement and the NStQ Constitution.

15.12.3 Any delegation under subparagraphs 15.12.1.b to 15.12.1.g or subparagraphs 15.12.2.b and 15.12.2.c will require the written consent of the delegate.

15.12.4 NStQ may enter into agreements to receive authorities, including law-making authority, by delegation.

**15.13.0 NSTQ GOVERNMENT**

15.13.1 NStQ may make laws in respect of the election, administration, management and operation of the NStQ Government, including:

- a. the establishment of NStQ Public Institutions, including their respective powers, duties, composition, and membership, but any incorporation of a NStQ Public Institution will be under Federal or Provincial Law;
- b. the powers, duties, responsibilities, remuneration, and indemnification of members, officials and appointees of NStQ Institutions;
- c. financial administration of NStQ and NStQ Institutions; and
- d. elections, by-elections, and referenda.

15.13.2 NStQ will make laws that provide for reasonable access to information in the custody or control of an NStQ Institution by NStQ Citizens, Non-Citizens, and persons who receive services and programs from an NStQ Institution.

15.13.3 NStQ Law under paragraph 15.13.1 or 15.13.2 will prevail to the extent of a Conflict with Federal or Provincial Law, unless the Conflict is in relation to the protection of personal information, in which case Federal or Provincial Law will prevail to the extent of the Conflict.

15.13.4 NStQ may make laws in respect of the establishment of NStQ Corporations, but any registration or incorporation of the NStQ Corporation will be under Federal or Provincial Law.

15.13.5 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.13.4.

**15.14.0 NSTQ CITIZENSHIP**

15.14.1 NStQ may make laws in respect of NStQ citizenship.

15.14.2 NStQ Law under paragraph 15.14.1 will prevail to the extent of a Conflict with Federal or Provincial Law.

**15.15.0 DEVOLUTION OF CULTURAL PROPERTY**

15.15.1 In paragraphs 15.15.2 to 15.15.7, "cultural property" will mean:

- a. ceremonial regalia and similar personal property associated with an NStQ Citizen; and
- b. other personal property that has cultural significance to NStQ.

15.15.2 NStQ may make laws in respect of devolution of the cultural property of an NStQ Citizen who dies intestate.

15.15.3 NStQ Law under paragraph 15.15.2 will prevail to the extent of a Conflict with Federal or Provincial Law.

15.15.4 NStQ will have standing in any judicial proceeding in which:

- a. the validity of the will of an NStQ Citizen; or
- b. the devolution of the cultural property of an NStQ Citizen,

is at issue, including any proceedings under provincial wills variation legislation.

15.15.5 NStQ may commence an action under provincial wills variation legislation in respect of cultural property addressed by the will of an NStQ Citizen that provides for the devolution of cultural property.

15.15.6 In a proceeding to which paragraphs 15.15.4 or 15.15.5 applies, the court will consider, among other matters, any evidence or representations in respect of NStQ Law and customs dealing with the devolution of cultural property.

15.15.7 The participation of NStQ in proceedings referred to in paragraphs 15.15.4 or 15.15.5 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

**15.16.0 NSTQ ASSETS**

15.16.1 NStQ may make laws in respect of the use, possession, management and Disposition of assets of NStQ, an NStQ Public Institution or an NStQ Corporation:

- a. located off NStQ Treaty Settlement Lands; and
- b. located on NStQ Treaty Settlement Lands.

15.16.2 For greater certainty, the law-making authority under paragraph 15.16.1 will not include the authority to make laws regarding creditors' rights and remedies.

15.16.3 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under subparagraph 15.16.1.a.

15.16.4 NStQ Law under subparagraph 15.16.1.b will prevail to the extent of a Conflict with Federal or Provincial Law.

**15.17.0 LIABILITY**

**Liability of Elected Members of NStQ Government**

15.17.1 No action for damages lies or may be instituted against a member or member of the NStQ Government for:

- a. anything said or done, or omitted to be said or done, by or on behalf of NStQ or the NStQ Government by somebody other than that member or former member while he or she is, or was, a member;
- b. any alleged neglect or default in the performance or intended performance of a duty or the exercise of a power, of NStQ or the NStQ Government while he or she is, or was, a member;
- c. anything said or done, or omitted to be said or done, by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or
- d. any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.

15.17.2 Subparagraphs 15.17.1.c and 15.17.1.d will not provide a defence if:

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- a. that person has, in respect of 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.

15.17.3 Subparagraphs 15.17.1.c and 15.17.1.d do not absolve NStQ from vicarious liability arising out of a tort committed by a member or former member of the NStQ Government for which NStQ would have been liable had those paragraphs not been in effect.

### **Liability of NStQ Public Officers**

15.17.4 No action for damages lies, or may be instituted against, an NStQ Public Officer or former NStQ Public Officer:

- a. for anything said or done, or omitted to be said or done, by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or
- b. for any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.

15.17.5 Paragraph 15.17.4 will not provide a defence if:

- a. that person has, in respect of 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.

15.17.6 Paragraph 15.17.4 does not absolve any of the corporations or bodies referred to in the definition of NStQ Public Officer from vicarious liability arising out of a tort committed by an NStQ Public Officer or former NStQ Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.

15.17.7 Notwithstanding paragraph 15.17.4, except as may be otherwise provided under Federal or Provincial Law, an NStQ Public Officer does not have protections, immunities or limitations in respect of liability, in respect of the provision of a service, if no persons delivering reasonably similar programs or services under Federal or Provincial Law have protections, immunities, limitations in respect of liability and rights under Federal or Provincial Law.



**15.18.0 NSTQ AND NSTQ GOVERNMENT**

- 15.18.1 NStQ and the NStQ Government will have the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a municipality, its council and public officers under Part 7 of the *Local Government Act*.
- 15.18.2 For greater certainty, the provisions of paragraph 15.18.1 in relation to remedies under Part 7 of the *Local Government Act*, will not limit any authority of NStQ and the NStQ Government under the Final Agreement to apply to a court of competent jurisdiction to enforce, prevent or restrain the contravention of NStQ Law, including the recovery or imposition of any penalty established under NStQ Law for the contravention of NStQ Law.
- 15.18.3 Subject to paragraph 6.1.3 of the Access Chapter, NStQ and the NStQ Government will have 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, will have those protections, immunities, limitations in respect of liability, remedies over, and rights, in respect of a road on NStQ Treaty Settlement Lands used by the public, or by industrial or resource users, if NStQ or the NStQ Government is the occupier of that road.

**15.19.0 CREDITOR REMEDIES**

- 15.19.1 No creditor will have any remedy against an Interest, reservation or exception in any NStQ Treaty Settlement Lands held by NStQ or an NStQ Public Institution:
- a. the title to which is not registered in the Land Title Office; or
  - b. for which an application for registration in the Land Title Office has not been made.
- 15.19.2 Before granting a security instrument in an Interest, reservation or exception in a parcel of NStQ Treaty Settlement Lands, NStQ will register the indefeasible title to the parcel under the *Land Title Act* in accordance with the Final Agreement.
- 15.19.3 Paragraph 15.19.1 will not apply to an application for an order to enforce a security interest in favour of Canada or British Columbia against an Interest, reservation or exception in any NStQ Treaty Settlement Lands held by NStQ or an NStQ Public Institution.
- 15.19.4 Subject to paragraph 15.19.5, no creditor will have a remedy against Essential Personal Property held by NStQ or an NStQ Public Institution

unless the British Columbia Supreme Court makes an order granting the creditor a remedy against such property at a time and on any such conditions as the court considers proper.

- 15.19.5 The court will consider the following factors in determining whether to grant an application for a remedy against Essential Personal Property held by NStQ or an NStQ Public Institution:
- a. whether granting the application is likely to result in the insolvency of NStQ or an NStQ Public Institution, as applicable;
  - b. whether granting the application is likely to result in NStQ or an NStQ Institution, as applicable, being unable to operate or to fund or deliver any programs or services which are provided at the time of the application; and
  - c. whether the creditor has exhausted all other reasonable remedies, including obtaining a court order to realize on personal property, other than Essential Personal Property of NStQ or of the NStQ Public Institution, as applicable.
- 15.19.6 Notwithstanding paragraph 15.19.4, no creditor will have any remedy against NStQ Cultural Materials owned by NStQ, an NStQ Public Institution, an NStQ Citizen, NStQ Family or a member of an NStQ Family or individual provided that the NStQ Cultural Materials are not offered for sale.

#### **15.20.0 PUBLIC WORKS**

- 15.20.1 NStQ may make laws in respect of public works and related services on NStQ Treaty Settlement Lands.
- 15.20.2 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law made under paragraph 15.20.1.

#### **15.21.0 BUILDINGS AND STRUCTURES**

- 15.21.1 NStQ may make laws in respect of buildings and structures on NStQ Treaty Settlement Lands.
- 15.21.2 The *Canada Labour Code* will apply to federal works, undertakings, and businesses on NStQ Treaty Settlement Lands.
- 15.21.3 The *British Columbia Building Code* will apply on NStQ Treaty Settlement Lands.

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15.21.4 At the request of NStQ, British Columbia and NStQ will negotiate and attempt to reach agreement to enable NStQ to establish standards for buildings or structures which are additional to or different from the standards established by the *British Columbia Building Code*.

15.21.5 Subject to paragraph 15.21.4, NStQ Law under paragraph 15.21.1 will 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*.

15.21.6 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.21.1.

### 15.22.0 PUBLIC ORDER, PEACE AND SAFETY

15.22.1 NStQ may make laws in respect of regulation, control, or prohibition of any actions, activities, or undertakings on NStQ Treaty Settlement Lands, including any Submerged Lands which form part of NStQ Treaty Settlement Lands under paragraph 3.14.2 that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace, or safety.

15.22.2 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.21.1.

### 15.23.0 REGULATION OF BUSINESS

15.23.1 NStQ may make laws in respect of the regulation, licensing and prohibition of business on NStQ Treaty Settlement Lands including the imposition of licence fees or other fees.

15.23.2 NStQ law-making authority under paragraph 15.23.1 will not include the authority to make laws in respect of the accreditation, certification, or professional conduct of professions and trades.

15.23.3 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.23.1.

### 15.24.0 TRAFFIC, PARKING, TRANSPORTATION AND NSTQ ROADS

15.24.1 NStQ may make laws in respect of traffic, parking, transportation and NStQ Roads on NStQ Treaty Settlement Lands to the same extent as Local Governments in British Columbia have authority to make laws in respect of traffic, parking, transportation and highways.

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15.24.2 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.24.1.

### 15.25.0 SOLEMNIZATION OF MARRIAGES

15.25.1 NStQ may make laws in respect of:

- a. the marriage rites and ceremonies of the Secwepemc culture; and
- b. the designation of NStQ Citizens to solemnize marriages.

15.25.2 Nothing in the *Marriage Act* will be construed as in any way preventing NStQ from solemnizing, according to the rites and ceremonies of the Secwepemc culture, a marriage between any two persons:

- a. neither of whom is under any legal disqualification to contract marriage under Federal or Provincial Law; and
- b. either or both of whom are NStQ Citizens.

15.25.3 A marriage may not be solemnized under NStQ Law unless the persons intending to marry possess a valid marriage licence.

15.25.4 For the purposes of paragraph 15.25.3, marriage licences may only be issued by NStQ where:

- a. NStQ has been appointed as an issuer of marriage licences under Provincial Law; and
- b. the issuance of the marriage licence complies with the *Marriage Act*.

15.25.5 Prior to the Final Agreement, the Parties agree to discuss other areas of interest with regard to solemnization of marriages.

15.25.6 Immediately after the solemnization of the marriage, a representative designated under subparagraph 15.25.1.b must register the marriage:

- a. by entering a record of it in a marriage register book issued by Vital Statistics and kept by NStQ for that purpose; and
- b. by providing the original registration to the registrar general under the *Vital Statistics Act*.

15.25.7 The registrar general, or a person authorized by the provincial representative under the *Vital Statistics Act*, may, during normal business hours and as often as the registrar general considers necessary, inspect the marriage register book kept by NStQ and compare it with the registrations returned by NStQ under subparagraph 15.25.6.b.

15.25.8 The record under subparagraph 15.25.6.a must be signed:

- a. by each of the parties to the marriage;
- b. by two witnesses; and
- c. by a representative designated under subparagraph 15.25.1.b.

15.25.9 A representative designated under subparagraph 15.25.1 b by whom a marriage is solemnized must observe and perform the duties imposed on him or her under the *Vital Statistics Act* respecting the records of marriage.

15.25.10 Subject to paragraphs 15.25.2 to 15.25.9, NStQ Law under paragraph 15.25.1 will prevail to the extent of a Conflict with Federal or Provincial Law.

### **15.26.0 LIQUOR CONTROL**

15.26.1 NStQ may make laws in respect of the prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on NStQ Treaty Settlement Lands.

15.26.2 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.26.1.

15.26.3 British Columbia will not issue a licence, permit, or other authority to sell liquor on NStQ Treaty Settlement Lands without the consent of NStQ.

15.26.4 A person with a licence, permit, or other authority to sell liquor on NStQ Treaty Settlement Lands must purchase the liquor in accordance with Federal and Provincial Law.

15.26.5 British Columbia will, in accordance with Provincial Law, authorize persons designated by NStQ to approve or deny applications for special occasion licences to sell liquor on NStQ Treaty Settlement Lands.

### **15.27.0 EMERGENCY PREPAREDNESS**

15.27.1 NStQ will have the rights, powers, duties, obligations, protections, immunities and limitations in respect of liability of a local authority under Federal and Provincial Law in respect of emergency preparedness and emergency measures on NStQ Treaty Settlement Lands.

15.27.2 NStQ may make laws in respect of its rights, powers, duties, and obligations under paragraph 15.27.1.

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- 15.27.3 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 15.27.2.
- 15.27.4 For greater certainty, NStQ may declare a state of local emergency, and exercise the powers of a local authority in respect of local emergencies in accordance with Federal and Provincial Law in respect of emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia set out in Federal and Provincial Law.
- 15.27.5 Nothing in the Final Agreement will affect the authority of:
- a. Canada to declare a national emergency; or
  - b. British Columbia to declare a provincial emergency,
- in accordance with Federal and Provincial Law.

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## CHAPTER 16 LOCAL GOVERNMENT RELATIONS

### 16.1.0 GENERAL

- 16.1.1 NStQ Treaty Settlement Lands will not form part of any municipality or electoral area, and will not form part of any regional district unless NStQ becomes a member of the regional district in accordance with paragraph 16.1.2.
- 16.1.2 NStQ may become a member of a regional district as set out in Provincial Law.
- 16.1.3 On the Effective Date, the NStQ will be responsible for managing its intergovernmental relations with Local Governments.
- 16.1.4 Nothing in the Final Agreement will limit the ability of British Columbia to restructure regional districts or to amend or divide the boundaries of a regional district, municipality or electoral area in accordance with Provincial Law.
- 16.1.5 Should NStQ exercise its right under paragraph 16.1.2, NStQ will appoint a director to the board of the regional district who will have the powers, duties and functions of a Treaty First Nation Director under Provincial Law.
- 16.1.6 British Columbia will consult with NStQ on any changes to the boundaries of a regional district or municipality that directly and significantly affect NStQ.
- 16.1.7 Any contractual service agreement between NStQ and a Local Government in effect on the Effective Date will remain in effect until such time as it is renegotiated or is terminated under the terms of the agreement.
- 16.1.8 NStQ and Local Governments may establish and maintain agreements that set out principles, procedures and guidelines for the management of their relationship. The matters that may be governed by such agreements include the following:
- a. coordination and harmonization of land use and planning, including regulating land use, enforcement of regulations and development;
  - b. coordination and harmonization of property tax structures;
  - c. coordination and harmonization of the development of infrastructure;
  - d. cooperative economic development;



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- e. environmental protection; and
  - f. dispute resolution.
- 16.1.9 Prior to the Final Agreement, the Parties will establish an intergovernmental relations technical working group and invite participation by Local Governments in order to discuss how participation of NStQ with the Local Governments might best be accommodated.
- 16.1.10 NStQ Treaty Settlement Lands will form part of the Regional Hospital District.
- 16.1.11 On the Effective Date, NStQ will be a member of the Regional Hospital District and will appoint an elected member of NStQ to sit as a director on the Regional Hospital District board in accordance with Provincial Law.
- 16.1.12 The NStQ director will have the functions, powers, duties, obligations and liability protections of a municipal director of the Regional Hospital District board as is provided to a Treaty First Nation Director under Provincial Law.
- 16.1.13 Where NStQ becomes a member of the regional district under paragraph 16.1.2, NStQ membership in the Regional Hospital District under paragraph 16.1.11 will be provided through regional district membership.

## CHAPTER 17 CHILD AND FAMILY WELLNESS

### 17.1.0 CHILD PROTECTION SERVICES

- 17.1.1 NStQ may make laws in respect of Child Protection Services to Children of NStQ Families resident on NStQ Treaty Settlement Lands.
- 17.1.2 NStQ may provide Child Protection Services to NStQ Children or Children of NStQ Families who reside off NStQ Treaty Settlement Lands or children and families who reside on NStQ Treaty Settlement Lands who are not NStQ Children, subject to agreements under paragraph 17.1.8.
- 17.1.3 NStQ Law under paragraph 17.1.1 will:
- a. expressly provide that those laws will be interpreted and administered such that the Safety and Well-Being of Children are the paramount considerations; and
  - b. not preclude the reporting, as required by Provincial Law, of a Child in Need of Protection.
- 17.1.4 If NStQ makes laws under paragraph 17.1.1, NStQ will:
- a. develop operational and practice standards intended to ensure the Safety and Well-Being of Children and families;
  - b. participate in British Columbia's information management systems, or establish an information system that is compatible with British Columbia's information systems concerning a Child in Need of Protection and a Child in Care;
  - c. allow for mutual sharing of information concerning a Child in Need of Protection and a Child in Care with British Columbia; and
  - d. 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.
- 17.1.5 If NStQ has made a law under paragraph 17.1.1, and there is an emergency in which a Child under British Columbia's authority is a Child in Need of Protection and British Columbia has not responded or is unable to respond in a timely manner, NStQ may act to protect the Child and in those circumstances unless NStQ and British Columbia otherwise agree in writing, NStQ, as appropriate, will refer the matter to British Columbia after the emergency.
- 17.1.6 Notwithstanding any laws under paragraph 17.1.1, if there is an emergency in which an NStQ Child on NStQ Treaty Settlement Lands is

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in need of protection, and NStQ has not responded or is unable to respond in a timely manner, British Columbia may act to protect the NStQ Child and, in those circumstances, unless British Columbia and NStQ otherwise agree in writing, British Columbia, as appropriate, will refer the matter to NStQ after the emergency.

- 17.1.7 NStQ Law under paragraph 17.1.1 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 17.1.8 At the request of either NStQ or British Columbia, NStQ and British Columbia will negotiate and attempt to reach agreement in respect of how Child Protection Services are provided to:
- a. NStQ Children or Children of NStQ Families who reside off NStQ Treaty Settlement Lands; or
  - b. Children who reside on NStQ Treaty Settlement Lands who are not NStQ Children.
- 17.1.9 Prior to the Final Agreement, the Parties will review transition provisions related to paragraphs 17.1.1 and 17.2.2 including the development of protocols and other operational agreements that are necessary for a safe and co-ordinated transition of adoption, guardianship and Child Protection Services for NStQ Children and Children of NStQ Families.
- 17.1.10 NStQ will participate in the planning, including the adoption planning, for an NStQ Child.
- 17.1.11 For greater certainty, where the Director becomes the guardian of an NStQ Child, the Director will include NStQ in planning for the NStQ Child, including adoption planning.
- 17.1.12 Notwithstanding paragraphs 17.1.10 and 17.1.11, the Director may proceed with planning for the NStQ Child where in the opinion of the Director the Best Interests of the NStQ Child require the Director to act.

### 17.2.0 ADOPTION

- 17.2.1 For the purposes of paragraphs 17.2.2 to 17.2.12, all relevant factors must be considered in determining the Child's best interests, including those factors that must be considered under the *Adoption Act*.
- 17.2.2 NStQ may make laws in respect of adoption for:
- a. NStQ Children in British Columbia; and
  - b. Children who reside on NStQ Treaty Settlement Lands to be adopted by NStQ Citizens.

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- 17.2.3 NStQ Law under paragraph 17.2.2 will:
- a. expressly provide that the Best Interests of the NStQ 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.
- 17.2.4 If NStQ makes laws under paragraph 17.2.2, NStQ will:
- a. develop operational and practice standards that promote the Best Interests of the NStQ Child; and
  - b. provide British Columbia and Canada with a record of all adoptions occurring under NStQ Law.
- 17.2.5 Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement on the information that will be included in the record under subparagraph 17.2.4.b.
- 17.2.6 NStQ Law under paragraph 17.2.2 will apply to the adoption of an NStQ Child residing off NStQ Treaty Settlement Lands or a Child residing on NStQ Treaty Settlement Lands who is not an NStQ Child 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 NStQ 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. if the Child is not under the guardianship of a Director, the guardian of the Child;
  - 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 subparagraph 17.2.6.a, in accordance with the criteria that would be used by that court in an application to dispense with the requirement for a parent or guardian's consent to an adoption under Provincial Law.
- 17.2.7 A Director appointed by NStQ must act in the Best Interests of the NStQ Child.

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- 17.2.8 NStQ Law under paragraph 17.2.2 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 17.2.9 Before placing an NStQ Child for adoption, an adoption agency must:
- a. make reasonable efforts to obtain information about the Child's cultural identity; and
  - b. discuss the Child's placement with a designated representative of NStQ.
- 17.2.10 Notwithstanding paragraph 17.2.9, the adoption agency may proceed with placing the NStQ Child for adoption, where in the opinion of the guardian of the Child, and where the Best Interests of the NStQ Child, require the adoption agency to act.
- 17.2.11 Subparagraph 17.2.9.b. 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.
- 17.2.12 Notwithstanding paragraph 17.2.11, the adoption agency will on obtaining information about the Child's cultural identity, ensure that information remains part of the adoption record, and is available to the Child.

### 17.3.0 CHILD CUSTODY

- 17.3.1 NStQ will have standing in any judicial proceedings in British Columbia in which custody of an NStQ Child is in dispute, and the court will take judicial notice of NStQ Law and consider any evidence or representations in respect of NStQ Law and customs in addition to any other matters it is required by law to consider.
- 17.3.2 The participation of NStQ in proceedings referred to in paragraph 17.3.1 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### 17.4.0 SOCIAL AND FAMILY SERVICES

- 17.4.1 NStQ may make laws in respect of social and family services, income assistance and housing, provided by an NStQ Institution.
- 17.4.2 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 17.4.1.

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- 17.4.3 NStQ law-making authority under paragraph 17.4.1 will not include the authority to make laws in respect of the licensing and regulation of facility-based services off NStQ Treaty Settlement Lands.
- 17.4.4 If NStQ makes laws under paragraph 17.4.1, at the request of any Party, the Parties will negotiate and attempt to reach agreement in respect of exchange of information with regards to avoidance of double payments and related matters.
- 17.4.5 At the request of any Party, the Parties will negotiate and attempt to reach agreement for administration and delivery by an NStQ Institution of federal and provincial social and family services and programs for all individuals residing within NStQ Treaty Settlement Lands.

### 17.5.0 CHILD CARE

- 17.5.1 NStQ may make laws in respect of Child Care services on NStQ Treaty Settlement Lands.
- 17.5.2 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 17.5.1.
- 17.5.3 For greater certainty, NStQ Law under paragraph 17.5.1 in respect of curriculum development for Secwepemctsin and Secwepemc culture will prevail to the extent of a Conflict with Federal or Provincial Law.

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## CHAPTER 18 EDUCATION

### 18.1.0 EDUCATION OF LANGUAGE AND CULTURE

- 18.1.1 NStQ may make laws in respect of Secwepemctsin and Secwepemc cultural education provided by an NStQ Institution on NStQ Treaty Settlement Lands for:
- a. the certification and accreditation of teachers for Secwepemc language and culture;
  - b. the development and teaching of Secwepemctsin and Secwepemc culture curriculum; and
  - c. the certification and accreditation of individuals to practice as aboriginal healers on NStQ Treaty Settlement Lands.
- 18.1.2 NStQ Law under paragraph 18.1.1 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 18.1.3 NStQ may enter into agreements with other educational institutions regarding the delivery of Secwepemc language and culture curriculum.

### 18.2.0 KINDERGARTEN TO GRADE 12 EDUCATION

- 18.2.1 NStQ may make laws in respect of kindergarten to grade 12 education provided by an NStQ Institution on NStQ Treaty Settlement Lands.
- 18.2.2 NStQ Law under paragraph 18.2.1 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. provide for the certification of teachers other than for the teaching of Secwepemc language and culture, by an NStQ Public Institution, or a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
- 18.2.3 NStQ may make laws in respect of home education of NStQ Citizens on NStQ Treaty Settlement Lands.
- 18.2.4 NStQ Law under paragraphs 18.2.1 or 18.2.3 will prevail to the extent of a Conflict with Federal or Provincial Law.



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- 18.2.5 If NStQ makes laws under paragraph 18.2.1, at the request of NStQ or British Columbia, those Parties will negotiate and attempt to reach agreements concerning the provision of kindergarten to grade 12 education to:
- a. persons other than NStQ Citizens residing on NStQ Treaty Settlement Lands; and
  - b. NStQ Citizens residing off NStQ Treaty Settlement Lands.
- 18.2.6 NStQ and British Columbia may negotiate agreements to provide educational services on NStQ Treaty Settlement Lands to persons other than NStQ Citizens residing off NStQ Treaty Settlement Lands.

### 18.3.0 POST-SECONDARY EDUCATION

- 18.3.1 NStQ may make laws in respect of post-secondary education provided by NStQ Institutions on NStQ Treaty Settlement Lands including:
- a. the establishment of post-secondary institutions, with the ability to grant degrees, diplomas or certificates;
  - b. the determination of the curriculum for post-secondary education institutions established by NStQ; and
  - c. the provision for and coordination of adult education programs.
- 18.3.2 NStQ Law under paragraph 18.3.1 will ensure that diploma, degree and certificate standards are consistent with other institutions offering similar diplomas, degrees and certificates in British Columbia that are operating in accordance with Provincial Law.
- 18.3.3 Federal and Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 18.3.1.

## CHAPTER 19 HEALTH

### 19.1.0 NStQ ABORIGINAL HEALERS

- 19.1.1 NStQ may make laws in respect of the authorization of individuals to practice as aboriginal healers on NStQ Treaty Settlement Lands.
- 19.1.2 NStQ authority to make laws under paragraph 19.1.1 will not include the authority to regulate:
- a. medical or health practices that, or practitioners who, require licensing or certification under Federal or Provincial Law; or
  - b. products or substances that are controlled under Federal Law.
- 19.1.3 Where Canada proposes to make a medicinal plant, product or substance traditionally used by an NStQ aboriginal healer a controlled substance under Federal Law, at the request of NStQ:
- a. Canada will Consult NStQ; and
  - b. NStQ and Canada will negotiate and attempt to reach agreement for an exemption for use of that product or substance by an NStQ aboriginal healer.
- 19.1.4 NStQ Law under paragraph 19.1.1 will establish standards:
- a. in respect of competence, ethics, and quality of practice that are reasonably required to protect the public; and
  - b. that are reasonably required to safeguard personal client information.
- 19.1.5 NStQ Law under paragraph 19.1.1 will prevail to the extent of a Conflict with Federal or Provincial Law.
- 19.1.6 In the event that British Columbia or Canada propose to regulate individuals practicing as aboriginal healers off NStQ Treaty Settlement Lands, British Columbia or Canada will consult with NStQ prior to establishing those regulations.

### 19.2.0 HEALTH

- 19.2.1 NStQ may make laws in respect of health services, including public health, on NStQ Treaty Settlement Lands.
- a. for NStQ Citizens; or
  - b. provided by an NStQ Institution.

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- 19.2.2 NStQ Law under paragraph 19.2.1 will take into account the protection, improvement and promotion of public and individual health and safety.
- 19.2.3 At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration of federal and provincial health services and programs by an NStQ Institution for all individuals residing on NStQ Treaty Settlement Lands.
- 19.2.4 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 19.2.1.
- 19.2.5 Notwithstanding paragraph 19.2.4, NStQ Law under paragraph 19.2.1 in respect of the organization and structure of NStQ Institutions used to deliver health services on NStQ Treaty Settlement Lands, will prevail to the extent of a Conflict with Federal or Provincial Law.

## CHAPTER 20 JUSTICE

### 20.1.0 ENFORCEMENT OF NSTQ LAW

20.1.1 NStQ will be responsible for the enforcement of NStQ Law.

20.1.2 Prior to the Final Agreement, the Parties will review available options for the enforcement of NStQ Law, Provincial Law and Federal Law on NStQ Treaty Settlement Lands, including those laws made in conjunction with the fish, Wildlife and Migratory Birds Chapters.

20.1.3 NStQ may make laws for the enforcement of NStQ Law respecting:

- a. the appointment of officers to enforce NStQ Law; and
- b. powers of enforcement, provided such powers do not exceed those provided by Federal or Provincial Law for enforcing similar law in British Columbia.

20.1.4 NStQ law-making authority will not include the jurisdiction to:

- a. establish a police force, regulate police activities or appoint peace officers (including but not limited to police officers); or
- b. authorize the acquisition, possession, transport, carrying or use of a firearm, ammunition, prohibited weapon or prohibited device as these terms are defined in Part III of the *Criminal Code*; or
- c. establish or maintain places of confinement except for:
  - i. police jails or lock-ups operated by a police service established under Provincial Law; or
  - ii. as provided for under an agreement referred to in paragraph 20.4.7,

but nothing in the Final Agreement will prevent NStQ from establishing a police force in accordance with Provincial Law.

20.1.5 If NStQ appoints officials to enforce NStQ Law, NStQ will:

- a. ensure that any NStQ enforcement officials 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 NStQ enforcement officials.

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20.1.6 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law under paragraph 20.1.3.

20.1.7 NStQ may, by a proceeding brought in the Supreme Court of British Columbia, enforce, prevent or restrain the contravention of NStQ Law.

### 20.2.0 PENALTIES

20.2.1 NStQ Law may provide for the imposition of sanctions, including fines, Administrative Penalties, community service, restitution, and imprisonment, for the violation of NStQ Law.

20.2.2 Subject to paragraph 20.2.7, NStQ Law may provide for:

- a. a maximum fine that is not greater than that which may be imposed for comparable regulatory offences punishable by way of summary conviction under Federal or Provincial Law; and
- b. a maximum Administrative Penalty that will not be greater than that which may be imposed for a breach of a comparable regulatory requirement under Federal or Provincial Law.

20.2.3 Where there is no comparable regulatory offence or regulatory requirement under Federal or Provincial Law, the maximum fine or Administrative Penalty will not be greater than the general limit for offences under the *Offence Act*.

20.2.4 NStQ Law in respect of the protection of the Environment may provide for:

- a. a fine; or
- b. subject to paragraph 20.2.6, imprisonment,

that is not greater than that imposed upon summary conviction under the *Canadian Environmental Protection Act*.

20.2.5 NStQ Law in respect of the protection of NStQ Cultural Sites or NStQ Cultural Materials may provide for a fine under the *Heritage Conservation Act* or term of imprisonment no greater than may be imposed for comparable offences under the *Offence Act*.

20.2.6 Subject to paragraph 20.2.7, NStQ Law may provide for a maximum term of imprisonment that is not greater than the general limit for offences under the *Offence Act*.

20.2.7 NStQ Law with respect to taxation may provide for:

- a. a fine that is greater than the limits set out in paragraph 20.2.2; or
- b. a term of imprisonment that is greater than the limit set out in paragraph 20.2.6,

where there is an agreement to that effect as contemplated in paragraph 24.2.1 of the Taxation Chapter.

### 20.3.0 ADJUDICATION OF NSTQ LAW

- 20.3.1 The Provincial Court of British Columbia will have jurisdiction to hear prosecutions of offences under NStQ Law, unless the Parties agree otherwise.
- 20.3.2 The summary conviction proceedings of the *Offence Act* will apply to prosecutions of offences under NStQ Law.
- 20.3.3 The Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, will have jurisdiction to hear legal disputes arising between individuals under NStQ Law.
- 20.3.4 NStQ will be responsible for the prosecution of all matters arising from NStQ Law, including appeals, and may carry out this responsibility by:
  - a. appointing or retaining individuals to conduct prosecutions and appeals, in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia;
  - b. entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals; or
  - c. both subparagraph a. and subparagraph b.
- 20.3.5 Unless the Parties agree otherwise, British Columbia will pay 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 NStQ Law, to NStQ on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia in respect of an offence under Federal Law.
- 20.3.6 After receiving a written request from NStQ, the Parties will discuss and explore options for the establishment of a court, other than a court with inherent jurisdiction or a federal court, to adjudicate offences and other matters arising under NStQ Law or laws of other First Nation Governments in British Columbia.

**20.4.0 COMMUNITY CORRECTIONAL SERVICES**

- 20.4.1 NStQ may provide Community Correctional Services for persons charged with, or found guilty of, an offence under NStQ Law and to carry out such other responsibilities as may be set out in an agreement under paragraphs 20.4.2, 20.4.5 or 20.4.6.
- 20.4.2 At the request of NStQ, NStQ and British Columbia may enter into agreements to provide Community Correctional Services on NStQ Treaty Settlement Lands for persons charged with, or found guilty of, an offence under Federal or Provincial Law.
- 20.4.3 Where the Minister is of the opinion that correctional services to offenders under paragraph 20.4.2 are not being delivered in accordance with standards and procedures negotiated as part of an agreement, the Minister may reassume care and custody of provincial offenders under the care of NStQ.
- 20.4.4 If British Columbia agrees to enter into agreements under paragraph 20.4.2, such agreements between NStQ and British Columbia will address:
- a. recruitment and selection standards for individuals appointed by NStQ to provide Community Correctional Services;
  - b. adherence to provincial operational policy, 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;
  - d. any other matters that may be identified by British Columbia and/or NStQ as necessary to enter into the agreement; and
  - e. provisions for NStQ to provide Community Correctional Services consistent with the needs and priorities of NStQ.
- 20.4.5 NStQ and British Columbia may enter into agreements to enable NStQ to provide rehabilitative community-based programs and interventions off NStQ Treaty Settlement Lands for NStQ Citizens charged with, or found guilty of, an offence under a Federal or Provincial Law.
- 20.4.6 NStQ and Canada may enter into agreements to enable a person appointed by NStQ to deliver Community Correctional Services under paragraph 20.4.1 to adult NStQ offenders who have been released from a federal penitentiary, or are subject to a long-term supervision order,

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including parole, temporary absence supervision, or other similar services as may be delivered by Canada.

- 20.4.7 Canada and NStQ may enter into an agreement to allow NStQ to establish facilities or processes for the care and custody of federally sentenced offenders.
- 20.4.8 Where an agreement under paragraphs 20.4.6 or 20.4.7 has been reached, federal standards will apply respectively except as modified by such agreements, to the following:
- a. the exercise of due process;
  - b. the proper and fair administration of the sentence of the court;
  - c. the protection of the public;
  - d. the safety and welfare of those individuals deprived of their freedom through the judicial process;
  - e. the provision of opportunities for rehabilitation;
  - f. the audit and review of Community Correctional Services; and
  - g. management, storage and disposal of records and the safeguard of confidential information.
- 20.4.9 Where the Minister is of the opinion that correctional services to federal offenders are not being delivered in accordance with standards and procedures negotiated as part of an agreement, the Minister may reassume care and custody of federally sentenced offenders under the care of NStQ.
- 20.4.10 Where practicable to do so the Minister will provide NStQ with:
- a. notification of the reasons or circumstances which form the basis of the Minister's decision to reassume care and custody of offenders;
  - b. reasonable opportunity to explain why no action should be taken; and
  - c. reasonable opportunity to correct or modify NStQ acts or omissions which form the basis for the Minister's decision.



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## CHAPTER 21 TRANSITIONS

### 21.1.0 ESTATES

21.1.1 The *Indian Act* will apply, with any modifications that the circumstances require, to the estate of an individual who:

- a. died testate or intestate before the Effective Date; and
- b. at the time of death, was a member of an NStQ Indian Band under the *Indian Act*.

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

- a. notify in writing all members of the NStQ Indian Bands who have deposited wills with the Minister; and
- b. provide information to all members of the NStQ Indian Bands who have not deposited wills with the Minister and to all individuals who may be eligible for enrolment under the Final Agreement,

that their wills may not be valid after the Effective Date, and that they should have their wills reviewed to ensure validity under Provincial Law.

21.1.3 Section 51 of the *Indian Act* will apply, with any modifications that the circumstances require, to the property of an NStQ Citizen whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date, until that individual is declared to be no longer incapable under the *Patients Property Act*.

21.1.4 The *Indian Act* will apply, with any modifications that the circumstances require, to the estate of an NStQ Citizen:

- a. who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before the Effective Date;
- b. whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date and at the time of death; and
- c. who did not execute a will that complies with the requirements as to form and execution under Provincial Law during a period after the Effective Date in which that individual was declared to be no longer incapable under the *Patients Property Act*.

21.1.5 At the request of NStQ, and subject to section 51 of the *Indian Act* the Minister may appoint the NStQ Government to administer the estates of those individuals referred to in paragraph 21.1.4.

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21.1.6 Section 52, and subsections 52.2, 52.3, 52.4 and 52.5 of the *Indian Act* will apply, with any modifications that the circumstances require, where immediately before the Effective Date the Minister was administering property to which an NStQ Citizen who is a Child of an individual as described in section 2 of the *Indian Act* is entitled, until the duties of the Minister in respect of the property have been discharged.

21.1.7 At the request of NStQ, and subject to section 52, and subsections 52.2, 52.3, 52.4 and 52.5 of the *Indian Act*, the Minister may appoint NStQ to administer the estates of those individuals referred to in paragraph 21.1.6.

### 21.2.0 CONTINUATION OF INDIAN ACT BY-LAWS

21.2.1 The by-laws of each NStQ Indian Band under the *Indian Act* that were in effect, if any, on the day before the Effective Date will continue in effect for six months after the Effective Date on those parcels of NStQ Treaty Settlement Lands that are the Former NStQ Indian Reserves of the applicable NStQ Indian Band.

21.2.2 On the Effective Date the relationship between a by-law referred to in paragraph 21.2.1 and Federal and Provincial Law will be governed by the provisions of the Final Agreement that govern the relationship between Federal and Provincial Law and NStQ Law in respect of the subject matter of the by-law.

21.2.3 NStQ may repeal, but not amend, a by-law referred to in paragraph 21.2.1.

21.2.4 Nothing in the Final Agreement will preclude a person from challenging the validity of a by-law referred to in paragraph 21.2.1.

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

21.3.1 On the Effective Date, all of the rights, titles, interests, assets, obligations, and liabilities of Canim Lake Indian Band, Soda Creek Indian Band, Stswecem'c/Xgat'tem First Nation and Williams Lake Indian Band will vest in NStQ, and the NStQ Indian Bands will cease to exist.

### 21.4.0 TRANSFER OF CAPITAL REVENUE MONEYS

21.4.1 All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of the NStQ Indian Bands, including capital and revenue moneys of the NStQ Indian Bands, will be transferred by Canada to NStQ as soon as practicable after the Effective Date.

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- 21.4.2 Upon transfer of the moneys referred to in paragraph 21.4.1, Canada will no longer be responsible for the collection of moneys payable:
- a. to or for the benefit of the NStQ Indian Bands; or
  - b. except as provided in paragraphs 21.1.1, 21.1.3, 21.1.4, and 21.1.6, to or for the benefit of an NStQ Citizen.
- 21.4.3 For greater certainty, Canada will not be liable for any errors or omissions in the administration of all moneys held by the NStQ Indian Bands for the use and benefit of the NStQ Indian Bands that occur subsequent to the transfer of capital and revenue moneys of the NStQ Indian Bands from Canada to NStQ.

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## CHAPTER 22 CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT

### 22.1.0 CAPITAL TRANSFER

- 22.1.1 The Capital Transfer from Canada and British Columbia to the NStQ will be \$48.7 million and will be paid in accordance with the provisions of this Chapter.
- 22.1.2 A provisional schedule of payments will be negotiated prior to the initialing of the Final Agreement such that:
- a. the net present value of the amounts listed in the provisional schedule of payments will equal the amount set out in paragraph 22.1.1; and
  - b. the net present value of the amounts listed in the provisional schedule of payments will be calculated using as a discount rate the most recent and appropriate Consolidated Revenue Fund Lending Rate available prior to the initialing of the Final Agreement from the Department of Finance, Canada, less one-eighth of one percent.
- 22.1.3 A final schedule of payments will be determined approximately one month before the Effective Date, or as soon as the Effective Date is known, whichever date is closest to the Effective Date, in accordance with the following formula:

$$\text{Final Amount} = \text{Provisional Amount} \times \left( \frac{\text{Effective Date FDDIPI}}{1^{\text{st}} \text{ Q 2014 FDDIPI}} \right)$$

Where,

“Final Amount” refers to each amount in the final schedule of payments;

“Provisional Amount” refers to the corresponding amount in the provisional schedule of payments;

“Effective Date FDDIPI” refers to the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the quarter prior to the Effective Date;

“1st Q 2014 FDDIPI” refers to the value of the Canada FDDIPI for the 1st quarter of the year 2014;

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the Effective Date FDDIPI and 1st Q 2014 FDDIPI values used will be taken from the latest published values available from Statistics Canada at the time the final schedule of payments is established.

- 22.1.4 Canada, subject to paragraph 22.3.5, and British Columbia will make payments to NStQ in accordance with the final schedule of payments determined in accordance with paragraph 22.1.3.

### 22.2.0 RESOURCE REVENUE SHARING

- 22.2.1 Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement on sharing with NStQ agreed-upon resource revenues originating in British Columbia and flowing to Canada or British Columbia.

### 22.3.0 NEGOTIATION LOAN REPAYMENT

- 22.3.1 Prior to the initialing of the Final Agreement, Canada will determine the outstanding amount of negotiation loans made by Canada to NStQ, and if applicable, any accrued interest to that date, in accordance with First Nation Negotiation Support Agreements.
- 22.3.2 At the same time, Canada will prepare a provisional schedule for NStQ Indian Bands for the repayment of the outstanding negotiation loan amount referred to in paragraph 22.3.1, such that the repayments will be proportional to the provisional schedule of payments referred to in paragraph 22.1.2.
- 22.3.3 This provisional schedule will use an interest rate equal to the discount rate referred to in subparagraph 22.1.2.b.
- 22.3.4 A final schedule of loan repayment amounts will be determined approximately one month before the Effective Date, or as soon as the Effective Date is known, whichever date is closest to the Effective Date, by:
- a. determining the amount of any additional negotiation loans made by Canada to NStQ Indian Bands after the initialing of the Final Agreement and prior to the Effective Date, and if applicable, any accrued interest, in accordance with First Nation Negotiation Support Agreements; and
  - b. including the additional amount determined in subparagraph 22.3.4.a.

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- 22.3.5 Canada may deduct any amounts due pursuant to the final schedule of loan repayments referred to in paragraph 22.3.4 from Capital Transfer payments payable to NStQ in accordance with paragraph 22.1.4.
- 22.3.6 The NStQ Indian Bands may pay to Canada, in advance and on account, without bonus or penalty, amounts that will be credited against the loan repayment amounts set out in paragraph 22.3.4.



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## CHAPTER 23 FISCAL RELATIONS

### 23.1.0 GENERAL

- 23.1.1 The Parties acknowledge they each have a role in supporting NStQ, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements.
- 23.1.2 In Final Agreement negotiations, the Parties will address fiscal matters including:
- a. Final Agreement provisions regarding the ongoing fiscal relationship among the Parties; and
  - b. funding arrangements to take effect no later than the Effective Date that will set out terms, conditions and funding with respect to the responsibilities assumed by NStQ, taking into account its ability to contribute from its own source revenues.
- 23.1.3 The Parties acknowledge that Canada is developing a new national fiscal policy including a transparent methodology for determining levels of federal funding that may be provided to self governing aboriginal groups in Canada to support the delivery of Agreed Upon Programs and Services, taking into account the ability of each self governing aboriginal group to generate revenues from its own sources.
- 23.1.4 Unless otherwise agreed by the Parties in a Fiscal Financing Agreement, the creation of the NStQ Government, the provision of NStQ Government legislative authority under the Final Agreement, or the exercise of NStQ Government legislative authority, does not create or imply any financial obligation or service responsibility on the part of any Party.
- 23.1.5 Any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is contemplated by the Final 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 of British Columbia; or
  - c. in the case of NStQ, by the NStQ Government.

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## CHAPTER 24 TAXATION

### 24.1.0 DIRECT TAXATION POWERS

24.1.1 NStQ may make laws in respect of:

- a. Direct taxation of NStQ Citizens, within NStQ Treaty Settlement Lands in order to raise revenue for NStQ Government purposes; and
- b. the implementation of any taxation agreement entered into between NStQ and Canada or British Columbia.

24.1.2 NStQ law-making authority under subparagraph 24.1.1.a. will not limit the taxation powers of Canada or British Columbia.

24.1.3 Notwithstanding any other provision of the Final Agreement, any NStQ Law made under this Chapter, or any exercise of power by the NStQ Government, will be subject to Canada's International Legal Obligations respecting taxation.

### 24.2.0 TAXATION POWERS AGREEMENTS

24.2.1 From time to time, at the request of NStQ, Canada and British Columbia, together or separately, may negotiate and attempt to reach an agreement with NStQ respecting:

- a. the extent to which the Direct taxation law-making authority of NStQ under subparagraph 24.1.1.a may be extended to apply to Persons other than NStQ Citizens within NStQ Treaty Settlement Lands; and
- b. the manner in which the law-making authority of NStQ under subparagraph 24.1.1.a, as extended by the application of subparagraph 24.2.1.a, will be coordinated with existing federal or provincial tax systems, including:
  - i. the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by NStQ; and
  - ii. the terms and conditions under which Canada or British Columbia may administer taxes imposed by NStQ.

24.2.2 Prior to the Final Agreement, NStQ and British Columbia will negotiate and attempt to reach agreement on:

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## Taxation

- a. NStQ authority to impose property taxes on Persons who are not NStQ Citizens in relation to those Persons' ownership or occupation of NStQ Treaty Settlement Lands; and
- b. the coordination of the exercise of the NStQ taxation authority with British Columbia's tax systems.

### 24.3.0 ADJUDICATION

- 24.3.1 Notwithstanding the provisions of the Justice Chapter, parties to an agreement under paragraph 24.2.1 may provide for an alternative approach to the appeal, enforcement or adjudication of matters relating to NStQ Law with respect to taxation.

### 24.4.0 PENALTIES

- 24.4.1 Penalties with respect to taxation are set out in paragraph 20.2.7 of the Justice Chapter.

### 24.5.0 INDIAN ACT TAX EXEMPTION TRANSITION

- 24.5.1 Prior to the Final Agreement, the Parties agree to negotiate transitional tax measures to address the fact that the *Indian Act* will no longer apply after the Effective Date. These transitional measures will be negotiated in a way that provides a reasonably comparable effect to transitional tax measures in other treaties negotiated with other aboriginal groups in British Columbia.

### 24.6.0 NSTQ TREATY SETTLEMENT LANDS

- 24.6.1 NStQ is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the interest of NStQ in NStQ Treaty Settlement Lands on which there are no improvements or on which there is a designated improvement.
- 24.6.2 In paragraph 24.6.1, "designated improvement" means:
  - a. a residence of an NStQ Citizen;
  - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to a 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,

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- police facility, court, correction facility, public recreation facility, public park, or an improvement used for NStQ cultural or spiritual purposes;
- ii. works of public convenience constructed or operated for the benefit of NStQ Citizens, occupiers of NStQ Treaty Settlement Lands or individuals visiting or in transit through NStQ Treaty Settlement 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. other improvements similar in nature to those described in subparagraph 24.6.2.b.i and ii.,
- 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.
- 24.6.3 In subparagraph 24.6.2.b, “public purpose” does not include the provision of property or services primarily for the purpose of profit.
- 24.6.4 For the purposes of paragraphs 24.6.1 and 24.6.2:
- a. for greater certainty, NStQ Treaty Settlement 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.
- 24.6.5 For greater certainty, the exemption from taxation in paragraph 24.6.1 will not apply to a taxpayer other than NStQ, nor will it apply with respect to a disposition of NStQ Treaty Settlement Lands, or interests in those lands, by NStQ.
- 24.6.6 For federal and British Columbia income tax purposes, proceeds of Disposition received by NStQ on expropriation of NStQ Treaty Settlement Lands in accordance with the Appendices L-1 and L-2 will not be taxable.

### 24.7.0 TRANSFER OF NStQ CAPITAL

- 24.7.1 A transfer under the Final Agreement of NStQ Capital will not be taxable and a recognition of ownership under the Final Agreement of NStQ Capital is not taxable.

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- 24.7.2 For purposes of paragraph 24.7.1, an amount paid to an NStQ Citizen will be deemed to be a transfer of NStQ Capital under the Final Agreement if the payment:
- a. reasonably can be considered to be a distribution of a Capital Transfer received by NStQ; and
  - b. becomes payable to the NStQ Citizen within 90 days and is paid to the NStQ Citizen within 270 days from the date that NStQ receives the Capital Transfer.
- 24.7.3 For federal and British Columbia income tax purposes, NStQ Capital will be deemed to have been acquired by NStQ at a cost equal to its fair market value on the latest 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.

### 24.8.0 TAX TREATMENT AGREEMENT

- 24.8.1 The Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date.
- 24.8.2 The tax treatment agreement referenced in paragraph 24.8.1 will address the tax treatment of:
- a. the NStQ Government;
  - b. corporations or other entities of the NStQ Government;
  - c. donations to NStQ;
  - d. NStQ settlement trusts; and
  - e. other matters as agreed by the Parties.
- 24.8.3 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.
- 24.8.4 In conjunction with the Final Agreement, Canada proposes to recommend to Parliament that Federal Settlement Legislation include the NStQ Government as a "taxing authority" for the purposes of the *Payments in Lieu of Taxes Act* R.S., 1985, c.M-13.

## CHAPTER 25 CULTURE AND HERITAGE

### 25.1.0 GENERAL

- 25.1.1 The Parties recognize the integral role of NStQ Cultural Materials, oral history, and Secwepemctsin in the continuation of NStQ culture, values and traditions.
- 25.1.2 NStQ will have the right to practice Secwepemc culture and to use the Secwepemctsin in a manner consistent with the Final Agreement.
- 25.1.3 For greater certainty, nothing in paragraph 25.1.2 creates or implies financial obligations or service delivery responsibilities on the part of any of the Parties.
- 25.1.4 Cultural materials obtained by NStQ from an NStQ Citizen, an NStQ Community, or an NStQ Cultural Site is presumed, in the absence of proof to the contrary, to be NStQ Cultural Materials.

### 25.2.0 LAW-MAKING AUTHORITY

- 25.2.1 NStQ may make laws applicable on NStQ Treaty Settlement Lands in respect of:
  - a. the conservation, preservation and management of NStQ Cultural Materials owned by NStQ;
  - b. the preservation, promotion and development of Secwepemctsin, NStQ heritage and Secwepemc culture;
  - c. the cremation or interment, including the bereavement rights and ceremonies of Ancient Human Remains found on NStQ Treaty Settlement Lands or returned to NStQ in accordance with paragraph 25.5.2 by Canada, British Columbia or any other party;
  - d. public access to Cultural Sites; and
  - e. the conservation, preservation and management of NStQ Cultural Sites.
- 25.2.2 For the purposes of subparagraph 25.2.1.b, Secwepemc culture includes their history, feasts, ceremonies, symbols, songs, dances, stories and traditional naming practices of individuals.
- 25.2.3 For greater certainty, and as provided in paragraph 2.6.12, NStQ does not have the authority to make laws in respect of Intellectual Property.



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- 25.2.4 NStQ Law in respect of the conservation, protection and management of NStQ Cultural Sites on NStQ Treaty Settlement Lands will establish standards and processes for the conservation and protection of Cultural Sites.
- 25.2.5 NStQ Law under subparagraph 25.2.1.e will provide for the sharing of information to the Minister relating to:
- a. the location of Cultural Sites; and
  - b. any materials recovered from the Cultural Sites.
- 25.2.6 Where British Columbia and NStQ agree, information provided by NStQ, to British Columbia under paragraph 25.2.5 will not be subject to public disclosure without NStQ's prior written consent.
- 25.2.7 NStQ Law under paragraph 25.2.1 will prevail to the extent of a conflict with Federal or Provincial Law.

### 25.3.0 CULTURAL SITES

- 25.3.1 On the Effective Date, or as soon as practicable after the Effective Date, British Columbia will commence the provincial designation process under the *Heritage Conservation Act* for sites of cultural or historic significance set out in Appendix M of the Final Agreement.
- 25.3.2 British Columbia will not designate any NStQ Treaty Settlement Lands as a provincial Heritage Site without the consent of NStQ.
- 25.3.3 NStQ and British Columbia will explore ways to provide for the meaningful participation of NStQ in the identification, conservation, interpretation, presentation, management and protection of Cultural Sites that are:
- a. of significance to NStQ;
  - b. outside NStQ Treaty Settlement Lands; and
  - c. within the NStQ Territory.

### 25.4.0 NSTQ CULTURAL MATERIALS

- 25.4.1 NStQ will own NStQ Cultural Materials discovered, after the Effective Date, on NStQ Treaty Settlement Lands in an archaeological context.
- 25.4.2 The Final Agreement will set out provisions for the identification and transfer to NStQ of NStQ Cultural Materials, if any, in the permanent collection of the Royal British Columbia Museum.

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- 25.4.3 After the Effective Date, if any NStQ Cultural Material comes into the permanent possession of British Columbia, British Columbia may lend, or transfer its interest in, that NStQ Cultural Material to NStQ in accordance with an agreement negotiated between British Columbia and NStQ.
- 25.4.4 If after the Effective Date, NStQ Cultural Material come into the permanent possession of Canada, at the request of NStQ, Canada may lend or transfer its legal interest in the NStQ Cultural Materials to NStQ in accordance with Federal Law and federal policy and Provincial Law.
- 25.4.5 An agreement with respect to custodial arrangements under paragraph 25.4.2 will respect NStQ cultural traditions with respect to NStQ Cultural Material and will comply with Federal and Provincial Law, including the statutory mandate of the Royal British Columbia Museum.
- 25.4.6 The Final Agreement will set out provisions for the disposition of NStQ Cultural Materials, if any, in the permanent collection of the Canadian Museum of History.
- 25.4.7 The Final Agreement will set out provisions for providing NStQ with access to Archival Materials relating to NStQ, if any, held in collections of Library and Archives Canada. Any requests for access to Archival Materials would be based on Library and Archives Canada's policies and services standards.
- 25.4.8 NStQ will resolve any competing claims with other First Nations and will provide Canada and British Columbia with written confirmation of the settlement of the dispute prior to further negotiations of the sharing or transfer of NStQ Cultural Materials.
- 25.4.9 From time to time, at the request of NStQ, Canada and British Columbia will use reasonable efforts, in accordance with Federal Law and federal policy and Provincial Law and provincial policy, to facilitate NStQ access to NStQ Cultural Materials and Ancient Human Remains of NStQ ancestry that are held in other Canadian public collections.
- 25.4.10 For greater certainty, paragraph 25.4.9 does not apply where the Federal department or agency or the Provincial department or agency does not possess any NStQ Cultural Materials or Ancient Human Remains in a Canadian public collection.

### 25.5.0 ANCIENT HUMAN REMAINS

- 25.5.1 To ensure that Ancient Human Remains of NStQ ancestry are treated respectfully, prior to the Final Agreement British Columbia or Canada and NStQ may negotiate and attempt to reach agreement on the process that

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will be followed by British Columbia or Canada during the period that Ancient Human Remains of NStQ ancestry are in the possession or under the control of British Columbia or Canada.

25.5.2 If, after the Effective Date, any Ancient Human Remains of NStQ ancestry or Associated Burial Objects come into the permanent possession of Canada or British Columbia, Canada or British Columbia will inform NStQ and, at the request of NStQ, transfer the Ancient Human Remains or Associated Burial Objects to NStQ in accordance with Federal Law, federal policy, Provincial Law and provincial policy.

25.5.3 In the event of competing claims with another First Nation as to whether Ancient Human Remains are of NStQ ancestry or burial objects are Associated Burial Objects, the parties to the dispute will resolve the competing claims between themselves and NStQ will provide British Columbia or Canada with written confirmation of the settlement of the dispute before the negotiation of the transfer proceeds.

### 25.6.0 KEY GEOGRAPHICAL FEATURES

25.6.1 NStQ and British Columbia will negotiate and attempt to reach agreement on a list of key geographic features, set out in the Final Agreement, to be named or renamed in Secwepemctsin, in accordance with Provincial Law.

25.6.2 After the Effective Date, NStQ may propose that British Columbia name or rename other geographic features with Secwepemctsin names, and British Columbia will consider those proposals in accordance with Provincial Law.

25.6.3 At the request of NStQ, British Columbia will record, in the British Columbia Geographic Names Database, names in Secwepemctsin and historic background information submitted by NStQ for the geographic features that will be set out in the Final Agreement, in accordance with Provincial policy and procedures.

### 25.7.0 OTHER MATTERS

25.7.1 NStQ or a non-profit organization, as the case may be, will be eligible to receive notification from Canada of cultural property that is subject to an export delay period under the *Cultural Property Export and Import Act*.

## CHAPTER 26 ENVIRONMENTAL MANAGEMENT

### 26.1.0 ENVIRONMENTAL PROTECTION

#### Law-Making Authority

- 26.1.1 NStQ may make laws applicable on NStQ Treaty Settlement Lands to manage, protect, preserve and conserve the Environment including laws in respect of:
- a. Environmental Assessment for projects that are not Provincial Projects;
  - b. prevention, mitigation and remediation of pollution and degradation of the Environment;
  - c. waste management, including solid wastes and wastewater;
  - d. protection of local air quality; and
  - e. Environmental Emergency response.
- 26.1.2 Where NStQ exercises law-making authority under paragraph 26.1.1, Canada and NStQ will work collaboratively to provide a timely and efficient review through:
- a. coordinating their respective environmental assessment requirements; and
  - b. avoiding duplication where an NStQ Project is also a Federal Project.
- 26.1.3 Federal or Provincial Law will prevail to the extent of a Conflict with NStQ Law made under paragraph 26.1.1.
- 26.1.4 NStQ Law under subparagraph 26.1.1.a in relation to NStQ Projects that are also Federal Projects will ensure that NStQ's Environmental Assessment process will maintain, or exceed, the requirements of the *Canadian Environmental Assessment Act, 2012*.

### 26.2.0 ADMINISTRATION AND HARMONIZATION

- 26.2.1 NStQ may enter into agreements with Canada for cooperation and coordination on the above matters including subparagraphs 26.1.1.b through 26.1.1.e which may affect the NStQ Territory, both on and off NStQ Treaty Settlement Lands.
- 26.2.2 Any agreements entered into under paragraph 26.2.1 will be in accordance with the technical and administrative capacity and resources

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of the NStQ Government to carry out functions in accordance with relevant federal and provincial standards.

### 26.3.0 ENVIRONMENTAL EMERGENCIES

- 26.3.1 As the owner and the decision-maker in relation to the use of NStQ Treaty Settlement Lands, NStQ is responsible for the prevention of, preparedness for, timely response to and recovery from Environmental Emergencies that originate on NStQ Treaty Settlement Lands.
- 26.3.2 NStQ may enter into agreements with Canada, British Columbia, Local Governments, other First Nations, or other aboriginal groups for the prevention of, preparedness for, response to and recovery from Environmental Emergencies occurring on NStQ Treaty Settlement Lands or on land or waters immediately adjacent to NStQ Treaty Settlement Lands.
- 26.3.3 Nothing in this agreement precludes NStQ from accessing provincial and federal emergency measures programs.
- 26.3.4 Any Party may respond to an Environmental Emergency on NStQ Treaty Settlement Lands or on Crown land or waters adjacent to NStQ Treaty Settlement Lands, if the person with primary responsibility for responding has not responded, or is unable to respond, in a timely manner.
- 26.3.5 The Party responding will, if possible, notify the person with primary responsibility in advance of taking action but, in any case, will notify that person as soon as practicable after responding.

### 26.4.0 ENVIRONMENTAL ASSESSMENT

- 26.4.1 For greater certainty, Federal and Provincial Law in relation to Environmental Assessment apply on NStQ Treaty Settlement Lands.
- 26.4.2 Notwithstanding any decision made by Canada or British Columbia in respect of a Federal Project or Provincial Project, and notwithstanding paragraph 5.1.2, no Federal Project or Provincial Project on NStQ Treaty Settlement Lands will proceed without the consent of NStQ unless:
  - a. the NStQ Treaty Settlement Land required for the Federal Project or Provincial Project has been expropriated in accordance with the Lands Chapter or Appendices L-1 and L-2; or
  - b. the project is within the terms and conditions of an Interest set out in Appendix F.

**26.5.0 NSTQ PARTICIPATION IN FEDERAL ENVIRONMENTAL ASSESSMENT PROCESSES**

- 26.5.1 If a proposed Federal Project may reasonably be expected to adversely affect NStQ Treaty Settlement Lands or NStQ rights under the Final Agreement, Canada will ensure that NStQ is provided with timely notice of the Environmental Assessment and information describing the Federal Project, in sufficient detail to permit NStQ to determine if it is interested in participating in the Environmental Assessment.
- 26.5.2 If NStQ confirms that it is interested in participating in the Environmental Assessment of the Federal Project referred to in paragraph 26.5.1:
- a. Canada will provide NStQ with an opportunity to comment on the Environmental Assessment conducted under the *Canadian Environmental Assessment Act, 2012*, including:
    - i. the scope of the assessment 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. NStQ 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, 2012*;
  - c. during the course of the Environmental Assessment, Canada will give full and fair consideration to any comments referred to in subparagraph 26.5.2 a and will respond to the comments, prior to taking any decision that would have the effect of enabling the proposed Federal Project to be carried out in whole or in part; and
  - d. Canada, in response to NStQ's comments made under subparagraph 26.5.2 c, will:
    - i. indicate how NStQ's comments were taken into account in the assessment of the Federal Project; and
    - ii. provide a rationale for why any of NStQ's comments were not incorporated into the assessment of the Federal Project.
- 26.5.3 If a proposed Federal Project that is referred to a panel under the *Canadian Environmental Assessment Act, 2012* may reasonably be expected to adversely affect the NStQ Territory or NStQ rights under the Final Agreement, Canada will provide NStQ with:

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- a. the opportunity to propose to the Minister a list of names in accordance with the requirements of the *Canadian Environmental Assessment Act, 2012* that the Minister may consider for appointment to the panel unless NStQ is a proponent of the Federal Project;
- b. the opportunity to participate in the development of the terms of reference of the panel; and
- c. formal standing before that panel.

26.5.4 Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement on the following subject matter:

Where a proposed Federal Project, that is referred to a review panel under the *Canadian Environmental Assessment Act, 2012* will be located within the NStQ Territory, Canada will provide NStQ with:

- a. the opportunity to propose to the Minister a list of names in accordance with the requirements of the *Canadian Environmental Assessment Act, 2012* that the Minister will consider for appointment to the panel, unless NStQ is a proponent of the Federal Project;
- b. the opportunity to participate in the development of the terms of reference of the panel; and
- c. formal standing before that panel.

### **26.6.0 NSTQ PARTICIPATION IN PROVINCIAL ENVIRONMENTAL ASSESSMENT PROCESSES**

26.6.1 When a Provincial Project is located in the NStQ Territory or may reasonably be expected to have adverse environmental effects on NStQ Treaty Settlement Lands or residents of NStQ Treaty Settlement Lands or on NStQ rights as set out in the Final Agreement, British Columbia will ensure that NStQ:

- a. receives timely notice of, and relevant available information on, the Provincial Project and the potential adverse environmental effects;
- b. is Consulted regarding the environmental, economic, social, heritage or health effects of the Provincial Project; and
- c. receives an opportunity to participate in any Environmental Assessment of the Provincial Project.

26.6.2 British Columbia will respond to any views provided by NStQ under paragraph 26.6.1 before making a decision that would have the effect of enabling a Provincial Project to be carried out in whole or in part.

**26.7.0 CANADA'S PARTICIPATION IN NSTQ ENVIRONMENTAL ASSESSMENT PROCESSES**

26.7.1 Where an NStQ Project may reasonably be expected to have adverse impacts on federal lands or federal jurisdiction, NStQ will ensure that Canada:

- a. receives timely notice of, and relevant information in NStQ's possession on the NStQ Project and the potential environmental effects, subject to the relevant privacy legislation; and
- b. is Consulted and provided with an opportunity to participate in the Environmental Assessment of the applicable NStQ Project.

26.7.2 During the course of the Environmental Assessment of the NStQ Project, NStQ will give full and fair consideration to any comments provided by Canada, and will respond to the comments, before taking any decision that would have the effect of allowing the NStQ Project to proceed in whole or in part.



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**Environmental Management**

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## CHAPTER 27 PARKS AND PROTECTED AREAS

### 27.1.0 GENERAL

27.1.1 Subject to any agreement under paragraph 27.2.5 and measures for conservation, public health and public safety, NStQ Citizens may access any Provincial Protected Area wholly or partially within the NStQ Territory and exercise harvesting, fishing and gathering rights under the Final Agreement without any fees except those fees that are charged for visitor facilities.

### 27.2.0 PROVINCIAL PROTECTED AREAS

27.2.1 NStQ may make proposals to British Columbia from time to time to establish a Provincial Protected Area within the NStQ Territory, and such proposals will be reviewed by British Columbia, following which British Columbia and NStQ will meet to discuss the proposals.

27.2.2 Nothing in the Final Agreement will require British Columbia to establish, or maintain the designation of, any Provincial Protected Area.

27.2.3 British Columbia will not establish any Provincial Protected Areas on NStQ Treaty Settlement Lands after the Effective Date without the consent of NStQ.

27.2.4 British Columbia will Consult with NStQ before:

- a. establishing a Provincial Protected Area wholly or partially within the NStQ Territory;
- b. Disposing of or modifying the boundaries of existing Provincial Protected Areas or Wildlife Management Areas; and
- c. changing the use or designation of existing Provincial Protected Areas or Wildlife Management Areas,

that may affect the NStQ Right to Gather Plants, the NStQ Right to Harvest Wildlife or the NStQ Right to Harvest Migratory Birds.

27.2.5 British Columbia and NStQ may negotiate an agreement consistent with the Final Agreement and legislation establishing Provincial Protected Areas within the NStQ Territory that may address the following:

- a. park planning;
- b. management and operations;

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- c. economic opportunities; and
- d. other matters agreed to by British Columbia and NStQ.

27.2.6 British Columbia will Consult with NStQ in the preparation or modification of any management plan for Provincial Protected Area wholly or partially within the NStQ Territory.

### **27.3.0 PROVINCIAL PROTECTED AREA PLANNING PROCESSES**

- 27.3.1 Where a public management planning process is established for a Provincial Protected Area wholly or partially within the NStQ Territory, NStQ may participate in the planning process.
- 27.3.2 Should NStQ choose not to participate in the Provincial Protected Area public management planning process, British Columbia may still proceed with the public management planning process.
- 27.3.3 Nothing in the Final Agreement will require British Columbia to undertake any Provincial Protected Area public management planning process.
- 27.3.4 British Columbia will provide NStQ with the draft plan resulting from any public management planning process intended to apply within the NStQ Territory, and NStQ may provide written recommendations to the Minister which recommendations may be made public by British Columbia.
- 27.3.5 After considering any written recommendations from NStQ and any matters the Minister considers appropriate, the Minister will provide written reasons for any NStQ recommendations that are not accepted.

### **27.4.0 NATIONAL PARKS**

- 27.4.1 Canada will Consult with NStQ with respect to the establishment of any National Park wholly or partly within the NStQ Territory.
- 27.4.2 If, after the Effective Date, any National Park is established wholly or partly within the NStQ Territory, NStQ and Canada will negotiate and attempt to reach agreement in respect of the exercise of NStQ harvesting rights by NStQ Citizens in that National Park.
- 27.4.3 If, after the Effective Date, any National Park is established wholly or partly within the NStQ Territory, NStQ and Canada will negotiate and attempt to reach agreement regarding NStQ participation in a planning and management process to provide advice to the Minister for that National Park.

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- 27.4.4 If a National Park is established within the NStQ Territory, Canada and NStQ will negotiate and attempt to reach agreement on the identification, protection, interpretation and presentation of NStQ Cultural Sites, or NStQ Cultural Materials, in that National Park.

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## CHAPTER 28 DISPUTE RESOLUTION

### 28.1.0 GENERAL

28.1.1 The Parties share the following objectives:

- a. to cooperate with each other to develop harmonious working relationships;
- b. to prevent or minimize Disagreements;
- c. to identify Disagreements quickly and resolve them in the most effective, expeditious and cost-efficient manner possible; and
- d. to resolve Disagreements in a non-adversarial, collaborative, and informal atmosphere.

28.1.2 In this Chapter, and in each Appendix, a Party is deemed to be directly engaged in a Disagreement if another Party, acting reasonably, gives the first Party a written notice requiring it to participate in a process described in this Chapter to resolve the Disagreement.

28.1.3 Except as otherwise provided, participating Parties may agree to vary a procedural requirement contained in this Chapter, or in an Appendix, as it applies to a particular Disagreement.

28.1.4 Participating Parties may agree in writing to, or the Supreme Court of British Columbia, on application, may order, the abridgment of a time limit or the extension of a time limit, despite the expiration of that time limit in this Chapter or in an Appendix.

### 28.2.0 SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT

28.2.1 This Chapter does not apply to all conflicts and disputes between or among the Parties, but is limited to the conflicts, disputes and negotiations described in paragraph 28.2.2.

28.2.2 This Chapter only applies to:

- a. a conflict or dispute in respect of:
  - i. the interpretation, application or implementation of the Final Agreement; or
  - ii. a breach or anticipated breach of the Final Agreement; or
- b. a conflict or dispute, where provided for in the Final Agreement; or

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- c. negotiations required to be conducted under any provision of the Final Agreement that provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”.

28.2.3 This Chapter does not apply to:

- a. an agreement between or among the Parties that is ancillary, subsequent or supplemental to the Final Agreement unless the Parties have agreed that this Chapter applies to that agreement;
- b. the implementation plan; and
- c. conflicts or disputes where excluded from this Chapter.

28.2.4 Nothing in this Chapter limits the application of a dispute resolution process, under any law, to a conflict or dispute involving a person if that conflict or dispute is not a Disagreement.

28.2.5 Nothing in Federal or Provincial Law limits the right of a Party to refer a Disagreement to a process under this Chapter.

### **28.3.0 DISAGREEMENTS TO GO THROUGH STAGES**

28.3.1 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.

28.3.2 Except as otherwise provided in the Final Agreement, Disagreements not resolved informally will progress until resolved through the following stages:

- a. Stage One: formal, unassisted efforts to reach agreement between or among the Parties, in collaborative negotiations under Appendix O-1;
- b. Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix O-2, O-3, O-4, or O-5 as applicable; and
- c. Stage Three: final adjudication in arbitral proceedings under Appendix O-6, or in judicial proceedings.

28.3.3 Except as otherwise provided in the Final 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.

28.3.4 Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:

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- 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.

### **28.4.0 STAGE ONE: COLLABORATIVE NEGOTIATIONS**

- 28.4.1 If a Disagreement is not resolved by informal discussion, and a Party directly engaged in a Disagreement wishes to invoke this Chapter, that Party will deliver a written notice, as required under Appendix O-1, as soon as practicable to the other Parties, requiring the commencement of collaborative negotiations.
- 28.4.2 Upon receiving the notice under paragraph 28.4.1, a Party directly engaged in the Disagreement will participate in the collaborative negotiations.
- 28.4.3 A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving written notice to the other Parties, preferably before the collaborative negotiations commence.
- 28.4.4 If the Parties have commenced negotiations in the circumstances described in subparagraph 28.2.2 c. then, those negotiations will be deemed collaborative negotiations and the matter under negotiation will be considered a Disagreement.
- 28.4.5 Collaborative negotiations terminate in the circumstances set out in Appendix O-1.

### **28.5.0 STAGE TWO: FACILITATED PROCESSES**

- 28.5.1 Within 15 days of termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement may require the commencement of a facilitated process by delivering written notice to the other Parties.
- 28.5.2 A notice under paragraph 28.5.1:
  - a. will include the name of the Party or Parties directly engaged in the Disagreement and a summary of the particulars of the Disagreement; and
  - b. may propose the use of a particular facilitated process described in paragraph 28.5.5.



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- 28.5.3 Upon receiving a notice under paragraph 28.5.1, a Party directly engaged in the Disagreement will participate in a facilitated process described in paragraph 28.5.5.
- 28.5.4 A Party not directly engaged in the Disagreement may participate in the facilitated process by giving written notice to the other Parties within 15 days of delivery of a notice under paragraph 28.5.1.
- 28.5.5 Within 30 days after delivery of a notice under paragraph 28.5.1, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:
- a. mediation under Appendix O-2;
  - b. technical advisory panel under Appendix O-3;
  - c. neutral evaluation under Appendix O-4;
  - d. elders advisory council under Appendix O-5; or
  - e. any other non-binding dispute resolution process assisted by a Neutral,
- and if they fail to agree, they will be deemed to have selected mediation under Appendix O-2.
- 28.5.6 A facilitated process terminates:
- a. in the circumstances set out in the applicable Appendix; or
  - b. as agreed by the participating Parties, if an Appendix does not apply.

### 28.6.0 NEGOTIATING CONDITIONS

- 28.6.1 In order to enhance the prospect of reaching agreement, the participating Parties in collaborative negotiations or a negotiation component of a facilitated process will:
- a. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority;
  - b. at the request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated; and
  - c. negotiate in good faith.

**28.7.0 SETTLEMENT AGREEMENT**

- 28.7.1 Any agreement reached in a process under this Chapter:
- a. will be:
    - i. recorded in writing;
    - ii. signed by authorized representatives of the Parties to the agreement; and
    - iii. delivered to all Parties; and
  - b. is binding only on the Parties who have signed the agreement.

**28.8.0 STAGE THREE: ADJUDICATION – ARBITRATION**

- 28.8.1 Where a Disagreement arises out of any provision of the Final Agreement that provides that a matter will be “finally determined by arbitration,” the Disagreement will, on the delivery of a notice by a Party directly engaged in the Disagreement, to all Parties as required under Appendix O-6, be referred to and finally resolved by arbitration in accordance with that Appendix.
- 28.8.2 A Disagreement, other than a Disagreement referred to in paragraph 28.8.1, and with the written agreement of all Parties directly engaged in the Disagreement, will be referred to, and finally resolved by, arbitration in accordance with Appendix O-6.
- 28.8.3 If two Parties make a written agreement under paragraph 28.8.2, they will deliver a copy of the agreement as soon as practicable to the other Party that is not directly engaged in the Disagreement.
- 28.8.4 Upon delivering a written notice to the participating Parties to the arbitration within 15 days after receiving a notice under paragraph 28.8.1, or copy of a written agreement under paragraph 28.8.2, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a Party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.
- 28.8.5 Notwithstanding paragraph 28.8.4, 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 participating Parties will not be unduly prejudiced; or

b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under paragraph 28.8.1, or the written agreement to arbitrate in paragraph 28.8.2,

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.

28.8.6 Prior to the Final Agreement, the Parties will review and discuss the circumstances and conditions under which Disagreements will proceed to Stage Three.

### **28.9.0 EFFECT OF ARBITRAL AWARD**

28.9.1 An arbitral award will be final and binding on all Parties whether or not a Party has participated in the arbitration.

28.9.2 Notwithstanding paragraph 28.9.1, an arbitral award will not be binding on a Party that has not participated in the arbitration if:

- a. the Party did not receive copies of:
  - i. the notice to arbitrate or the written agreement to arbitrate; or
  - ii. the pleadings and any amendments or supplements to the pleadings; or
- b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 28.8.5.

### **28.10.0 APPLICATION OF LEGISLATION**

28.10.1 No legislation of any Party respecting arbitration, except the Settlement Legislation, applies to an arbitration conducted under this Chapter.

28.10.2 A court must not intervene or offer assistance in an arbitration or review an arbitral award under this Chapter except as provided in Appendix O-6.

### **28.11.0 STAGE THREE: ADJUDICATION – JUDICIAL PROCEEDINGS**

28.11.1 Nothing in this Chapter creates a cause of action where none otherwise exists.

28.11.2 Subject to paragraph 28.11.3, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a Disagreement.

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- 28.11.3 A Party may not commence judicial proceedings in respect of a Disagreement under this Chapter if the Disagreement:
- a. is required to be referred to arbitration under paragraph 28.8.1 or has been agreed to be referred to arbitration under paragraph 28.8.2;
  - b. has not been discussed informally or 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.
- 28.11.4 Nothing in subparagraph 28.11.3.a. prevents an arbitral tribunal or the participating Parties from requesting the Supreme Court of British Columbia to make a ruling in respect of a question of law as permitted in Appendix O-6.

### 28.12.0 NOTICE TO PARTIES

- 28.12.1 If, in any judicial or administrative proceeding, an issue arises in respect of:
- a. the interpretation or validity of the Final Agreement; or
  - b. the validity or applicability of:
    - i. any Settlement Legislation; or
    - ii. any NStQ 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 NStQ Government.

- 28.12.2 In any judicial or administrative proceeding to which paragraph 28.12.1 applies, the Attorney General of British Columbia, the Attorney General of Canada and the NStQ Government may appear and participate in the proceedings as parties with the same rights as any other party.

### 28.13.0 COSTS

- 28.13.1 Except as otherwise provided in the Appendices, each participating Party will bear the costs of its own participation, representation and appointments in collaborative negotiations, a facilitated process or an arbitration conducted under this Chapter.
- 28.13.2 Subject to paragraph 28.13.1 and except as provided otherwise in the Appendices, the participating Parties will share equally all costs of

collaborative negotiations, a facilitated process, or an arbitration conducted under this Chapter.

28.13.3 For purposes of paragraph 28.13.2, 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 the Appendices; and
- e. administration fees of a Neutral Appointing Authority.

**28.14.0 CONFIDENTIALITY**

28.14.1 Appendix O-1 will guide any confidentiality matters associated with this Chapter.

## CHAPTER 29 ELIGIBILITY AND ENROLMENT

### 29.1.0 GENERAL

29.1.1 Enrolment under the Final Agreement will not:

- a. confer rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
- b. except as set out in the Final Agreement, or in any Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

### 29.2.0 ELIGIBILITY CRITERIA

29.2.1 An individual will be eligible to be enrolled under the Final Agreement if that individual is:

- a. an individual of NStQ ancestry;
- b. a band member of an NStQ Indian Band whose name is included in a Band List of those Bands, which Band List is maintained by Aboriginal Affairs and Northern Development Canada pursuant to section 11 of the *Indian Act* as of the day before the Effective Date;
- c. a band member of an NStQ Indian Band whose name is included in a Membership List of those Bands, which Membership List is maintained by the Band pursuant to section 10 of the *Indian Act* as of the day before the Effective Date;
- d. adopted under law recognized in Canada by an individual eligible to be enrolled;
- e. adopted under an NStQ Law after the Effective Date by an individual eligible to be enrolled;
- f. accepted into the community under NStQ custom; or
- g. a descendant of an individual who is eligible for enrolment under subparagraphs a, b, c, or d.

29.2.2 Notwithstanding paragraph 29.2.1, any outstanding issues with respect to affiliation with an NStQ Indian Band or criteria relating to subparagraphs 29.2.1 a. and f. will be negotiated prior to the Final Agreement.

29.2.3 Notwithstanding subparagraph 29.2.1.g, where an individual having no aboriginal ancestry became a member of an NStQ Indian Band under the *Indian Act* before April 17, 1985, because of marriage to a member of an NStQ Indian Band under the *Indian Act*, and that individual subsequently

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has a Child with another individual who is not eligible under paragraph 29.2.1, that Child will not be eligible to be enrolled.

### 29.3.0 APPLICATIONS FOR ENROLMENT

29.3.1 An individual may:

- a. apply to the Enrolment Committee for enrolment, under the Final Agreement, or any body which may be established under paragraph 29.10.1;
- b. appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; and
- c. seek judicial review of a decision of the Enrolment Appeal Board or any body which may be established under paragraph 29.10.1, on the individual's own behalf, or on behalf of a Child or an adult whose affairs the individual has legal authority to manage.

29.3.2 Each applicant, or individual who has the legal authority to manage the affairs of an applicant, will have the burden of demonstrating that the applicant meets the Eligibility Criteria.

29.3.3 If an individual applies to have his or her own name, or the name of a Child, or an adult whose affairs he or she has the legal authority to manage, removed from the Enrolment Register, the Enrolment Committee will remove the name and will notify the applicant.

### 29.4.0 OTHER LAND CLAIMS AGREEMENTS

29.4.1 Other than as provided below, an individual who is a beneficiary of, or has applied for enrolment under, another treaty or another land claims agreement in Canada will not at the same time be enrolled under the Final Agreement.

29.4.2 The burden will be on the individual to notify the Enrolment Committee or any body which may be established under paragraph 29.10.1, upon application, to be enrolled if that individual is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada.

29.4.3 Subject to paragraph 29.4.4, a person described in paragraph 29.4.1 may be enrolled if that individual meets the Eligibility Criteria.

29.4.4 Within:

- a. 120 days following the Effective Date; or

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- b. 120 days of receiving written notification from a body established under paragraph 29.10.1,

whichever is later, the individual who has been enrolled under paragraph 29.4.3 will provide written evidence to the body established under paragraph 29.10.1 to demonstrate that the individual has ceased to be a beneficiary of, or has withdrawn their application for enrolment under another treaty or land claims agreement, or the body established under paragraph 29.10.1 will remove that individual's name from the Enrolment Register.

- 29.4.5 An individual enrolled under paragraph 29.4.3 will not be entitled to exercise any rights or receive any benefits under the Final Agreement until he or she has satisfied the requirements under paragraph 29.4.4.

### 29.5.0 BAND MEMBERSHIP

- 29.5.1 For greater certainty, as provided in paragraph 2.7.5 of the General Provisions Chapter, following the Effective Date upon becoming an NStQ Citizen, an individual ceases to be a member or registered Indian of any Indian Band but nothing will affect that individual's entitlement to status under the *Indian Act*.

- 29.5.2 Within:

- a. 120 days following the Effective Date; or
- b. 120 days of receiving notification from the Enrolment Committee or a body established under paragraph 29.10.1 that the individual has been enrolled,

whichever is later, an individual who was a member or a registered Indian of a Band other than:

- iii. Canim Lake (Tsq'escen');
- i. Soda Creek Indian Band (Xats'ull/Cmetem');
- ii. Stswecem'c/Xgat'tem (Canoe Creek/Dog Creek); or
- iii. Williams Lake Indian Band (T'exelc),

will do all things necessary to request Canada to change that individual's affiliation to NStQ and to issue a new status card for the individual.



**29.6.0 THE ENROLMENT COMMITTEE**

- 29.6.1 The Final Agreement will provide that the Enrolment Committee will be established by NStQ at a time agreed upon by the Parties, and will be comprised of 5 representatives appointed by NStQ.
- 29.6.2 NStQ will notify Canada and British Columbia of the members of the Enrolment Committee upon their appointment.
- 29.6.3 During the Initial Enrolment Period, the Enrolment Committee or any body which may be established under paragraph 29.10.1 will:
- a. establish its enrolment procedures and set its time limits;
  - b. publish its procedures, including the Eligibility Criteria and a list of the documentation and information required of each applicant in time for any individual to review;
  - c. take reasonable steps to notify individuals potentially eligible to be enrolled of the Eligibility Criteria and application procedures;
  - d. provide an application form to any individual who wishes to apply for enrolment;
  - e. receive enrolment applications, consider each application, request further information if required, enroll applicants who meet the Eligibility Criteria and maintain a record of those decisions;
  - f. establish and maintain an Enrolment Register;
  - g. add names to, delete names from or amend names on the Enrolment Register in accordance with this Chapter and a decision of the Enrolment Appeal Board;
  - h. notify in writing each applicant and the Parties of its decision, and, if enrolment is refused, provide written reasons for that decision;
  - i. provide a copy of the Enrolment Register, and any other relevant information requested, to the Ratification Committee in a timely manner;
  - j. provide a copy of the Enrolment Register to the Parties on request;
  - k. provide information with respect to an enrolment application, in confidence, on request to the Parties, or the Enrolment Appeal Board; and
  - l. unless otherwise provided in this Chapter, keep information provided by and about individuals confidential.

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- 29.6.4 During the Initial Enrolment Period, after a decision of the Enrolment Committee and before any appeal of that decision is commenced, an applicant may submit new information to the Enrolment Committee.
- 29.6.5 The Enrolment Committee may, before an appeal of a decision is commenced, vary, or rescind and remake, the decision on the basis of new information if it considers the decision was in error.
- 29.6.6 Subject to paragraph 29.6.5, all decisions of the Enrolment Committee not appealed to the Enrolment Appeal Board will be final and binding and not otherwise subject to review by any court.
- 29.6.7 If the Enrolment Committee fails to decide upon an application for enrolment within the time established in its procedures, the application will be deemed to be refused and the deemed refusal will constitute grounds for appeal to the Enrolment Appeal Board.

### 29.7.0 THE ENROLMENT APPEAL BOARD

- 29.7.1 NStQ and Canada will establish the Enrolment Appeal Board at a date agreed upon by the Parties to be responsible for the enrolment appeal process set out in the Final Agreement.
- 29.7.2 The Enrolment Appeal Board will be comprised of one member appointed by each NStQ Indian Band and one member appointed by Canada.
- 29.7.3 A member of the Enrolment Committee will not be a member of the Enrolment Appeal Board.
- 29.7.4 During the Initial Enrolment Period, an applicant or any Party may appeal by written notice to the Enrolment Appeal Board:
- a. any decision of the Enrolment Committee made under subparagraph 29.6.3.e, or paragraph 29.6.5; and
  - b. an application deemed to be refused under paragraph 29.6.7.
- 29.7.5 The Enrolment Appeal Board will:
- a. establish its own procedures and set its time limits;
  - b. publish its procedures and its time limits;
  - c. hear and determine any appeal brought under paragraph 29.7.4 and decide whether the applicant 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 an open hearing;

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- e. maintain a record of its decisions and communicate them to the Enrolment Committee and the Parties as required;
- f. provide written reasons for its decision to the applicant, the Enrolment Committee, and the Parties; and
- g. report to the Parties on the appeal process as requested.

29.7.6 The Enrolment Appeal Board, as of the Effective Date, may:

- a. by summons, require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in that individual's possession; and
- b. direct any witness to answer on oath or solemn affirmation any relevant question posed to the witness.

29.7.7 If an individual fails to comply with a summons or direction of the Enrolment Appeal Board made under paragraph 29.7.6, on application by the Enrolment Appeal Board, a judge of the Supreme Court of British Columbia may enforce a summons or direction.

29.7.8 Any individual, Party, or witness appearing before the Enrolment Appeal Board may be represented by counsel or an agent.

29.7.9 Subject to paragraphs 29.11.1 to 29.11.4, all decisions of the Enrolment Appeal Board will be final and binding and not otherwise subject to review by any court.

### **29.8.0 ACTIONS AGAINST**

29.8.1 No action lies or may be commenced against the Enrolment Committee or the Enrolment Appeal Board, or any member of the Enrolment Committee or the Enrolment Appeal Board, for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

### **29.9.0 DISSOLUTION OF ENROLMENT COMMITTEE AND ENROLMENT APPEAL BOARD**

29.9.1 The Enrolment Committee will be dissolved when it has rendered decisions in respect of applications commenced before the end of the Initial Enrolment Period.

29.9.2 The Enrolment Appeal Board will be dissolved when it has rendered decisions in respect of appeals initiated in respect of applications commenced before the end of the Initial Enrolment Period.

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29.9.3 On dissolution, the Enrolment Committee and the Enrolment Appeal Board will provide their records to NStQ, and, upon request, to Canada or British Columbia.

### **29.10.0 RESPONSIBILITIES FOR ENROLMENT POST-EFFECTIVE DATE**

29.10.1 As of the Effective Date, NStQ will, in accordance with the Final Agreement and the NStQ Constitution,:

- a. be responsible for an enrolment process, including the application of the Eligibility Criteria and the administrative costs of that process;
- b. maintain the Enrolment Register;
- c. provide a copy of the Enrolment Register to Canada and British Columbia as requested by Canada or British Columbia; and
- d. provide information concerning enrolment, upon request, to Canada and British Columbia.

### **29.11.0 JUDICIAL REVIEW**

29.11.1 An applicant, an individual with the legal authority to manage the applicant's affairs, or a Party may apply to the Supreme Court of British Columbia to review or set aside a decision of the Enrolment Appeal Board, or any body which may be established under paragraph 29.10.1, on the grounds that the Enrolment Appeal Board or body:

- a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- b. failed to observe procedural fairness;
- c. erred in law; or
- d. 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.

29.11.2 On an application for judicial review made under paragraph 29.11.1, 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 any body which may be established under paragraph 29.10.1, for determination in accordance with such directions as the court considers appropriate.

29.11.3 If the Enrolment Appeal Board, or any body which may be established under paragraph 29.10.1 refuses or fails to hear or decide an appeal within a reasonable time, an individual or a Party may apply to the

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Supreme Court of British Columbia for an order directing the Enrolment Appeal Board or the body to hear or decide the appeal in accordance with such directions as the court considers appropriate.

- 29.11.4 An applicant, an individual with the legal authority to manage the applicant's affairs, or a Party may apply for judicial review within sixty days of receiving notification of the decision of the Enrolment Appeal Board or any body which may be established under paragraph 29.10.1, or a longer time as determined by the Supreme Court of British Columbia.

### **29.12.0 COSTS**

- 29.12.1 Canada and British Columbia will provide to NStQ an agreed amount of funding for the Enrolment Committee and Enrolment Appeal Board to carry out the functions with respect to those applications or appeals commenced during the Initial Enrolment Period.
- 29.12.2 The Enrolment Committee and the Enrolment Appeal Board will operate within their approved budgets.
- 29.12.3 After the Initial Enrolment Period, NStQ will bear its own costs associated with enrolment.

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## CHAPTER 30 IMPLEMENTATION

### 30.1.0 GENERAL

30.1.1 The Parties will, prior to the initialing of the Final Agreement, conclude an implementation plan that will take effect on the Effective Date and have a term of 10 years, which may be renewed or extended upon agreement of the Parties.

### 30.2.0 IMPLEMENTATION PLAN

30.2.1 The implementation plan will:

- a. identify the obligations, the activities to be undertaken to fulfill these obligations, the responsible Party or Parties and the timeframe for completion of those activities;
- b. specify how the implementation plan may be amended;
- c. specify how the implementation plan may be renewed or extended;  
and
- d. address other matters agreed to by the Parties.

30.2.2 Without limiting paragraph 30.2.1 the implementation plan will not:

- a. create legal obligations;
- b. alter any rights or obligations set out in the Final Agreement;
- c. preclude any Party from asserting that rights or obligations exist under the Final Agreement even though they are not referred to in the implementation plan; and
- d. be used to interpret the Final Agreement.

### 30.3.0 IMPLEMENTATION PLAN WORKING GROUP

30.3.1 The Parties agree to establish a tripartite implementation plan working group during Final Agreement negotiations which will:

- a. be responsible for the development of an implementation plan; and
- b. be responsible for the development of a list of activities that the Parties must complete by the Effective Date.

**30.4.0 IMPLEMENTATION COMMITTEE**

30.4.1 The Implementation Committee will be established on the Effective Date for a term of ten years which may be extended for a period as agreed to by the Parties.

30.4.2 On the Effective Date, each Party will appoint one member as its representative on the Implementation Committee. Other individuals may participate in Implementation Committee meetings to support or assist a member.

30.4.3 The Implementation Committee will:

- a. establish its own procedures and operating guidelines;
- b. develop a communications strategy and may address ongoing communications issues in respect of the implementation and content of the Final Agreement;
- c. be a forum for the Parties to:
  - i. discuss the implementation of the Final Agreement; and
  - ii. attempt to resolve any implementation issues arising among the Parties in respect of the Final Agreement.
- d. provide for the preparation of annual reports on the implementation of the Final Agreement;
- e. recommend revisions to the implementation plan;
- f. before the expiry of the implementation plan, review the implementation plan and advise the Parties on the further implementation of the Final Agreement; and
- g. address other matters agreed to by the Parties.

## CHAPTER 31 APPROVAL OF THE AGREEMENT-IN-PRINCIPLE

### 31.1.0 GENERAL

- 31.1.1 This Agreement will be submitted to the Parties for approval after it has been initialed by the chief negotiators for Canada, British Columbia and the NStQ Indian Bands.
- 31.1.2 Each NStQ Indian Band will have approved this Agreement when it is signed by the Chief and Council of the NStQ Indian Band after a vote of that NStQ Indian Band.
- 31.1.3 Canada will have approved this Agreement when it is signed by a Minister authorized to do so by the federal cabinet.
- 31.1.4 British Columbia will have approved this Agreement when it is signed by a Minister authorized to do so by the Lieutenant-Governor-in-Council.
- 31.1.5 Prior to the signing of this Agreement, the chief negotiators may agree to correct any editing, grammatical, mapping or typographical error found in the version of this Agreement initialed by them and to correct this Agreement accordingly.



**SAMPLE FIRST NATIONS TREATY NEGOTIATIONS**

**DRAFT AGREEMENT IN PRINCIPLE**

**Approval of the Agreement in Prinicple**

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## CHAPTER 32 RATIFICATION

### 32.1.0 GENERAL

32.1.1 The Final Agreement will be submitted to the Parties for ratification as set out in the Final Agreement after it has been initialed by the chief negotiators for Canada and British Columbia, and the chief negotiator for NStQ.

### 32.2.0 RATIFICATION BY NStQ

32.2.1 Ratification of the Final Agreement by NStQ will require:

- a. that its Eligible Voters have a reasonable opportunity to review the Final Agreement;
- b. a vote, by way of a secret ballot, is conducted by the Ratification Committee in accordance with section 32.5.0 and paragraph 32.4.3;
- c. a majority of Eligible Voters on the Official Voters List of each NStQ Community vote in favour of entering into Final Agreement;
- d. ratification of the NStQ Constitution in accordance with the Final Agreement; and
- e. the Final Agreement be signed by the authorized representatives of NStQ.

### 32.3.0 RATIFICATION OF NStQ CONSTITUTION

32.3.1 Ratification of the NStQ Constitution will require:

- a. that Eligible Voters have a reasonable opportunity to review the NStQ Constitution;
- b. a vote, by way of a secret ballot, that is conducted by the Ratification Committee in accordance with section 32.5.0 and paragraph 32.4.3; and
- c. that a majority of Eligible Voters on the Official Voters List of each NStQ Community vote in favour of the NStQ Constitution.

32.3.2 Once ratified, the NStQ Constitution will come into force on the Effective Date.

**32.4.0 THE RATIFICATION COMMITTEE**

- 32.4.1 The Parties will establish a Ratification Committee to be responsible for the ratification process, including conduct of the ratification vote as set out in paragraph 32.4.3.
- 32.4.2 The Ratification Committee will include a representative, appointed by each Party, from each NStQ Community, Canada and British Columbia.
- 32.4.3 The Ratification Committee will:
- a. establish and publish its procedures;
  - b. set its time limits;
  - c. prepare and publish a preliminary list of voters based on the information provided by the Enrolment Committee under subparagraph 29.6.3.i of the Enrolment and Eligibility Chapter;
  - d. ensure NStQ has provided Eligible Voters a reasonable opportunity to review the NStQ Constitution and the Final Agreement;
  - e. prepare and publish an Official Voters List at least 30 days before the first day of general voting in the ratification vote by:
    - i. determining whether each individual whose name is provided to it by the Enrolment Committee is eligible to vote under paragraph 32.5.1; and
    - ii. including on the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under subparagraph 32.4.3.e.i;
  - f. update the Official Voters List by:
    - i. at any time on or before the last day of voting, adding to the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 32.5.1;
    - ii. adding to the Official Voters List the name of each individual who casts a ballot under paragraph 32.5.2 and whose ballot is counted under paragraph 32.5.3;
    - iii. removing from the Official Voters List the name of each individual who died on or before the last day of voting without having voted in the ratification vote;
    - iv. removing from the Official Voters List the name of each individual who did not vote in the ratification vote and who provides, within seven days of the last scheduled day of voting in the ratification vote, certification by a qualified

- medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for general voting; and
- v. removing from the Official Voters List the name of each individual that has applied, or on whose behalf an application has been made to the Ratification Committee by the close of polls on the last day of voting, to have his or her name removed from the Enrolment Register by the Enrolment Committee under paragraph 29.3.3 from the Eligibility and Enrolment Chapter provided the individual has not already voted;
  - g. after preparing and updating the Official Voters List under subparagraphs 32.4.3.e and 32.4.3.f prepare and publish a final Official Voters List;
  - h. establish polling stations;
  - i. approve the form and content of the ballot;
  - j. authorize and provide general direction to voting officers;
  - k. conduct the ratification vote on a day or days determined by the Ratification Committee;
  - l. ensure that information about the dates set for voting and the location of the polling stations are publically available;
  - m. count the vote and provide the results of the ratification vote to the Parties;
  - n. publish the results of the ratification vote; and
  - o. prepare and provide to the Parties a written report on the outcome of the ratification vote within 90 days within the last day of voting.

### 32.5.0 ELIGIBLE VOTERS

32.5.1 An individual is eligible to vote in the ratification vote if that individual:

- a. has been enrolled under the Final Agreement in accordance with the Eligibility and Enrolment Chapter; and
- b. is at least 18 years of age on the last day of voting.

32.5.2 An individual who is eligible to vote under paragraph 32.5.1, but whose name is not included on the Official Voters List, may vote in the ratification vote if that individual:

- a. provides the voting officer with a completed enrolment application form or evidence satisfactory to the voting officer that the individual

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has submitted a completed enrolment application form to the Enrolment Committee; and

- b. provides evidence satisfactory to the voting officer that the individual meets the requirement set out in paragraph 32.5.1.

32.5.3 If the Enrolment Committee notifies the Ratification Committee that an individual referred to in paragraph 32.5.2 meets the Eligibility Criteria:

- a. the name of the individual will be added to the Official Voters List; and
- b. the ballot of the individual will be counted for the purposes of the votes under subparagraphs 32.2.1.b and 32.3.1.b.

### 32.6.0 RATIFICATION BY CANADA

32.6.1 Ratification of the Final Agreement by Canada will require:

- a. that the Final Agreement be signed by a Minister authorized by the federal Cabinet; and
- b. the coming into force of Federal Settlement Legislation.

### 32.7.0 RATIFICATION BY BRITISH COLUMBIA

32.7.1 Ratification of the Final Agreement by British Columbia will require:

- a. that the Final Agreement be signed by a Minister authorized by the Lieutenant Governor in Council; and
- b. the coming into force of Provincial Settlement Legislation.

### 32.8.0 COSTS

32.8.1 Canada and British Columbia will provide to NStQ an amount of funding for the Ratification Committee to carry out the duties and responsibilities set out in this Chapter.

### 32.9.0 MINOR CHANGES

32.9.1 After ratification but before the Parties sign the Final Agreement, the chief negotiators for the Parties may agree to make minor changes to the Final Agreement.