

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

**- and -**

**BC FIRST NATIONS GAMING REVENUE SHARING LIMITED PARTNERSHIP**

**- and -**

**FIRST NATIONS SUMMIT**

**- and -**

**BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS**

**- and -**

**UNION OF BRITISH COLUMBIA INDIAN CHIEFS**

**September 16, 2020**

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**LONG-TERM BC FIRST NATIONS GAMING REVENUE SHARING AND  
FINANCIAL AGREEMENT**

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**LONG TERM BC FIRST NATIONS GAMING REVENUE SHARING AND  
FINANCIAL AGREEMENT**

THIS AGREEMENT dated as of the 16<sup>th</sup> day of September, 2020.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA**, represented by the Minister of Indigenous Relations and  
Reconciliation

(the “**Province**”)

AND:

**BC FIRST NATIONS GAMING REVENUE SHARING LIMITED  
PARTNERSHIP**, a limited partnership formed under the laws of British  
Columbia, and having an office at 106–2370 Bering Road, Westbank, BC V4T 3J6,  
as represented by its general partner, **BCFN GRS GP INC.**, a corporation  
incorporated under the laws of British Columbia and having an office at 106–2370  
Bering Road, Westbank, BC V4T 3J6

(the “**Partnership**”)

AND:

**FIRST NATIONS SUMMIT**, having an office at Suite 1200–100 Park Royal  
South, West Vancouver, BC V7T 1A2

(the “**First Nations Summit**”)

AND:

**BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS**, a society  
incorporated under the laws of British Columbia, and having an office at 1004  
Landooz Road, Prince George, BC V2K 5S3

(“**BCAFN**”)

AND:

**UNION OF BRITISH COLUMBIA INDIAN CHIEFS**, a society incorporated  
under the laws of British Columbia, and having an office at Suite 401–312 Main  
Street, Vancouver, BC V6A 2T2

(“**UBCIC**”)

(each a “**Party**” and collectively the “**Parties**”)

**WHEREAS:**

- A. The *Declaration of the Rights of Indigenous Peoples Act* advances the Province's reconciliation with First Nations by affirming the application of the United Nations Declaration on the Rights of Indigenous Peoples (the "**Declaration**") in British Columbia and contributing to its implementation.
- B. The Parties wish to contribute to the achievement of the objectives of the Declaration, including in relation to: (i) the right of Indigenous peoples to the improvement of their economic and social conditions; (ii) the right of Indigenous peoples to self-determination including the rights to freely pursue their economic, social and cultural development and to finance their autonomous functions; (iii) the right of Indigenous peoples to have access to financial assistance from States for the enjoyment of their rights; (iv) the obligations of States to take effective measures to ensure continuing improvement of Indigenous peoples' economic and social conditions; and (v) the rights of Indigenous peoples to have agreements and constructive arrangements with States recognized, observed and enforced, and to have States honour and respect such agreements and constructive arrangements.
- C. The Province adopted the Draft Principles of Reconciliation, whereby the Province recognizes that reconciliation and self-government require a renewed fiscal relationship with First Nations to ensure that they have the fiscal capacity to govern effectively and to provide programs and services to those for whom they are responsible.
- D. The Parties wish to uphold and provide the fullest expression of the Draft Principles of Reconciliation which include, among other things: a recognition that the honour of the Crown requires that the Province act with honour, integrity and good faith in all dealings with First Nations; that the Crown enter into flexible and innovative agreements, whether by way of agreements or other constructive arrangements with First Nations, that ensure that the relationship accords with the aspirations, needs and circumstances of the First Nations; that First Nations have a role in public decision-making and that the Province looks for opportunities to build processes and approaches aimed at securing free, prior and informed consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus and new ways of working together; that reconciliation requires a renewed fiscal relationship that ensures that First Nations have the fiscal capacity to provide programs and services to their Members; and that agreements and other constructive arrangements in furtherance of reconciliation should be flexible and capable of evolution over time.
- E. The Provincial Territorial Organizations (as represented by the First Nations Gaming Commission on behalf of the Leadership Council, as coordinating body for the PTOs) have a shared commitment to expanding opportunities for First Nations to access a meaningful share of British Columbia's gaming industry and have reached agreement with the Province on the terms of the sharing of annual provincial gaming revenues, as the first phase of a renewed relationship between the Province and First Nations in British Columbia with respect to gaming.

- F. The Province and First Nations leadership in British Columbia have a shared commitment to create sustainable economic opportunities for First Nations, and recognize that First Nations access to their share of British Columbia's gaming revenues will facilitate increased regional economic activity, which is essential for all First Nations in British Columbia and in particular for rural First Nations communities affected by the cyclicity of resource-based economies.
- G. The Parties acknowledge that revenue sharing in a context outside of lands and resources is a significant step towards true and lasting reconciliation with First Nations in British Columbia.
- H. The Province has committed to the objective of providing a consistent, sustainable and long-term source of funding for First Nations to develop and strengthen their governance capacity and to assist in closing the socio-economic gaps that exist between First Nations and non-Indigenous communities in British Columbia.
- I. The Partnership is an entity wholly owned and controlled by First Nations in British Columbia which enables First Nations to administer gaming revenue sharing, to monitor program requirements and to assist First Nations in complying with such requirements; all in a manner that establishes and supports First Nations-owned and controlled institutions in furtherance of First Nations self-determination.
- J. BCLC is responsible for the conduct and management of gaming on behalf of the government of the Province, as set out in the *Gaming Control Act*.
- K. The Parties have entered into the Interim Agreement, which provides for an entitlement of First Nations to 7% of the Actual Net Income of BCLC for the 2019/2020 and 2020/2021 Fiscal Years and pursuant to which payment for those years was transferred by the Province to the Partnership in August of 2019.
- L. The *Gaming Control Act* creates a First Nation entitlement to a share of BCLC net revenues for a further 23 years by requiring BCLC, in each Fiscal Year, to pay to the Province, on behalf of the Partnership, 7% of the Actual Net Income of BCLC for each Fiscal Year; and by further requiring the Province to make payment of this amount to the Partnership from the consolidated revenue fund of the Province.
- M. The *Gaming Control Act* contemplates the Parties entering into, and the Parties have entered into, this long-term Agreement with respect to the distribution of Provincial gaming revenue and in accordance with section 14.1(2) of the Act this Agreement will be published in the British Columbia Gazette as the long-term agreement referred to in the statute.
- N. The Parties have entered into this Agreement to govern the relationship among the Parties with respect to the payment, receipt, distribution and use of the First Nations' share of Provincial gaming revenues and First Nations' reporting and audit obligations; and to provide long-term certainty to First Nations regarding the stability of this revenue stream.



- O. Initially, all First Nations peoples in British Columbia will participate through the Eligible First Nations listed in Schedule “A”; it being recognised, however, that such list will evolve and be amended over time as such First Nations peoples self-define their political and governance structures.
- P. It is the intent of the Parties that First Nations in British Columbia will share in all Provincial net revenues from gaming activities, as they may change over time, on the same basis, *mutatis mutandis*, as they share 7% of the Actual Net Income of BCLC under this Agreement.
- Q. It is the intention of the Province and the PTOs to maintain an on-going relationship with respect to gaming matters for so long as the Province is involved directly or indirectly, through BCLC or otherwise, in conducting, managing, regulating or taxing Lottery Schemes or other gaming activity in British Columbia; and to allow for the relationship in respect of gaming revenue sharing and this Agreement to evolve pursuant to a process of Periodic Review that takes into account changing circumstances over time.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

## **ARTICLE 1 – INTERPRETATION**

### **1.1 Definitions.** In this Agreement, including the Schedules:

- (a) **“Actual Net Income of BCLC”** means, in relation to a Fiscal Year, the amount of BCLC Net Income calculated in accordance with section 3.6
  - (i) less the amount, as reported in BCLC’s audited financial statements for the Fiscal Year, that the BCLC makes provision for in that Fiscal Year for any payments it is obliged to make under agreements entered into in respect of lotteries under section 7(1)(c) of the *Gaming Control Act*; and
  - (ii) as otherwise adjusted in accordance with this Agreement;

all without taking into account the payments to be made to the Partnership under this Agreement.
- (b) **“Agreement”** means this Long-Term BC First Nations Gaming Revenue Sharing and Financial Agreement and all Schedules attached to this Agreement, in each case as they may be amended or supplemented from time to time, and the expressions “herein”, “hereto”, “hereunder”, “hereby”, and similar expressions refer to this Agreement; and unless otherwise indicated, references to Articles, sections and Schedules are to Articles, sections and Schedules in this Agreement.
- (c) **“Alternative Measures”** has the meaning attributed to that term in section 12.9.
- (d) **“Annual Reconciling Payment”** means the payment from the Province to the Partnership referred to and calculated in accordance with section 3.3.

- (e) **“Annual Revenue Sharing Entitlement”** means, for each Fiscal Year beginning on or after April 1, 2021, the entitlement of the Partnership to receive 7% of the Actual Net Income of BCLC for that Fiscal Year as set out in section 14.3(1) of the *Gaming Control Act*.
- (f) **“Annual Revenue Sharing Payment”** means an annual payment by the Province to the Partnership equal to 7% of the Estimated Net Income of BCLC as adjusted as set out in section 3.2, and including the sum of any payment made by the Province directly to a Limited Partner pursuant to section 3.4.
- (g) **“Applicable Laws”** means the statutes, regulations and common law of the Province of British Columbia and the federal statutes, regulations and common law of Canada applicable therein and, for greater certainty, includes the constitutional law of Canada.
- (h) **“Approved Purposes”** means, collectively:
  - (i) health and wellness;
  - (ii) infrastructure, safety, transportation and housing;
  - (iii) economic and business development;
  - (iv) education, language, culture and training;
  - (v) community development and environmental protection; and
  - (vi) capacity building, fiscal management and governance of Eligible First Nations and their territories and Members.
- (i) **“Arbitration Act”** means the *Arbitration Act*, SBC 2020, c 55.
- (j) **“Authority”** means the federal government of Canada, the provincial government of British Columbia or any local government in British Columbia constituted under the authority of the *Local Government Act*, RSBC 2015, c 1 or any regulatory authority, agency, tribunal, commission, board or department of any such government or any Canadian federal or provincial court, having jurisdiction in the relevant circumstances.
- (k) **“BCLC”** means the British Columbia Lottery Corporation, a Crown corporation continued under the *Gaming Control Act*, and its statutory successors.
- (l) **“BCLC Net Income”** means, in relation to a Fiscal Year, BCLC’s “net income” as that term is defined in section 9 of the *Gaming Control Act*, as reported in BCLC’s audited financial statements for the Fiscal Year submitted under section 11 of the *Gaming Control Act*.

- (m) **“Budget Transparency and Accountability Act”** means the Budget Transparency and Accountability Act, SBC 2002, c 23.
- (n) **“Business Day”** means any day which is not a Saturday or Sunday or other Holiday.
- (o) **“Change Event”** has the meaning attributed to that term in section 12.3.
- (p) **“Common Objectives”** has the meaning attributed to that term in section 10.3.
- (q) **“Compliance Reports”** has the meaning attributed to that term in section 6.1(a).
- (r) **“Constitution Act, 1982”** means the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
- (s) **“Consultative Process”** has the meaning attributed to that term in section 12.4.
- (t) **“Criminal Code”** means the *Criminal Code*, RSC 1985, c C-46.
- (u) **“Declaration”** means the United Nations Declaration on the Rights of Indigenous Peoples referred to in Recital A.
- (v) **“Dispute”** has the meaning attributed to that term in section 11.1(a).
- (w) **“Dispute Resolution Procedure”** means the dispute resolution procedure set out in Article 11.
- (x) **“Disputing Parties”** has the meaning attributed to such term in section 11.2.
- (y) **“Distributable Income”** has the meaning attributed to that term in the Partnership Agreement.
- (z) **“Distribution Formula”** means the formula used by the Partnership to calculate the Distributive Shares of each Eligible First Nation as determined from time to time pursuant to sections 4.3 and 4.4, the initial Distribution Formula being described in Schedule “B”.
- (aa) **“Distributive Share”** means, at any time, a Limited Partner’s percentage entitlement to Distributable Income; and for any Unsigned First Nation, means such Unsigned First Nation’s percentage entitlement to Distributable Income that would, at such time, apply to the Unsigned First Nation if such Unsigned First Nation were a Limited Partner; in each case calculated in accordance with the Distribution Formula.
- (bb) **“Draft Principles of Reconciliation”** means the *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples* adopted by the Province, as amended and updated from time to time.
- (cc) **“Effective Date”** means the “as of” date of this Agreement as first above written.

- (dd) **“Eligible First Nations”** means the First Nations in British Columbia identified in Schedule “A” as eligible to become Limited Partners and to share in Limited Partner Distributions; which Schedule may be amended and updated from time to time pursuant to sections 4.1 and 4.2.
- (ee) **“Estimated Net Income of BCLC”** means, in relation to a Fiscal Year, the amount of estimated BCLC Net Income for the Fiscal Year, less the amount that the BCLC is obliged to make under agreements entered into in respect of lotteries under section 7(1)(c) of the *Gaming Control Act*, as presented to the British Columbia Legislative Assembly in the main estimates for the Fiscal Year under the *Budget Transparency and Accountability Act*, without taking into account the payments to be made to the Partnership under this Agreement.
- (ff) **“Event of Default”** means a Partnership Event of Default or a Province Event of Default, as the case may be.
- (gg) **“Execution Date”** means the date of execution of this Agreement written below.
- (hh) **“Financial Administration Act”** means the Financial Administration Act, RSBC 1996, c 138.
- (ii) **“Fiscal Year”** means the Fiscal Year commencing on April 1<sup>st</sup> in a calendar year and ending on March 31<sup>st</sup> of the following calendar year.
- (jj) **“Force Majeure”** means any cause beyond the reasonable control of, and without fault or negligence of the Party claiming Force Majeure, including acts of war (whether declared or undeclared), invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection, civil disobedience or disturbances, vandalism or act of terrorism; strikes, lockouts, restrictive work practices or other labour disturbances; inability to access its place of business; and acts of God including lightning, earthquake, fire, flood, unusually heavy or prolonged rain or accumulation of snow or ice arising from weather or environmental problems.
- (kk) **“Fundamental Default”** means:
  - (i) a fundamental breach of this Agreement by the Partnership;
  - (ii) an ongoing lack of good faith conduct by the Partnership;
  - (iii) an act or series of acts by the Partnership that denies the Province substantially the whole benefit of this Agreement;
  - (iv) repudiation of this Agreement by the Partnership expressly or by its conduct; or
  - (v) failure of the Partnership or the PTOs to cure an Event of Default within a reasonable time period in accordance with subsection 11.7(b).

- (ll) **“Gaming Commission”** means the BC First Nations Gaming Commission established and mandated pursuant to the Terms of Reference Framework (November 2010), as may be updated from time to time by the PTOs or their delegates.
- (mm) **“Gaming Control Act”** means the *Gaming Control Act*, SBC 2002, c 14.
- (nn) **“General Partner”** means BCFN GRS GP INC.
- (oo) **“Held Amount”** has the meaning attributed to that term in section 5.8.
- (pp) **“Holiday”** has the meaning attributed to that term in the *Interpretation Act*.
- (qq) **“IFRS”** means the International Financial Reporting Standards or any successor set of accounting principles generally accepted in Canada; or the Canadian Public Sector Accounting Standards.
- (rr) **“Indemnified Persons”** has the meaning attributed to that term in subsection 13.11(a).
- (ss) **“Independent Accounting Expert”** has the meaning attributed to that term in section 3.14.
- (tt) **“Independent Appointee”** means the independent appointee appointed by the Partnership pursuant to subsection 6.4(a).
- (uu) **“Indian Band”** means a First Nation located in British Columbia that is or becomes recognized as a band under the *Indian Act*, RSC 1985, c I-5.
- (vv) **“Initial Periodic Review”** has the meaning attributed to that term in subsection 10.2(a).
- (ww) **“Interim Agreement”** means the Interim BC First Nations Gaming Revenue Sharing and Financial Agreement dated August 2, 2019 between the Province, the PTOs and the Partnership and all Schedules attached thereto as described by this Agreement and as may be amended or supplemented from time to time.
- (xx) **“Interim Agreement Reconciliation Amount”** means the amount of the difference (positive or negative) between \$196,840,000 and the total of the Partnership’s annual revenue sharing entitlement, under the Interim Agreement, for the Fiscal Years beginning on April 1, 2019 and April 1, 2020.
- (yy) **“Interpretation Act”** means the Interpretation Act, RSBC 1996, c 28.
- (zz) **“Investment Income”** has the meaning attributed to that term in the Partnership Agreement.

- (aaa) **“Joinder Agreement”** means an agreement among a Limited Partner, the Partnership and the General Partner, as may be amended by the General Partner from time to time, wherein an Eligible First Nation becomes a Limited Partner and a Shareholder and agrees to adhere to and be bound by the Partnership Agreement and ratifies the Interim Agreement or this Agreement.
- (bbb) **“Leadership Council”** means the First Nations Leadership Council comprised of the political leadership of the PTOs and formalized under the Leadership Accord executed between the PTOs and dated effective March 17, 2005, and where referred to herein in its capacity as coordinating body for the PTOs.
- (ccc) **“Levy”** means any tax, duty, fee, premium, assessment, impost or other charge of any kind whatsoever, including all interest, penalties, fines, additions to such charges or other additional amounts imposed in respect thereof.
- (ddd) **“Limited Partner”** means an Eligible First Nation in British Columbia that has signed the Partnership Agreement or a Joinder Agreement and has been accepted by the General Partner as a limited partner of the Partnership.
- (eee) **“Limited Partner Distributions”** means all monies from the Province distributed to Limited Partners by the Partnership as contemplated in section 5.1 together with any Investment Income from Permitted Investments distributed to Limited Partners by the Partnership; and all monies paid by the Province directly to Limited Partners pursuant to section 3.4.
- (fff) **“Lottery Scheme”** means a lottery scheme conducted or managed by the Province, BCLC or any Other Agent of the Province under the authority of section 207(1)(a) of the *Criminal Code*.
- (ggg) **“Member”** means a member or citizen of a Limited Partner.
- (hhh) **“Other Agent of the Province”** means any agency of the Province, other than BCLC, that conducts and/or manages Lottery Schemes, and includes the Province itself if the Province conducts and manages any such Lottery Schemes directly; but, for greater certainty, does not include any operator that the Province, BCLC or any other agent of the Province that conducts and manages such Lottery Schemes may hire to operate any gaming facility or to provide services for the operation of such Lottery Schemes for or on behalf of the Province, BCLC or such other agent of the Province.
- (iii) **“Partnership”** means the BC First Nations Gaming Revenue Sharing Limited Partnership, a limited partnership formed under the laws of British Columbia to administer, manage, distribute and report on gaming revenues received from the Province; or its successors or assigns.
- (jjj) **“Partnership Agreement”** means the Second Amended and Restated BC First Nations Gaming Revenue Sharing Limited Partnership Agreement dated and effective as of March 31, 2020, among the General Partner, the Limited Partners

(as of the date thereof) and those Eligible First Nations who from time to time execute Joinder Agreements and are accepted by the General Partner as Limited Partners; as such agreement may be amended, modified, supplemented or restated from time to time.

- (kkk) **“Partnership Event of Default”** has the meaning attributed to that term in section 9.5.
- (lll) **“Partnership Expense”** means ‘Expenses’ as defined in the Partnership Agreement.
- (mmm) **“Partnership Fiscal Year”** means the ‘Fiscal Year’ of the Partnership, as defined in the Partnership Agreement.
- (nnn) **“Periodic Review”** means the process described in Article 10.
- (ooo) **“Permitted Expenses”** has the meaning attributed to that term in the Partnership Agreement.
- (ppp) **“Permitted Investments”** has the meaning attributed to that term in the Partnership Agreement.
- (qqq) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation (with or without share capital), unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Authority, First Nation or other entity, however designated or constituted.
- (rrr) **“Principle of First Nations Gaming Revenue Sharing”** or the **“Principle”** has the meaning attributed to that term in section 12.1.
- (sss) **“Province Event of Default”** has the meaning attributed to that term in section 9.7.
- (ttt) **“Provincial Territorial Organizations”** or **“PTOs”** means the First Nations Summit, BCACFN and UBCIC collectively, whether acting directly or through the Leadership Council or the Gaming Commission as its delegate; and includes any successor or replacement organizations.
- (uuu) **“Public Accounts”** means, in relation to a Fiscal Year, the public accounts published by the Province under the authority of the *Budget Accountability and Transparency Act* for that Fiscal Year.
- (vvv) **“Qualified Monitor or Receiver”** means a monitor or receiver that is a ‘trustee’ within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, cB-3 or is a ‘licenced trustee’ and is licenced or approved under that Act.
- (www) **“Reserves”** has the meaning attributed to that term in the Partnership Agreement.

- (xxx) **“Retainer Agreement”** has the meaning attributed to that term in subsection 6.4(b).
- (yyy) **“Review Period”** has the meaning attributed to that term in subsection 10.2(b).
- (zzz) **“Second Preceding Fiscal Year”** means, in respect of any Fiscal Year, the Fiscal Year ending immediately before the commencement of the immediately preceding Fiscal Year.
- (aaaa) **“Self Governing First Nation Established by Statute”** means a self-governing First Nation established by statute, including for example the Sechelt Indian Band, established under the *Sechelt Indian Band Self Government Act*, SC 1986, c 27; and Westbank First Nation, as described in the *Westbank First Nation Self-Government Act*, SC 2004, c 17.
- (bbbb) **“Shared Cost Agreement”** means the shared cost agreement dated September ●, 2020 between the Province and the Partnership in relation to the Independent Appointee, and such further shared cost agreements as may be executed from time to time.
- (cccc) **“Shareholder”** means an Eligible First Nation that is a shareholder of the General Partner.
- (dddd) **“Subsequent Fiscal Year”** means, in respect of any Fiscal Year, the Fiscal Year immediately following that Fiscal Year.
- (eeee) **“Term”** means the term of this Agreement as set out in section 9.1.
- (ffff) **“Treaty First Nation”** has the meaning attributed to that term in the *Interpretation Act*; but for purposes of this Agreement, the Interim Agreement and the Partnership Agreement also includes the Nisga’a Nation, as described in the *Nisga’a Final Agreement Act*, SBC 1999, c 2.
- (gggg) **“Unsigned First Nation”** means an Eligible First Nation that is not a Limited Partner at the relevant time.

## 1.2 Interpretation. For purposes of this Agreement:

- (a) **“Including”** means “including, but not limited to” and **“includes”** means “includes, but not limited to” and **“included”** means “included, but not limited to”;
- (b) The recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- (c) The use of the singular includes the plural and the use of the plural includes the singular;



- (d) Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;
- (e) A reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it; and
- (f) There will be no presumption that any ambiguity in the terms, expressions or provisions in this Agreement are to be resolved in favour of either Party.

**1.3 Parts of Agreement.** These are the parts of this Agreement: Article 1, section 1.1, subsection 1.1(a), subparagraph 1.1(a)(i). Unless stated otherwise, any reference in this Agreement to an Article, section or subsection means the appropriate part of this Agreement.

**1.4 Schedules.** The following are the Schedules to this Agreement:

Schedule A	-	Eligible First Nations
Schedule B	-	Distribution Formula
Schedule C	-	[Intentionally deleted]
Schedule D	-	Form of Partnership Report to Province
Schedule E	-	Alternative Dispute Resolution Procedure

## **ARTICLE 2 – UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

**2.1 Application.** The Parties acknowledge it is their mutual intention that:

- (a) this Agreement, in particular through the sharing of gaming revenue with Eligible First Nations and the application of those revenues towards Approved Purposes, as well as the processes for Periodic Review, Consultative Process and Dispute Resolution, contribute to the implementation and achievement of the objectives of the Declaration; and
- (b) the spirit and intent of the Declaration will inform and guide the implementation of this Agreement. In particular, the provisions of this Agreement will be to the greatest extent possible construed and interpreted in accordance with, and the Parties' participation in the processes of Periodic Review, Consultative Process and Dispute Resolution will be guided and informed by, the Declaration.

**2.2 Articles of Declaration.** This Agreement furthers, and its implementation will be guided by, the Declaration and in particular, but without limitation, the following articles:

Article 3, which provides that Indigenous peoples have the right to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;

Article 4, which provides that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions;

Article 18, which provides that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

Article 19, which provides that States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

Article 20, which provides that Indigenous peoples have the right to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security; and that States shall take effective measures, and where appropriate special measures to ensure continuing improvement of Indigenous peoples' economic and social conditions;

Article 37(1), which provides that Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements;

Article 39, which provides that Indigenous peoples have the right to have access to financial and technical assistance from States for the enjoyment of the rights contained in the Declaration; and

Article 40, which provides that Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights and that such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**2.3 Respectful and Collaborative Discussions.** The Parties will take an open-minded and collaborative approach to discussions and negotiations required under this Agreement,

including in the Periodic Review and Consultative Process, with the objective of reaching a reasonable and mutually agreeable outcome. The Parties will carry out such discussions in a manner that:

- (a) is guided and informed by the Declaration and the Draft Principles of Reconciliation;
- (b) respects the principle of honour of the Crown;
- (c) respects, preserves and protects Aboriginal rights, culture, traditions and aspirations; and
- (d) demonstratively considers and takes into account and incorporates the views and inputs of all Parties to the discussion, and provides transparency of outcomes.

**2.4 Interpretation.** The Parties further acknowledge that the implementation of the Declaration through this living Agreement is an ongoing process and that a wider interpretation and application of the Declaration may evolve over time. The Parties will consider this wider interpretive context where relevant in the context of gaming revenue sharing in British Columbia. For greater certainty, where the Parties are required by this Agreement to discuss or otherwise consider the Declaration, they are not limited to consideration of those articles referenced in section 2.2 and may have regard to the Declaration in its entirety. In the event of any inconsistency between section 2.1 and the Declaration, the Parties will refer to the text of the Declaration.

**2.5 Not Limiting.** Nothing in this Article 2 will limit in any way the meaning or interpretation of activities that constitute Approved Purposes.

### **ARTICLE 3 – PAYMENT OF FUNDS**

**3.1 Annual Revenue Sharing Entitlement.** For each Fiscal Year beginning on or after April 1, 2021 and ending on the earlier of March 31, 2045 or the date of termination of this Agreement, the Province will pay from the BCLC's annual revenue the Annual Revenue Sharing Entitlement in accordance with Division 4 of Part 2 of the *Gaming Control Act* and this Article 3. For greater certainty, for each Fiscal Year beginning on or after April 1, 2021, the payment by the Province of the Annual Revenue Sharing Payment for that Fiscal Year as set out in section 3.2, plus the payment by the Province of any Annual Reconciling Payment for that Fiscal Year as set out in section 3.3, fully discharges the obligation of the Province to pay the Annual Revenue Sharing Entitlement for that Fiscal Year.

**3.2 Annual Revenue Sharing Payment.** By April 30 of each Fiscal Year beginning on or after April 1, 2021, the Province will pay from the BCLC's annual revenue to the Partnership an amount equal to the Annual Revenue Sharing Payment for that Fiscal Year, adjusted as follows:

- (a) for the Fiscal Year beginning on April 1, 2022, the amount payable will be increased or reduced, respectively, by the Interim Agreement Reconciliation Amount, if any; and any reduction will constitute full recovery by the Province of

the overpayment under the Interim Agreement and thereafter the Province will have no further claims under the Interim Agreement for such amount;

- (b) subject to subsection 3.2(c), for each Fiscal Year beginning on or after April 1, 2023, if the Actual Net Income of BCLC for the Second Preceding Year is less than the Estimated Net Income of BCLC for the Second Preceding Year, the amount payable for the current Fiscal Year must be reduced by the amount that is equal to 7% of the difference between the Actual Net Income of BCLC for the Second Preceding Fiscal Year and the Estimated Net Income of BCLC for the Second Preceding Year; provided however that if such excess arises from a restatement of the financial statements of BCLC, no deduction will be made; and
- (c) for the Fiscal Years beginning on April 1, 2043 and April 1, 2044, if the Actual Net Income of BCLC for the Fiscal Year is less than the Estimated Net Income of BCLC for the Fiscal Year, the Partnership will pay to the Province, within 90 days of receiving the statement in subsection 3.5(b), an amount equivalent to 7% of the difference between the Actual Net Income of BCLC and the Estimated Net Income of BCLC for the relevant Fiscal Year; provided however that if such excess arises from a restatement of the financial statements of BCLC, no repayment will be made required.

The adjustments to amounts payable under subsections 3.2(a) and (b) above will be the sole remedy of the Province in respect of an overpayment of an Annual Revenue Sharing Payment under the Interim Agreement or this Agreement to which those subsections are applicable, respectively; and in no circumstance will the Partnership or the Limited Partners have the obligation to repay an overpayment or the Province have any recourse against the Partnership or the Limited Partners in respect of an overpayment other than the right to make the adjustments contemplated by subsections 3.2(a) and (b) above. In the circumstances to which subsection 3.2(c) is applicable, recourse against the Partnership is the Province's sole remedy and in no circumstances will the Province have recourse against the Limited Partners.

**3.3 Annual Reconciling Payment.** For each Fiscal Year beginning on or after April 1, 2021, if the Actual Net Income of BCLC for that Fiscal Year exceeds the Estimated Net Income of BCLC for that Fiscal Year, the Province will pay to the Partnership 7% of the amount of such excess (the “**Annual Reconciling Payment**”) within 20 Business Days of the date on which the Province provides the statement under subsection 3.6(b); but in any event not later than the date that is 60 days following the publication of the public accounts under the *Budget Transparency and Accounting Act* for that Fiscal Year.

**3.4 Direct Payments.** Notwithstanding sections 3.2 and 3.3, the Partnership, at the request of a Limited Partner, but at the discretion of the General Partner acting reasonably, may request in writing that the Province pay directly to a Limited Partner its Limited Partner Distributions, the amount of which will be determined in accordance with the Partnership Agreement, as notified by the General Partner to the Province. The Partnership may withdraw its direction to the Province at any time. Any amount paid by the Province to a Limited Partner in accordance with this section 3.4 will discharge the obligation of the

Province to make payment to the Partnership in an amount equivalent to the amount so paid; and, accordingly, the payment to the Partnership will be reduced by such amount.

**3.5 Estimated Net Income of BCLC.** Within 20 Business Days after the date the main estimates for a Fiscal Year are presented to the Legislative Assembly of British Columbia in accordance with the *Budget Transparency and Accountability Act*, the Province will provide or will cause BCLC to provide to the Partnership:

- (a) a copy of the most recent Annual Service Plan of BCLC that includes the projected BCLC Net Income for that Fiscal Year; and
- (b) a written statement setting out the Estimated Net Income of BCLC and the amount of the Annual Revenue Sharing Payment for that Fiscal Year.

**3.6 Actual Net Income of BCLC.** Within 60 days after the Public Accounts pertaining to a Fiscal Year in which an Annual Revenue Sharing Payment was due are made public, the Province will provide or will cause BCLC to provide to the Partnership:

- (a) copies of the annual report and audited financial statements submitted by the BCLC for that Fiscal Year pursuant to section 11(1) of the *Gaming Control Act*; and
- (b) a written statement setting out the Actual Net Income of BCLC and the amount of the Annual Reconciling Payment for that Fiscal Year, if any including, for the Fiscal Years beginning on April 1, 2043 and April 1, 2044, the amount owing by the Partnership under subsection 3.2(c), if any.

**3.7 Provincial Levies.** The Parties acknowledge their mutual intent that payments by the Province under this Article 3 and receipt by either the Partnership or any Limited Partner will not be reduced by any Provincial Levy. If it is determined that any such Levy becomes payable:

- (a) by the Partnership on receipt by the Partnership of a payment by the Province under this Article 3; or
- (b) by a Limited Partner on receipt from the Partnership of a Limited Partner Distribution made in accordance with section 5.1; and
- (c) the Partnership or any Limited Partner, as applicable, pays the Provincial Levy; and
- (d) no remission is available to the Partnership or to the Limited Partner, as applicable, in respect of the payment under subsection 3.7(c),

then the Province will pay to the Partnership or to such Limited Partner an amount that would result in the Partnership or such Limited Partner, as the case may be, receiving the same amount under this Article 3 or as a Limited Partner Distribution made in accordance with section 5.1 as if the Levy of the Province did not apply to the Partnership or such Limited Partner, as applicable.

- 3.8 Partnership Bank Accounts.** All payments by the Province to the Partnership under this Agreement will be made by direct deposit or wire transfer by the Province to the bank account identified by the Partnership as its bank account designated for the purpose of receiving such funds.
- 3.9 Certificate and Legal Opinion.** At least 20 Business Days prior to the date any payment by the Province under this Agreement is due, the Partnership will provide to the Province:
- (a) a certificate signed by an officer of the General Partner certifying that, as of the date of the certificate, there is no Fundamental Default existing; and
  - (b) an opinion from legal counsel for the Partnership dated no more than 20 Business Days prior to the date of the certificate referred to in subsection 3.9(a) and otherwise in a form and content satisfactory to the Province with respect to those matters set out in section 7.1.
- 3.10 Fundamental Default.** If the Province takes the view that there is a Fundamental Default existing at the time payment by the Province under this Agreement would otherwise be required to be made, the Province will provide written notice to the Partnership in accordance with the Dispute Resolution Procedure.
- 3.11 Suspension.** If the Partnership does not provide the certificate and legal opinion as described in section 3.9 or if the Province has provided notice of Fundamental Default as contemplated by section 3.10, payment from the Province will be suspended until the non-compliance or Fundamental Default is cured or resolved or the dispute referred to in section 3.10 is resolved pursuant to the Dispute Resolution Procedure, at which time the Province will recommence regular payments and will pay in full any suspended payments. Payment by the Province under this Agreement may be suspended only under this section 3.11 and section 13.28, and in no other circumstances.
- 3.12 Discussion of Information Provided.** If requested to do so by the General Partner, the Province will discuss in good faith with the General Partner any of the statements, plans or reports referred to in sections 3.5 and 3.6, and will make available to the General Partner and its agents for review and inspection (i) all relevant books and records supporting the statements, plans or reports referred to in sections 3.5 and 3.6; and (ii) annual performance indicators or reports including the BCLC's ratio of operating costs to net win; and will discuss in good faith with the General Partner any of the foregoing, including any variances in BCLC's ratio of operating costs to net win within the categories of expenditures set out in Schedule "C" hereto.
- 3.13 Application of and Changes in Provincial Accounting Practices.** The calculation of BCLC Net Income will be made in accordance with IFRS or such other generally accepted accounting principles as are determined by the Province as applicable to BCLC. In the event that during the course of any Fiscal Year there has been a change in any applicable accounting policies or practices (including the allocation of general overheads or unusual costs, funding of special projects, imposition of a Provincial Levy, or similar charges, expenses or unusual items) of the Province from those used for the preceding Fiscal Year

and such change affects the determination of BCLC Net Income, the Estimated Net Income of BCLC or the Actual Net Income of BCLC, the Province will deliver notice of such change to the Partnership in sufficient detail for the General Partner to understand such change, and if requested by the General Partner, will meet with the General Partner to discuss the change. It is the intention of the Parties that the amount of the payments to be made to the Partnership under this Agreement not be unfairly or unduly reduced (having regard to the purposes of this Agreement), directly or indirectly, as a result changes in accounting policies or practices that affect calculation of the Estimated Net Income of BCLC, the Actual Net Income of BCLC, or the Annual Revenue Sharing Payment and if such result arises, the Parties agree to discuss and effect reasonable amendments to this Agreement.

- 3.14 Calculation of Actual Net Income of BCLC.** When calculating the Actual Net Income of BCLC for any Fiscal Year, no deduction or expense will be taken or allowed for an expenditure (i) made to Persons that do not deal at arm's length with the Province, unless such expenditure is incurred in the ordinary course of business, is reasonable and is on arm's length terms; (ii) not made for the purpose of earning income included in the Actual Net Income of BCLC; or (iii) for funding of any special, unusual or non-recurring costs or programs (including the Joint Illegal Gaming Investigation Team or other amounts deducted from BCLC Net Income from operations other than indirect tax expenses and net defined accrued losses). Only expenses deducted from BCLC's revenue for purposes of calculating its net income from operations, as set forth in its consolidated audited financial statements, shall be deducted in calculating the Actual Net Income of BCLC in any Fiscal Year.
- 3.15 Net Revenue Calculation Dispute Process.** The Partnership may dispute the calculation of the Annual Revenue Sharing Payment or the Annual Reconciling Payment for any Fiscal Year (including any amount relevant to such calculation) by submitting a written notice of objection (setting out in reasonable detail the basis for the objection and relief requested) within 40 Business Days of being delivered the last of the materials requested under section 3.12. The Province and the Partnership will co-operate in good faith to resolve the dispute. If the dispute has not been resolved within 40 Business Days after delivery of the written notice, the dispute will be referred to a nationally recognized independent accounting firm (the "Independent Accounting Expert") for a written expert opinion or for a written expert determination on the basis of the principles articulated in this Article 3. The costs and expenses related to such Independent Accounting Expert will be shared equally between the Province and the Partnership. A Party wishes to dispute the opinion or determination of the Independent Accounting Expert, such Party may do so pursuant to the Dispute Resolution Procedure.
- 3.16 BCLC Board Membership.** The Parties agree that concomitant with the on-going relationship between the Province and First Nations in British Columbia in respect of gaming and, acknowledging that the success of BCLC means success for First Nations by way of increased funds flowing to communities to close socio-economic gaps, during the Term, the PTOs have the right to nominate a nominee of the Partnership (the "**Partnership Nominee**") to act as a full participating director of the board of directors of BCLC. The Minister responsible for BCLC will recommend the appointment of the Partnership

Nominee (as well as any replacement or successor therefor nominated by the Partnership) in accordance with and pursuant to Applicable Laws and the procedures of the Province for making such appointments. In selecting the Partnership Nominee, the Partnership will select a candidate who contributes to satisfying the competencies and skill set criteria established from time to time by the Province and generally applicable to the board of BCLC.

#### **ARTICLE 4 – ELIGIBLE FIRST NATIONS AND DISTRIBUTION FORMULA**

- 4.1 List of Eligible First Nations.** The initial list of Eligible First Nations is attached hereto as Schedule “A”, and may be amended, revised or updated from time to time (i) pursuant to a proposal from the PTOs ratified by the Limited Partners by Special Resolution pursuant to the Partnership Agreement, or (ii) by the Limited Partners by Extraordinary Resolution pursuant to the Partnership Agreement. The General Partner may also add new Indian Bands, Treaty First Nations and Self Governing First Nations Established by Statute to the list and may also, at the direction of an Eligible First Nation, replace such Eligible First Nation with another entity identified by such Eligible First Nation as governing such Eligible First Nation. The Partnership will provide any amended, revised or updated list of Eligible First Nations to the Province on a timely basis.
- 4.2 Principles Relating to Determination of Eligible First Nations.** The initial list of Eligible First Nations includes all Indian Bands, Treaty First Nations and Self Governing First Nations Established by Statute located in British Columbia. The Parties acknowledge and recognize, however, the right of First Nations peoples to self-determination, including their right, as reflected in the Declaration, to determine their own political and governance structures. Accordingly, Schedule “A” will be amended, revised and updated from time to time in accordance with all relevant considerations appropriately weighted, including the following principles (which will not be amended without notice to and consent of the Province):
- (a) participation in the sharing of provincial gaming revenues by all First Nations in British Columbia, in a fair and equitable manner, without duplication or discrimination; including Indian Bands, Treaty First Nations and Self Governing First Nations Established by Statute;
  - (b) the sharing of gaming revenues at the local community level;
  - (c) respect for the governance structures adopted by First Nations and the rights of every First Nation to determine the entity through which it wishes to be included in gaming revenue sharing; and
  - (d) regard for the right of First Nations to self-determination including regard for such processes and principles of self-determination as may develop or evolve during the Term and as may be discussed in the process set out in Article 10.
- 4.3 Distribution Formula.** The Distribution Formula may be amended, revised or updated from time to time by the PTOs with ratification by the Limited Partners by Special



Resolution pursuant to the Partnership Agreement, or by the Partnership by an Extraordinary Resolution of the Limited Partners pursuant to the Partnership Agreement.

- 4.4 Principles Relating to Distribution Formula.** In updating from time to time the Distribution Formula, the PTOs or the Partnership, as applicable, will ensure that the Distribution Formula is fair and equitable to all Eligible First Nations. For example, the Distribution Formula will be applied in a manner that does not create a disincentive to two or more Eligible First Nations aggregating, forming centralized governance structures or otherwise combining or consolidating governance into a single legal entity.
- 4.5 Execution by PTOs.** The PTOs, by their execution and delivery of this Agreement, authorize and approve this Agreement for and on behalf of First Nations leadership in the Province.

## **ARTICLE 5 – AGREED USE OF FUNDS**

- 5.1 Use of Funds by the Partnership.** Subject to Partnership Expenses, Reserves, Permitted Investments, and Held Amounts, all funds received by the Partnership under Article 3 will be distributed among the Limited Partners in accordance with the Distribution Formula and in accordance with the Partnership Agreement. For greater certainty, Partnership Expenses will be paid by the Partnership and will not be the responsibility of the Province.
- 5.2 Use of Funds by the Limited Partners.** The Partnership covenants and agrees that the Partnership Agreement does, and during the Term will continue to, provide that the Limited Partner Distributions received by a Limited Partner will, subject to Reserves and Permitted Investments pending expenditures made in accordance with this section 5.2, only be used or expended by such Limited Partner for capital and operating expenditures in respect of or in furtherance of the Approved Purposes for the benefit of such Limited Partner and its Members and to fund Permitted Expenses.
- 5.3 Approved Purposes.** The Partnership covenants and agrees that the Partnership Agreement does, and during the Term will continue to, provide that the Approved Purposes do not include per capita distributions or other forms of direct per capita distributions of any portion of the Limited Partner Distributions to Members or any other Person. For greater certainty, per capita distributions will not include payments or reimbursements to Members except for those Members bonafide participating in programs and services, such as, for example, housing, education or training programs.
- 5.4 Application of Declaration.** The Parties agree that First Nations gaming revenue sharing and the application of funds towards Approved Purposes contributes to the achievement of the objectives of the Declaration including in relation to: (i) the right of Indigenous peoples to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security; (ii) the right of Indigenous peoples to self-determination including the right to freely pursue their economic, social and cultural development and to finance their autonomous functions; (iii) the right of Indigenous peoples to have access to financial assistance from States for the enjoyment of such rights;

and (iv) the obligations of States to take effective measures to ensure continuing improvement of Indigenous peoples' economic and social conditions; provided however, that this section 5.4 will not limit in any way the meaning or interpretation of activities that constitute Approved Purposes.

- 5.5 Pooling Resources.** For greater certainty, nothing in this Agreement prohibits two or more Limited Partners from using Limited Partner Distributions to jointly further a project of benefit to such Limited Partners and their Members, provided such project is in respect of or in furtherance of the Approved Purposes.
- 5.6 First Nations Traditions.** The Parties acknowledge and agree that in respect of the Limited Partner Distributions, the Approved Purposes are to be interpreted to include within their meaning and scope the cultures, traditions, values, beliefs, methods and practices of First Nations in British Columbia, provided that in no event will any such tradition, value, belief, method or practice override any specific use of funds provisions, or any reporting or accountability provisions, set out in this Agreement.
- 5.7 Unsigned First Nations.** The General Partner will use its good faith reasonable efforts to explain to any Unsigned First Nation the benefits of this Agreement to such Unsigned First Nation in order that such Unsigned First Nation can determine whether it will execute a Joinder Agreement and become a Limited Partner.
- 5.8 Held Amounts.** The Partnership covenants and agrees that the Partnership Agreement provides and will continue to provide during the Term that:
- (a) in accordance with the Partnership Agreement, the General Partner will hold for each Unsigned First Nation all monies to which such Unsigned First Nation would be entitled to have distributed to it under the Partnership Agreement if such Unsigned First Nation had been a Limited Partner at the effective date of such Limited Partner Distribution, (all such monies the “**Held Amounts**” and individually, a “**Held Amount**”) and the Partnership may make Permitted Investments with such Held Amounts;
  - (b) subject to the terms of the Partnership Agreement, an Unsigned First Nation, upon becoming a Limited Partner, will be entitled to receive its Held Amount and any Investment Income earned on Permitted Investments; provided however that the Partnership Agreement may provide that such Held Amount will be forfeited by the Unsigned First Nation if such First Nation remains an Unsigned First Nation for a period longer than three years or such other period as may be prescribed by the General Partner pursuant to policies as may be established or adopted by its board of directors from time to time; and
  - (c) each such Held Amount will not be distributed to any Person except as provided in the Partnership Agreement.

## **ARTICLE 6 – FIRST NATIONS REPORTING**

### **6.1 Limited Partner Reports to Partnership.**

- (a) The Partnership agrees that the Partnership Agreement does and will continue to provide that each Limited Partner that has received a Limited Partner Distribution in a Fiscal Year from the Partnership (or from the Province pursuant to section 3.4) will provide to the Partnership a Limited Partner compliance report on receipt and disbursement in form and substance satisfactory to the General Partner, together with its independent practitioner's reasonable assurance report on compliance prepared in accordance with Canadian Standards on Assurance Engagements 3530 or 3531, as may be amended, supplemented or replaced from time to time, for that Fiscal Year (together, the "**Compliance Reports**"), within 120 days of the end of that Fiscal Year. The Limited Partner compliance report will show the receipt of Distributions from the Partnership together with expenditures by category of Approved Purposes in accordance with section 5.3, investments in Permitted Investments and amounts expended on Permitted Expenses.
- (b) The Partnership will use reasonable efforts to obtain from each Limited Partner that has received a Limited Partner Distribution from the Partnership (or directly from the Province pursuant to section 3.4) the Compliance Reports in accordance with the terms of the Partnership Agreement.
- (c) The Partnership will forward copies of Compliance Reports delivered under subsection 6.1(a) to the Independent Appointee every 10 Business Days from the initial receipt of such reports by the Partnership. For greater certainty, the Partnership will not provide the Compliance Reports of the Limited Partners to the Province.

### **6.2 Partnership Reports to Province.** The Partnership agrees that:

- (a) Based on a review of the Compliance Reports, the Partnership will deliver to the Province and the Independent Appointee annually within a reasonable time, but not later than 180 days after the Partnership Fiscal Year-end, the following documents:
  - (i) a report in respect of such Partnership Fiscal Year substantially in the form of Schedule "D" hereto; and
  - (ii) a summary report of representative examples of projects, programs or other initiatives to which the Limited Partners have applied the Limited Partner Distributions during such Partnership Fiscal Year; it being understood that the purpose of such report is to document examples of the success of the gaming revenue sharing program in achieving its objectives and that such report will be consent-based and respect the privacy of individual Limited Partners and will not attribute projects to specific Limited Partners or describe such projects in detail such that projects could be attributed to specific Limited Partners.

- (b) If a Limited Partner that has failed to provide the Compliance Reports within the time period referred to therein, subsequently delivers the contemplated reports to the Partnership, then the Partnership will deliver to the Province and the Independent Appointee a supplemental report under subparagraph 6.2(a)(i) above. Any supplemental reports will be delivered by the Partnership to the Province and the Independent Appointee within 90 days of the Partnership receiving the underlying report from the Limited Partner.
- (c) The Partnership will also deliver to the Province and the Independent Appointee within a reasonable time, but not later than 90 days after the Partnership Fiscal Year-end, audited financial statements of the Partnership.

**6.3 Books and Records and Financial Statements of Partnership.** The Partnership represents and warrants that the Partnership Agreement does, and will continue, during the Term, require that the Partnership maintain adequate books of accounts and records, and will provide to the Limited Partners audited financial statements and such other information as the Partnership Agreement or Applicable Laws may require.

#### **6.4 Independent Appointee.**

- (a) The Partnership will appoint a Person acceptable to the Province who is a Chartered Professional Accountant or a firm of a Chartered Professional Accountants, unless otherwise mutually agreed, to act as an independent appointee in respect of any Fiscal Year for which funds are paid by the Province to the Partnership in accordance with the terms of this Agreement (the “**Independent Appointee**”). For greater certainty, the Independent Appointee will be engaged throughout the Term of this Agreement and for one additional year following the conclusion of the Term.
- (b) The appointment of the Independent Appointee will be pursuant to and be upon the terms set out in a formal written retainer agreement (the “**Retainer Agreement**”) between the Partnership and the Independent Appointee and in form acceptable to the Province. The Independent Appointee will operate with the authority granted to it under and in accordance with the provisions of this Agreement and the Retainer Agreement will provide that the Independent Appointee will perform the duties and obligations of the Independent Appointee set out in this Agreement.
- (c) For each Fiscal Year during the Term, the parties will enter into a Shared Cost Agreement that will provide for payment by the Province of all reasonable fees and other costs of the Independent Appointee. For greater certainty, all terms and conditions relating to such payment, including the timing and amount of payment, are to be set out annually in the Shared Cost Agreement.

## **6.5 Partnership Report to Independent Appointee.**

- (a) Concurrently with the Partnership's delivery of the audited financial statements referred to in subsection 6.2(c) to the Province and the Independent Appointee, the Partnership will deliver to the Independent Appointee the following:
  - (i) a schedule setting forth the specific amounts of Limited Partner Distributions transferred to each Limited Partner during such Partnership Fiscal Year and the dates of such transfers including any amounts distributed directly to the Limited Partners by the Province at the direction of the Partnership; and
  - (ii) a schedule setting forth the following:
    - (A) the Held Amount attributable to each First Nation that was an Unsigned First Nation at the end of such Partnership Fiscal Year; and
    - (B) the total of the Held Amounts at the end of such Partnership Fiscal Year.

## **6.6 Independent Appointee Review.**

- (a) The Independent Appointee will conduct an independent review of the documents received from the Partnership in order to: prepare its report under section 6.7; assist the Partnership in its work assisting Limited Partners to meet expenditure and reporting requirements under the Partnership Agreement; and to provide accurate and, to the greatest extent possible, complete information to the Partnership to inform, in part, the General Partner's decision(s) to impose suspensions and/or forfeitures of Limited Partner Distributions in accordance with the Partnership Agreement.
- (b) The Independent Appointee will be entitled to make reasonable inquiries of, and to request for inspection, any document which, in the opinion of the Independent Appointee is or may be necessary for its review, from the Partnership or, subject to this section 6.6, from a Limited Partner that has received a Limited Partner Distribution.
- (c) Where the Independent Appointee wishes to obtain relevant information or documents from a Limited Partner, the Independent Appointee will first request the Partnership to obtain the information and documents. If the Independent Appointee makes such a request of the Partnership, the Partnership will make such request of the Limited Partner. If the Independent Appointee, after the request or delivery, or both, of the requested information and documents from the Limited Partner as provided through the Partnership, determines that a direct approach to the Limited Partner is required to obtain further information or documents, the Independent Appointee may request such information and documents directly from the Limited Partner. The Independent Appointee will provide to the Partnership copies of all

information pertaining to Limited Partners that it receives independently of the Partnership.

- (d) The Partnership Agreement provides, and will continue to provide, that any Limited Partner that has received Limited Partner Distributions fails to provide the documents referred to in this section 6.6 or to respond to the reasonable inquiries made by the Independent Appointee in a timely manner will be in default of the Partnership Agreement and subject to suspension or forfeiture of its Limited Partner Distributions in accordance with the provisions of the Partnership Agreement.
- (e) All information, records or documents provided to the Independent Appointee will be treated by the Independent Appointee as confidential and not disclosed to any Party or to any other Person except as specifically required by the terms of this Agreement or the terms of the Retainer Agreement.

## **6.7 Independent Appointee Report.**

- (a) The Independent Appointee will deliver to the Partnership and the Province at least annually within 140 Business Days of each Partnership Fiscal Year-end, or more frequently as contemplated pursuant to subsection 6.7(b), a report setting out, based on the reports and inquiries set forth in this Article 6:
  - (i) whether each Limited Partner has provided to the Partnership its Compliance Reports in accordance with the Partnership Agreement;
  - (ii) whether the Partnership has provided to the Province the reports and audited financial statements required to be provided by the Partnership to the Province pursuant to section 6.2;
  - (iii) whether the review conducted by the Independent Appointee has resulted in the discovery of information that there has been non-compliance with the Limited Partner expenditure requirements set out in section 5.2 of this Agreement, interpreted in accordance with section 5.6; and
  - (iv) such other information to which the Partnership and the Province may agree, provided however that any information pertaining to Limited Partner compliance provided to the Province will be in aggregate form and information about individual Limited Partners will not be disclosed to the Province.
- (b) The report contemplated in subsection 6.7(a) may be delivered more frequently if:
  - (i) the Independent Appointee, in his or her reasonable opinion, deems it necessary or appropriate;
  - (ii) the Partnership requests that the Independent Appointee make more frequent reports and the Independent Appointee acting reasonably agrees; or
  - (iii) the Partnership and the Province agree to the delivery of the report on a more frequent basis.

- 6.8 Provincial Review of Reports.** The Province will be entitled to submit to the Partnership any concerns it may have with respect to the reports contemplated by section 6.2 within 40 Business Days after its receipt of the Independent Appointee's report under section 6.7. If the Province does not submit any concerns in respect of such reports within such 40 Business Day period, then the Province will not be entitled to object to or take issue with any matter arising out of this Agreement in respect of the Fiscal Year and the entities to which such reports relate.
- 6.9 Code of Reporting.** Subject to Applicable Laws, the Partnership and the Province agree and acknowledge that the provisions of this Article 6 satisfy and are exhaustive of all requirements and rights of the Province in respect of the requirements for reporting and the provision of information regarding the investment, distribution and expenditure of monies received by the Partnership and Limited Partners pursuant to this Agreement and the Partnership Agreement.

## **ARTICLE 7 – REPRESENTATIONS AND WARRANTIES**

- 7.1 Representations and Warranties by the Partnership.** Each of the Partnership and the General Partner, as general partner of the Partnership, represents and warrants to the Province as follows and acknowledges that the Province is relying on such representations and warranties in entering into this Agreement and performing its respective obligations hereunder:
- (a) the General Partner is a corporation duly formed and validly existing under the laws of British Columbia;
  - (b) the Eligible First Nations that are Limited Partners, or nominees holding in trust for such Limited Partners, are the registered owners of all of the issued and outstanding shares of the General Partner;
  - (c) the Partnership is a limited partnership duly formed and validly existing under the laws of British Columbia;
  - (d) the First Nations that are Limited Partners, or nominees holding in trust for such Limited Partners, are the registered owners of all of the limited partnership interests of the Partnership;
  - (e) each of the Partnership and General Partner has all necessary capacity and power to enter into and to carry out the provisions of this Agreement;
  - (f) this Agreement has been duly authorized, executed and delivered by the General Partner on behalf of the Partnership;
  - (g) there are no actions or proceedings pending (including appeals or applications for review) or to the knowledge of the General Partner threatened, before any court, arbitrator, administrative agency or governmental body against the Partnership which, if determined against it, would result in a change occurring in its properties,

assets, condition (financial or otherwise), business or operations which would materially adversely affect its ability to fulfil its obligations under this Agreement;

- (h) each of the Partnership and the General Partner is in good standing with the British Columbia Registrar of Companies; and
- (i) neither the execution and delivery of this Agreement by the General Partner on behalf of the Partnership, nor the performance of or compliance with the terms and conditions of this Agreement by the General Partner on behalf of the Partnership conflicts with or will result in a breach of any of the terms, conditions or provisions of, or constitutes a default under, the constating documentation of any of either the Partnership or the General Partner, including the Partnership Agreement or any other agreement or instrument to which either of them is a party or by which either of them is bound.

**7.2 Representations and Warranties by the Province.** The Province represents and warrants to the Partnership, and acknowledges that the Partnership is relying on such representations and warranties in entering into this Agreement, that:

- (a) the Province has all necessary capacity, power and authority to enter into and to carry out the provisions of this Agreement;
- (b) this Agreement has been duly authorized, executed and delivered by the Province;
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against the Province in accordance with the terms of this Agreement;
- (d) the execution of this Agreement has not resulted and will not result in violation of any Applicable Law; and
- (e) the execution, delivery and performance of this Agreement does not require any approval, legislative authorization or consent except as has been obtained as of the date of this Agreement.

**7.3 Representations and Warranties by the PTOs.** Each PTO represents and warrants that this Agreement has been duly authorized, executed and delivered by such PTO and constitutes a legal, valid and binding obligation enforceable against such PTO in accordance with the terms of this Agreement.

**7.4 Parties Not to Take Actions.** Each of the Partnership, the Province and the PTOs covenants that it will not, from and after the Execution Date, do any things or take any actions as may cause the representations and warranties of such Party in this Agreement to become untrue or incorrect from and after the Execution Date.

**7.5 Survival of Representations and Warranties.** The representations and warranties of the Parties contained in this Article 7 will survive the expiration of the Term and the termination of this Agreement, without time limit.



## **ARTICLE 8 – INDEMNITY AND SET OFF**

- 8.1 Indemnity by the Partnership.** The Partnership will indemnify and save harmless the Province and the PTOs and their respective employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or the PTOs or any of their respective employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, by reason of any breach by the Partnership or by any of its agents, employees, officers, directors, or subcontractors of this Agreement or of a provision in the Partnership Agreement required to be maintained by the Partnership.
- 8.2 Set off of Losses.** The Partnership agrees that, notwithstanding any other provision in this Agreement, the full amount of any amounts payable to the Province or any of its employees or agents under section 8.1 may be deducted and set off by the Province from and against any payments payable to the Partnership pursuant to the terms of this Agreement, until all such amounts have been paid in full. The Province agrees that it will not deduct and set off from and against any such payments any amount in accordance with this section 8.2 until at least 60 Business Days from the day that the Province provides notice to the Partnership that it claims indemnification.
- 8.3 Indemnity by the Province.** The Province will indemnify and save harmless the Partnership and the PTOs and their respective employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Partnership or the PTOs or any of their respective employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, by reason of any breach of this Agreement by the Province or by any of its agents or employees; including the failure by the Province to pay to the Partnership any payment required under this Agreement on or before the relevant date. In the event of any such payment failure, the Province will pay or cause an agent of the Province to pay to the Partnership, in addition to the payment due, the amount of interest that would have accrued on such payment from the day it became due until, but excluding the date of actual payment, at a rate equal to the rate announced from time to time by the Province's principal banker as its prime lending rate plus three percent and the Parties hereby agree that this amount will be a reasonable pre-estimate of such damages.
- 8.4 Indemnity by the PTOs.** The PTOs will indemnify and save harmless the Province and the Partnership and their respective employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or the Partnership or any of their respective employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, by reason of any breach by the PTOs or by any of its agents, employees, officers, directors, or subcontractors of this Agreement.
- 8.5 Indemnification of PTOs.** The Partnership will indemnify and save harmless the PTOs and their respective members, employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the PTOs or any of their respective members, employees or agents may sustain, incur, suffer or be put to at any time, either

before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, as a result of the performance or non-performance by the PTOs of their obligations under this Agreement; except where such consequences of performance or non-performance are the result of fraud, malfeasance or gross negligence.

## **ARTICLE 9 – TERM AND DEFAULT**

- 9.1 Term.** The Term of this Agreement will commence upon the Effective Date and will include all days up to but not including March 31, 2045, unless terminated earlier in accordance with this Agreement.
- 9.2 Termination of Interim Agreement.** The Interim Agreement will terminate upon the Effective Date. Notwithstanding the termination of the Interim Agreement, the right of a Party to bring a claim in respect of a breach of the Interim Agreement will survive the termination of the Interim Agreement.
- 9.3 End of Term.** Notwithstanding the expiry of the Term or the termination of this Agreement, and in accordance with section 13.16, the following provisions will survive the termination of this Agreement:
- (a) sections 3.6 and 3.13 to 3.14 will apply with respect to the Fiscal Year in which the Term ends or the Agreement is terminated, and the Province will be required to make the Annual Reconciliation Payment, if any, under section 3.3 for that Fiscal Year and the Partnership will be required to pay the amount, in any, under subsection 3.2(c);
  - (b) sections 5.6, 5.8, and 6.1 – 6.9 will apply with respect to the Fiscal Year in which the Term ends or the Agreement is terminated; and
  - (c) the representations and warranties of the Partnership and the Province contained in Article 7, in accordance with section 7.5.
- 9.4 Mutual Intention of the Parties.** Provided that the Province or any Other Agent of the Province is generating revenues from Lottery Schemes or other gaming activities at the time the Parties agree that they will, no later than 18 months prior to the end of the Term, meet to discuss the possibility of entering into a new gaming financial arrangement taking into account the circumstances in the gaming market in British Columbia at the time and any other relevant circumstances.
- 9.5 Events of Default by the Partnership.** Each of the following will constitute an Event of Default by the Partnership (each, a “**Partnership Event of Default**”):
- (a) the Partnership fails to perform or comply with any of its covenants, obligations or agreements set forth in this Agreement, the Province provides written notice of such failure and such failure is not remedied within:
    - (i) 40 Business Days from the date the Partnership receives notice from the Province; or,

- (ii) if section 9.8 applies, within the period of time determined in accordance with that section;
- (b) any representation or warranty made by the Partnership in this Agreement is not true or correct in any material respect when made or ceases to remain materially true and correct, the Province provides notice of such fact, and the representation or warranty is not made true or correct in all material respects within:
  - (i) 40 Business Days from the date the Partnership receives notice from the Province; or,
  - (ii) if section 9.8 applies, within the period of time determined in accordance with that section;
- (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Partnership pursuant to this Agreement is materially untrue or incorrect, the Province provides notice of such fact and such document is not made true and correct in all material respects within:
  - (i) 40 Business Days from the date the Partnership receives notice from the Province; or,
  - (ii) if section 9.8 applies, within the period of time determined in accordance with that section;
- (d) a change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of the Partnership which materially adversely affects the ability of the Partnership to fulfil its obligations under this Agreement;
- (e) an order is made or a resolution is passed or a petition is filed for the liquidation or winding up of the Partnership;
- (f) the Partnership becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency; or
- (g) the Partnership substantially ceases to operate.

**9.6 Defaults by Limited Partners.** For greater certainty, a default by a Limited Partner under the Partnership Agreement will not constitute a Partnership Event of Default, and the Province will not have any recourse against such defaulting Limited Partner or against the Partnership, including with respect to any payments to be made to the Partnership under this Agreement; and the only recourse against such defaulting Limited Partner will be the rights of the Partnership to cause a suspension or forfeiture of the right of such defaulting Limited Partner to receive Limited Partner Distributions, together with such other recourse against such defaulting Limited Partner as the Partnership Agreement may provide.

**9.7 Events of Default by the Province.** Each of the following will constitute an Event of Default by the Province (each, a “**Province Event of Default**”):

- (a) the Province fails to make any payment when due as required under this Agreement, if such failure is not remedied within 20 Business Days after receipt by the Province of written notice of such failure from the Partnership;
- (b) the Province fails to perform any of its covenants or obligations set forth in this Agreement (except as referred to in subsection 9.7(a), and the Partnership provides written notice of such failure and such failure is not remedied within:
  - (i) 40 Business Days from the date the Province receives notice from the Partnership; or
  - (ii) if section 9.8 applies, within the period of time determined in accordance with that section;
- (c) any representation and warranty made by the Province in this Agreement is not true or correct in any material respect when made or ceases to remain materially true and correct, and the Partnership provides notice of such fact, and the representation or warranty is not made true or correct in all material respects within:
  - (i) 40 Business Days from the date the Province receives notice from the Partnership; or
  - (ii) if section 9.8 applies, within the period of time determined in accordance with that section.

**9.8 Extension of Time to Remedy.** With respect to the time periods specified in sections 9.5(a), 9.5(b), 9.5(c), 9.7(b) and 9.7(c), the Parties agree:

- (a) if there is a failure by the Partnership as contemplated by subsection 9.5(a) or by the Province as contemplated by subsection 9.7(b) and such failure is capable of being remedied but is not capable of being remedied within the 40 Business Day period, then such period will be extended for a period not to exceed 120 Business Days from the date the Partnership or the Province, as applicable, receives written notice of such failure as may be required in order to permit the Partnership or the Province, as applicable, to remedy such failure and so long as the Partnership or the Province, as applicable, is diligently acting to remedy such failure during such 120 Business Day period; and
- (b) with respect to a representation or warranty being not true or correct as described in subsections 9.5(b) or 9.7(c), if such representation and warranty is capable of being made true and correct in all material respects but is not capable of being made true and correct the 40 Business Day period, then such period will be extended for a period not to exceed 120 Business Days from the date the Partnership or the Province, as applicable, receives written notice of such fact as may be required in order to permit the Partnership or the Province, as applicable to correct such breach

and so long as the Partnership or the Province, as applicable, is diligently acting to correct such breach during such 120 Business Day period.

- 9.9 Remedies.** Upon the occurrence of an Event of Default, a non-defaulting Party's remedies will be those provided in this Agreement, including recourse to the Dispute Resolution Procedure or as otherwise may be available to such non-defaulting Party under Applicable Laws.

## **ARTICLE 10 – PERIODIC REVIEW**

### **10.1 Purpose.**

- (a) The Parties recognize and acknowledge that this Agreement is a living Agreement that provides a foundation for an ongoing relationship between the Parties which may evolve over time. To support the evolution of the relationship and this Agreement, the Parties commit to conducting and implementing, in good faith, Periodic Review of this Agreement in accordance with this Article 10.
- (b) The purpose of the Periodic Review is to provide the Parties an opportunity to:
  - (i) review whether the Common Objectives of the Parties as set out in section 10.3 are being achieved, with a view of taking agreed to steps to achieve those objectives; and
  - (ii) modernize, update and renew this Agreement as a result of changing circumstances related to the matters set out in section 10.4.

### **10.2 Procedure.** The Parties will engage in Periodic Review as follows:

- (a) The Parties will conduct an initial Periodic Review of this Agreement within the Fiscal Year commencing April 1, 2024 (the “**Initial Periodic Review**”). The Parties will meet at least 6 months before the commencement of that Fiscal Year to discuss agenda items and scheduling for the Initial Periodic Review.
- (b) After the Initial Periodic Review, the Parties may conduct subsequent Periodic Reviews in every fifth Fiscal Year thereafter, or at such shorter interval as they may agree (each interval between the conclusion of a Periodic Review and the commencement of a subsequent Periodic Review being a “**Review Period**”). A Party that wishes to address any matter contemplated by sections 10.3 and 10.4 will provide the other Party with written notice and the Parties will meet to discuss agenda items and scheduling for the Periodic Review. Unless the Parties agree otherwise, the discussions and any negotiations under subsections 10.2(a) and 10.2(b) respectively, will commence within 40 Business Days of the written notice. If no notice is provided by any Party, the Parties will forego engaging in a review.
- (c) The Partnership will be represented in discussions and negotiations in respect of and in all other matters relating to the Periodic Reviews by the Leadership Council, the Gaming Commission or such other entity as the PTOs may designate.

- (d) Periodic Reviews will conclude on the date that is the earlier of:
  - (i) the date agreed to by all Parties; or
  - (ii) 20 Business Days following the date any Party has provided the other Parties with notice that it is withdrawing from the Periodic Review.

**10.3 Common Objectives.** The Parties agree to advance the following common objectives (the “Common Objectives”):

- (a) providing First Nations access to a meaningful share of British Columbia’s gaming industry;
- (b) ensuring the Parties’ ongoing commitment to the Principle of First Nations Gaming Revenue Sharing;
- (c) improving socioeconomic outcomes and improving the overall wellbeing in First Nations communities in British Columbia through demonstrable changes in those communities, in recognition of the socioeconomic gaps that separate Indigenous people from non-Indigenous British Columbians;
- (d) enhancing economic opportunities for First Nations in British Columbia, their Members and the surrounding community;
- (e) providing for effective and sustainable First Nations self-government through, among other things, a common commitment to capacity building and a new and enhanced fiscal relationship with the Province;
- (f) upholding First Nations’ right to recognition, observance and enforcement of this Agreement and related constructive arrangements, and First Nations’ right to engage in decision-making with respect to any matters affecting their rights under this Agreement and under related provisions of the *Gaming Control Act*; and
- (g) supporting the rights of First Nations peoples to self-determination and to establish their own governance models, structures and entities, including, for example, in the determination of Eligible First Nations, consistent with the Declaration and the *Constitution Act, 1982*.

**10.4 Commitment to Discuss.** If requested by any Party, the Parties will discuss any of the following topics:

- (a) progress made towards Common Objectives in the Review Period. The Parties will evaluate progress on the Common Objectives based on the best empirical data relating to socioeconomic indicators available from time to time, and may track expenditures of First Nations communities funded with Limited Partner Distributions in relation to improvements in community wellbeing in accordance with subparagraph 6.2(a)(ii) and by such other studies, reports or data as may be agreed upon from time to time by the Parties;

- (b) mechanisms for moving forward in relation to Common Objectives;
- (c) implementation of this Agreement, including the effectiveness and practicability of processes established by the Parties under this Agreement;
- (d) changes to the nature and breadth of gaming activities in British Columbia;
- (e) developments in the common law related to matters set out in this Agreement;
- (f) changes to federal or provincial legislation related to matters set out in this Agreement;
- (g) any developments in federal or provincial policy related to the matters set out in this Agreement;
- (h) measures to advance the objectives of the Declaration and the Draft Principles of Reconciliation through gaming revenue sharing;
- (i) changes with respect to establishment or recognition of new First Nations in British Columbia and growth in population of First Nations;
- (j) changes in practices and approaches to First Nations membership and citizenship, including legislative changes and trends towards increasingly broad concepts of First Nations membership and citizenship, as reflected by citizenship codes, treaties, and self-government agreements;
- (k) changes in law or policy respecting alternative dispute resolution;
- (l) changes in the fiscal relationship between the Province and First Nations peoples of British Columbia; and
- (m) other matters as the Parties may agree to in writing.

## **10.5 Implementation.**

- (a) Following the discussion(s) conducted pursuant to section 10.4, the Parties may develop recommendations or proposals for presentation to and consideration by the Parties' respective authorities.
- (b) In developing recommendations and proposals to bring forward to the Parties' respective authorities, the Parties may consider, amongst other things:
  - (i) whether the proposal in relation to a specific issue can be addressed in another forum, under another process or through other arrangements, agreed to by the Parties;
  - (ii) availability of resources and lower cost alternatives that would reasonably address the Parties' interests; and

- (iii) other alternatives that would reasonably address the Parties' interests that do not require amendment of this Agreement, including for example side agreements.
- (c) The Parties will present any recommendations and proposals to their respective authorities and will seek approval to implement those recommendations and proposals through amendments to this Agreement or the *Gaming Control Act* or through other appropriate mechanisms agreed to by the Parties.
- (d) Subject to section 13.32, decisions about whether to adopt recommendations and proposals under 10.5(c) through amendments to the Agreement or the *Gaming Control Act* or to take other measures will be consent-based and each Party will have the discretion to consent or to withhold consent to a proposal of another Party, or to recommend an alternative proposal. All amendments to the Agreement are subject to ratification by each of the Parties and by ratification of the Limited Partners.

**10.6 Periodic Review Participants.** The Parties will:

- (a) appoint senior qualified negotiating teams who are knowledgeable on the relevant issues, including Aboriginal culture and values; and ensure that such negotiating teams are clearly and fully mandated and resourced to identify and recommend appropriate outcomes, including provision by the Province to the PTOs of capacity funding sufficient to defray the cost of the PTOs participating in the Periodic Review or the Consultative Process;
- (b) make available to participate in the discussions, as may be appropriate, their senior representatives, such as, in the case of the Province, Ministers and Deputy Ministers; and, in the case of the PTOs, their representatives on the Leadership Council and the Gaming Commission; and
- (c) engage such legal, accounting and financial advisors and other qualified and experienced experts as may be appropriate or necessary to identify and implement recommendations and proposals under section 10.5.

**10.7 Standards of Conduct and Accountability.**

- (a) The Parties are required to conduct Periodic Review discussions and negotiations on a good faith, best efforts basis. In these discussions, the Parties will, among other things:
  - (i) enter into negotiations with the goal of reaching a mutually agreeable outcome;
  - (ii) provide timely disclosure of sufficient information and documentation to enable a full examination of the subject matter of the discussions;



- (iii) respond appropriately and in a timely, responsive and meaningful way to bargaining positions;
  - (iv) give full and fair consideration to the recommendations and proposals of the other Parties;
  - (v) not unreasonably object to a position of another Party; and
  - (vi) demonstratively consider and take into account and incorporate the views and inputs of all Parties to the discussion, and provide transparency of outcomes; and
  - (vii) act consistently with the standard of good faith as articulated in the common law.
- (b) The Periodic Review contemplated by this Article 10 and all discussions and information relating to the matter of the Periodic Review are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done with respect to a Periodic Review, including the discussions or the responses provided by the Parties, except for any amendments made pursuant to subsection 10.5(d), creates any legally binding rights or obligations, including financial obligations.
- (c) For greater certainty:
- (i) while, where requested by a Party, the requirement to review and evaluate progress on the Common Objectives in section 10.3 and to discuss the matters set out in section 10.4 is legally binding, the Parties agree that the Common Objectives on their own do not create independently enforceable legally binding obligations and are not agreed upon interpretive tools for any purpose other than the application of the Periodic Review provisions;
  - (ii) while the Parties are required to participate in the discussions and negotiations in good faith, none of the Parties are required to agree to amend this Agreement or take other measures requested by another Party as a result of the Periodic Review contemplated by this Article 10; and
  - (iii) if the Parties agree to amend any other agreement contemplated by this Agreement, that agreement will be amended in accordance with its terms.
- (d) Subject to a determination made in accordance with section 10.8, each of the Parties will be responsible for its own costs in relation to the Periodic Review process.

**10.8 Periodic Review Dispute Resolution.** Following the conclusion of a Periodic Review, the Province or the PTOs may, upon notice to the Parties and within 30 days of said conclusion, refer the question of whether any of the Parties has failed to participate in the Periodic Review process in good faith, to be determined in accordance with the Dispute Resolution Procedure set out in Article 11 without having to undertake the steps set out in

sections 11.2 and 11.3 and, if the Province and the PTOs agree, they will arbitrate the Dispute in accordance with section 11.4.

## **ARTICLE 11– DISPUTE RESOLUTION**

### **11.1 Principles Informing Dispute Resolution.**

- (a) The Parties agree that they will use their best efforts to resolve any dispute, claim, difference or question concerning the construction, meaning, effect, implementation of or compliance with this Agreement (any of which being a “**Dispute**”) in a cooperative, effective and timely manner.
- (b) The Parties acknowledge that where they are unable to resolve a Dispute by negotiation as contemplated by section 11.2, they have a mutual interest in impartial and effective dispute resolution, which may include arbitration and mediation, and that the Dispute Resolution process set out in this Article 11 can contribute to the achievement of the objectives of the Declaration, which states that Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights; and that such a decision will give due consideration to the customs, traditions, rules and legal systems of the Indigenous peoples concerned and international human rights.

**11.2 Negotiation.** If a Party wishes to resolve a Dispute, then such Party will provide notice to the other Party of same. The Party receiving such notice will have a reasonable period of time to consider and address the matter or discuss the concern with the Party giving the notice, such period not to exceed 20 Business Days. If the matter is not addressed to the reasonable satisfaction of the Party giving the notice within such period, the Parties to the Dispute (the “**Disputing Parties**”), through their senior personnel responsible for the implementation of their Agreement will diligently and in good faith endeavour, for another 20 Business Day period, to resolve the Dispute by negotiation. The Partnership will be represented in all matters relating to any Dispute by the Leadership Council, the Gaming Commission or such other entity as the PTOs may delegate.

**11.3 Mediation.** In the event that an acceptable resolution of a Dispute is not achieved pursuant to section 11.2, the Disputing Parties agree to submit the Dispute to mediation in accordance with the following:

- (a) The Disputing Parties will jointly appoint a mutually acceptable mediator. If the Disputing Parties are unable to agree upon the appointment of a mediator within 10 Business Days after the end of the negotiation period referred to in section 11.2 the Disputing Parties will apply to the Mediate BC Society, or such other organization or Person agreed to by the Disputing Parties in writing, which will, within 20 Business Days of the application, appoint a mediator taking into account (i) the need for the mediator to be neutral and independent; (ii) the qualifications of the mediator, including his or her experience with disputes involving First

Nations; (iii) the expertise of the mediator on the subject matter of the Dispute; (iv) the mediator's availability; and (v) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

- (b) The Disputing Parties agree to participate in good faith in a mediation session which must occur within 20 Business Days after the appointment of the mediator, or such later period agreed to by the Disputing Parties in writing.
- (c) The Disputing Parties agree that the mediation will be conducted in accordance with the Mediation Rules of the Mediate BC Society.
- (d) The Disputing Parties will provide timely disclosure of sufficient information and documents to enable a full examination at the mediation session of the matters in Dispute.
- (e) The Disputing Parties will make all reasonable efforts to appoint representatives with sufficient knowledge and authority to resolve the Dispute at the mediation.
- (f) If the mediation is unsuccessful in resolving the Dispute, the mediator will nevertheless issue a non-binding recommendation to the Disputing Parties with respect to the resolution of the Dispute.

**11.4 Alternative Dispute Resolution.** In the event that an acceptable resolution of the Dispute is not achieved pursuant to section 11.3, the Disputing Parties may agree to arbitrate or use another dispute resolution method alternative to commencing litigation to resolve the Dispute. In the event of a decision by the Disputing Parties to arbitrate, the matter will be referred for determination in accordance with the procedure set out in Schedule "E". The award of any arbitration will, with leave of the court, be appealable by the Disputing Parties to the appropriate British Columbia court on questions of law including matters of process and procedure (other than breaches of procedural fairness by the arbitrator that amount to procedural error, which breach will be addressed under such provisions of the *Arbitration Act* as may be applicable). The arbitrators, as part of their award, may award costs of the arbitration, in their discretion, having regard to the factors set out in Schedule "E".

**11.5 Remedy.** In the event that any Party does not comply with any final decision of the arbitrators under sections 10.8, 11.4 or 12.10, then the other Party may in its discretion take such steps as are reasonably necessary and proportionate to enforce the decision of the arbitrators in accordance with Applicable Laws.

**11.6 Resort to Litigation.** The Parties agree not to commence a court proceeding relating to a Dispute until all good faith efforts to resolve the Dispute by alternative dispute resolution mechanisms pursuant to this Article 11 have been exhausted (but without derogation from the right of any Party to elect not to participate in arbitration); except that a Party may at any time commence litigation to seek injunctive relief or other interim measures of relief such as safekeeping property or to preserve a right of action which would otherwise have expired due to expiry of a limitation period. In the event of litigation, the Disputing Parties will use best efforts to ensure that proceedings proceed efficiently and expeditiously by, for example, narrowing the scope of issues to be resolved, developing agreed statements

of fact, limiting the scope of discoveries and, where appropriate, using processes such as summary judgment, summary trial, and the trial of an issue; and by trying to achieve settlement throughout the currency of the litigation through alternative dispute resolution procedures. In the event that the decision of the court is in favour of the Partnership, the Province will reimburse the costs of the Partnership on a full indemnity, solicitor and own client basis.

**11.7 Rights in Circumstances of an Uncured Partnership Event of Default.** In the event that there has been a Partnership Event of Default, the Province will have the following rights:

- (a) if the Partnership Event of Default relates to subsections 9.5(a), (b), or (c), the right to indemnity from the Partnership under section 8.1 or to recover damages from the Partnership; and the rights of set off under section 8.2.
- (b) if the Partnership Event of Default relates to subsections 9.5(d), (e), (f) or (g), the Province will be entitled to receive notice from the Partnership or the PTOs of such Event of Default and will have the right to require, on notice in writing to the Partnership and the PTOs, that the PTOs appoint a Qualified Monitor or Receiver to manage the business and affairs of the Partnership as an interim measure to continue distributions until the Event of Default is cured either by bringing the Partnership or the General Partner, as the case may be, into compliance with this Agreement on a go forward basis, or by the PTOs, at their discretion, replacing the Partnership and/or the General Partner with a successor First Nations-controlled entity(ies) which will become a party to and compliant with this Agreement in place and stead of the Partnership and/or the General Partner. For greater certainty, the PTOs have the right to and will be fully indemnified by the Qualified Monitor or Receiver with respect to its activities; and
- (c) if the Partnership Event of Default is a Fundamental Default, the right to suspend payments in accordance with section 3.11 while the Partnership or the PTOs, as the case may be, work to cure the Fundamental Default, including in the manner contemplated by subsection 11.7(b), provided however that if the Fundamental Default has not been remedied or otherwise resolved by the third anniversary of the date that the Province provided notice, the Province may terminate this Agreement. In event of such termination the Province and the PTOs will discuss, in accordance with the processes and procedures established in Article 12, alternate arrangements for sharing Provincial gaming revenues with First Nations; it being the intention of the Parties to adhere to the Principle of First Nations Gaming Revenue Sharing.

**11.8 Rights.** The Province's rights under section 11.7 will be subject to the following terms and conditions:

- (a) the Province having provided appropriate notices of such Partnership Event of Default or Fundamental Default to the Partnership and the PTOs in accordance with this Agreement, and any periods for addressing such non-compliance

provided by this Agreement having expired without cure or compliance having been effected within such periods;

- (b) if there is no Dispute, and the Province provides written notice to the Partnership and the PTOs pursuant to this section 11.7, such notice will take effect at such time as any permits for addressing such non-compliance provided in this Agreement have expired without cure or compliance have been affected within this period; and
- (c) the delivery of written notice to the Partnership and the PTOs of the non-compliances referenced above in subsections 11.8(a) and (b).

**11.9 Other Remedies.** The exercise by a Party of any of its rights pursuant to this Article 11 will be without prejudice to the other rights and remedies of the Party under this Agreement or pursuant to Applicable Laws.

**11.10 Costs.** Except where otherwise determined by a court or by arbitrators in accordance with Schedule “E”, the Province may not deduct the Province’s costs of engaging in dispute resolution including litigation from payments to the Partnership whether as a direct deduction, or indirectly through BCLC expenditures, the calculation of the Net Gaming Revenue Estimate and Net Gaming Revenue Actual under section 3.14 or otherwise.

**11.11 Rights of PTOs.** In the event of a Partnership Event of Default relating to subsections 9.5(d), (e), (f) or (g), the PTOs will have the right to appoint a Qualified Monitor or Receiver to manage the business and affairs of the Partnership as an interim measure to continue distributions until the Event of Default is cured by bringing the Partnership or the General Partner, as the case may be, into compliance with this Agreement on a go forward basis. Alternatively, in the event of the occurrence of such a Partnership Event of Default, the PTOs, at their discretion, may replace the Partnership and/or the General Partner with a successor First Nations-controlled entity(ies) which will become a party to and compliant with this Agreement in place and stead of the Partnership and/or the General Partner.

## **ARTICLE 12 – PRINCIPLE OF FIRST NATIONS GAMING REVENUE SHARING**

**12.1 Certainty.** The Parties acknowledge that they have entered into this Agreement and the Interim Agreement, and that the Province has made amendments to the *Gaming Control Act* to establish the Annual Revenue Sharing Entitlement in each year of the Term with the intent of providing a consistent, stable, long-term source of funding to First Nations. The Parties have committed, in the event of a Change Event, to the principle (the “**Principle of First Nations Gaming Revenue Sharing**”) of preserving and maintaining the certainty of a revenue stream to BC First Nations equivalent to the revenue stream that would have been generated by the annual receipt of the Annual Gaming Revenue Entitlement over the Term if the Change Event had not occurred. Recognizing the potential for change in gaming activity and its regulation during the Term, including changes in the nature of gaming activity and changes in the manner in which the Province receives revenues from gaming, the Parties have set out in this Article 12 the Consultative Process through which they will work together to understand the impacts of any such changes on the revenue stream generated over the Term by the Annual Revenue Sharing Entitlement and seek to

reach agreement on ways to maintain the Principle of First Nations Gaming Revenue Sharing.

**12.2 Applicability of the Declaration.** The Province acknowledges that First Nations have the right as reflected in Article 37 of the Declaration to the recognition, observance and enforcement of constructive arrangements such as those constituted by this Agreement and the related provisions of the *Gaming Control Act* and that the Province should honour and respect this constructive arrangement. The Province also acknowledges that First Nations have the right as reflected in Articles 18 of the Declaration to participate in decision-making in matters which would affect their rights. In relation to this Agreement, the Province agrees that First Nations should participate where their rights under this Agreement and the *Gaming Control Act* may be affected, in the manner set out in this Article 12.

**12.3 Change Events.** The Parties recognize and acknowledge that, over the Term, achievement of the Principle of First Nations Gaming Revenue Sharing may be adversely impacted by various acts or omissions of the Province (each a “**Change Event**”). Change Events include, for example, the following:

- (a) the Province replacing BCLC, in whole or in part, with an Other Agent of the Province including where the Province receives revenues from Provincial Gaming from an Other Agent of the Crown and such revenues are not included in the calculation of the Annual Revenue Sharing Entitlement;
- (b) the Province amending or repealing the *Gaming Control Act*, or enacting, amending or repealing any other legislation or regulation, if such enactment, amendment or repeal has the effect of materially reducing or eliminating the Annual Revenue Sharing Entitlement; or
- (c) the Province imposing a tax, fee or regulation on gaming activity that has the effect of materially reducing or eliminating the Annual Revenue Sharing Entitlement.

**12.4 Consultative Process.** In the event that the Province is considering or contemplating the implementation of or giving effect to a Change Event, the Province will forthwith engage with the PTOs in a process of good faith consultation, in order to obtain the free, prior and informed consent of the PTOs to the Change Event and to proposed Alternative Measures; including to understand the potential implications of the contemplated Change Event to the stream of revenues generated by the Annual Revenue Sharing Entitlement and to identify and seek to reach agreement on Alternative Measures to maintain the Principle of First Nations Gaming Revenue Sharing (the “**Consultative Process**”). This Consultative Process will be governed as follows:

- (a) the Minister responsible for this Agreement will provide the PTOs with advance notice of the contemplated Change Event and proposed Alternative Measures, together with sufficient information respecting the proposed Change Event and possible Alternative Measures to permit the PTOs to prepare their views on the contemplated Change Event and possible Alternative Measures;

- (b) where the proposed Change Event or the proposed Alternative Measures may result from the introduction, amendment or repeal of legislation or regulations, the Province will initiate the Consultative Process before government introduces legislation in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council;
- (c) the Minister will allow the representatives of the PTOs sufficient time before any proposed legislation is introduced in the Legislative Assembly or any regulation is made, or the implementation of the Change Event or Alternative Measure is otherwise advanced, for the representatives of the PTOs to fully consider the proposed Change Event and possible Alternative Measures and to prepare and provide their comments to the Minister; and
- (d) the Minister must seriously consider and demonstrably integrate the views provided by the representatives of the PTOs into the decision-making process for the proposed Change Event and possible Alternative Measures. The Minister will provide feedback to the PTOs, both during the Consultative Process and after the decisions giving effect to the Change Event and implementing the Alternative Measures, as to how their views were taken into account in the decision process respecting the Change Event and the Alternative Measures.

**12.5 Unanticipated Change Events.** In the event that a Change Event or Alternative Measure results from the introduction, amendment or repeal of legislation other than by the government, and the government was not able to initiate the Consultative Process prior to the taking effect of the Change Event or the Alternative Measure, or if the Province receives information that indicates potential adverse impacts to the revenue stream that would have been generated by the annual receipt of the Annual Gaming Revenue Entitlement over the Term if the Change Event had not occurred, subject to confidentiality requirements the Province and the PTOs will, as soon as practicable after becoming aware of the Change Event or the Alternative Measure, meet to understand the potential implications of the contemplated Change Event and/or the Alternative Measure to the revenue stream and to identify and seek to reach agreement on Alternative Measures or additional Alternative Measures as may be required to maintain the Principle of First Nations Gaming Revenue Sharing.

**12.6 Upholding the Principle.** The Province and the PTOs will engage in the Consultative Process in good faith and in a timely, responsive and meaningful way using *bona fide*, best efforts to uphold the Principle of First Nations Gaming Revenue Sharing, giving full and fair consideration to all of the reasonably available alternatives to maintaining the Principle of First Nations Gaming Revenue Sharing.

**12.7 Consultative Process Participants.** The Parties will:

- (a) appoint senior qualified negotiating teams who are knowledgeable on the relevant issues, including Aboriginal culture and values; and ensure that such negotiating teams are clearly and fully mandated and resourced to identify and recommend appropriate outcomes, including provision by the Province to the PTOs of capacity

funding sufficient to defray the cost of the PTOs participating in the Consultative Process;

- (b) make available to participate in the discussions, as may be necessary or desirable, their senior representatives, such as, in the case of the Province, Ministers and Deputy Ministers; and, in the case of the PTOs, their representatives on the Leadership Council and the Gaming Commission; and
- (c) engage such legal, accounting and financial advisors and other qualified and experienced experts as may be necessary or appropriate to identify and recommend Alternative Measures to maintain the Principle of First Nations Gaming Revenue Sharing throughout the Term.

**12.8 Standards of Conduct and Accountability.** The Province and the PTOs are required to conduct the consultative process discussions and negotiations on a good faith, best efforts basis. In these discussions, the Parties will, among other things:

- (a) enter into negotiations with the goal of reaching a mutually agreeable outcome;
- (b) provide timely disclosure of sufficient information and documentation to enable a full examination of the subject matter of the discussions;
- (c) respond appropriately and in a timely, responsive and meaningful way to bargaining positions;
- (d) give full and fair consideration to the recommendations and proposals of the other Parties;
- (e) not unreasonably object to a position of the other Party;
- (f) demonstratively consider and take into account and incorporate the views and inputs of all parties to the discussion, and to provide transparency of outcomes; and
- (g) act consistently with the standard of good faith as articulated in the common law.

**12.9 Range of Alternative Measures.** In the course of the Consultative Process, the Province and the PTOs will consider all reasonable available alternative measures (“**Alternative Measures**”) to maintain the Principle of First Nations Gaming Revenue Sharing throughout the Term. For example, such Alternative Measures may include one or more of the following measures to replace or restore the the income stream revenue that would have been generated by the annual receipt of the Annual Gaming Revenue Entitlement over the Term if the Change Event had not occurred:

- (a) introducing to the Legislative Assembly legislation that creates a statutory entitlement in favour of the Partnership to a share of net revenues from Other Agents of the Crown;



- (b) a commitment by the Province to the payment to the Partnership of an alternative revenue stream that maintains or replaces the revenue stream; or of a single payment equal to the present discounted value of such amount; or
- (c) the sharing of Provincial revenues from gaming activities other than revenues included in the Actual Net Income of BCLC.

**12.10 Dispute Resolution.** Following the conclusion of the Consultative Process, the Province or the PTOs may, upon notice to the Parties and within 30 days of said conclusion, refer the question of whether any of the parties to the Consultative Process has failed to participate in the Consultative Process in good faith, to be determined in accordance with the Dispute Resolution Procedure set out in Article 11 without having to undertake the steps set out in sections 11.2 and 11.3 and, if the Province and the PTOs agree, they will arbitrate the Dispute in accordance with section 11.4.

**12.11 Other Potential Changes.** If, during the Term, the Province receives revenues in relation to gaming activities other than from the Actual Net Income of BCLC, which may include but are not limited to revenues received from a fee, levy or tax collected by the Province in relation to gaming activity, the Parties will meet to discuss the potential for sharing such revenues with Partnership. For greater certainty, the receipt of such revenues by the Province is not, in and of itself, a Change Event; however, if the receipt of such revenues has the effect of materially reducing or eliminating the stream of revenues generated by the Annual Gaming Revenue Entitlement, such reduction or elimination will be a Change Event and the Parties will engage in the Consultative Process in respect of such Change Event and related Alternative Measures.

**12.12 Implementation of Alternative Measures.** Subject to the requirement under that the Parties use *bona fide* best efforts to maintain the Principle of First Nations Gaming Revenue Sharing', the Parties are not required to agree to any particular Alternative Measure, including the making of any payment, as a result of the Consultative Process contemplated by this Article 12.

**12.13 Confidentiality.** The obligations of the Province to disclose or otherwise share information in accordance with this Article 12 are subject to Applicable Laws and to the Parties entering into appropriate agreements to preserve the confidentiality of the information so disclosed or otherwise shared. The disclosure or sharing of such information will not constitute a waiver of solicitor-client privilege and will not waive, defeat or negate any privilege or confidence, including parliamentary convention of the confidentiality of proposed bills and Cabinet confidentiality, or any other protection provided by law. Nothing in this Agreement will require the Province to disclose or otherwise share information where such disclosure or sharing is prohibited by law.

## **ARTICLE 13 – GENERAL MATTERS**

### **13.1 Provincial Gaming Control.**

- (a) Nothing expressed or implied in this Agreement will:
- (i) be construed so as to either acknowledge or affect in any manner the jurisdiction of the Province to conduct and manage, and to control, licence, administer and regulate in the Province of British Columbia, the conduct and management of activities pursuant to section 207 of the *Criminal Code*;
  - (ii) acknowledge or limit the right of the Province or BCLC or any Other Agent of the Province to conduct and manage activities under section 207 of the *Criminal Code* in their sole and absolute discretion in accordance with Applicable Laws;
  - (iii) create any interest in favour of Eligible First Nations, the Partnership or any Limited Partner in or to any Lottery Schemes or in or to any assets of the Province or of BCLC or any Other Agent of the Province, including any casinos, casino assets or other lottery or gaming related assets; or
  - (iv) oblige the Province or BCLC or any Other Agent of the Province to conduct and manage or to continue to conduct and manage or provide for the operation of any Lottery Scheme or any other activity or any facility, including any casinos.

**13.2 Non-Derogation.** This Agreement does not create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any asserted or determined Aboriginal or Treaty rights (including Aboriginal title), which are recognized and affirmed under section 35 of the *Constitution Act, 1982*. Without limitation of the foregoing, this Agreement does not limit or derogate from the right of First Nations to challenge the 1985 decision to devolve the regulating authority over gaming from the federal government of Canada to the provincial governments.

**13.3 Not a Treaty.** This Agreement is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

**13.4 First Nations as Gaming Operators.** Nothing in this Agreement, including any of the payments required under this Agreement, will adversely affect, diminish or derogate from existing or future decisions, negotiations or agreements with First Nations groups regarding the siting, conduct, operation or management of gaming or gaming facilities.

**13.5 Other Benefits.** Nothing in this Agreement, including any of the payments required under this Agreement, will adversely affect, diminish or derogate from any policy, program or statutory entitlement or benefit funded or provided by the Province to which any one or more Eligible First Nations, or any Member, was entitled at the Effective Date. For the purposes of this section 13.5, a policy, program or statutory entitlement or benefit is not adversely affected where a negative effect or reduction of expenditure is based primarily on reasons other than the receipt of funds under this Agreement or the Partnership Agreement. The Parties also acknowledge that it is their mutual intent and desire that nothing in this Agreement, including any of the payments required under this Agreement, adversely affects, diminishes or derogates from any policy, program or statutory

entitlement or benefit funded or provided by the federal government of Canada to which any one or more of the Eligible First Nations, or any Member, was entitled at the Effective Date. It is the intent that all funding provided by the Province under this Agreement, will be incremental to all existing funding First Nations currently receive from the Province.

**13.6 Administration of Agreement.** For clarity, the Ministry of Indigenous Relations and Reconciliation is responsible for administration of this Agreement.

**13.7 Partnership Representation.** The Partnership will be represented in all respects by the PTOs in all discussions and negotiations in respect of and in all matters relating to Articles 10, 11 and 12; and any decisions or other acts or actions by the PTOs in respect of any such matters will be binding on the Partnership.

**13.8 PTO Delegation.** The PTOs will be represented in discussions and negotiations in respect of and in all other matters relating to this Agreement by the Leadership Council, the Gaming Commission or such other entity as the PTOs may designate.

**13.9 Relationship of Parties.** Nothing expressed or implied in this Agreement will:

- (a) be deemed or construed or interpreted to constitute any form of business relationship or to constitute any Party a partner, joint venturer or any other form of business associate of the other;
- (b) constitute any Party the agent or legal representative of any other Party; or
- (c) or create any fiduciary or other similar relationship between any of the Parties.

**13.10 Partnership Not to Commit Province.** The Partnership will not:

- (a) represent itself, including in any agreement with a third party, as an agent, legal representative or partner of the Province; or
- (b) other than pursuant to subsection 3.4, in any manner whatsoever, commit or purport to commit the Province to the payment of money to any Person.

**13.11 Third Party Beneficiaries.**

- (a) Except as provided in sections 8.1 - 8.5, which, without limiting their terms, are intended as stipulations for the benefit of the third Persons mentioned in such provisions (such third Persons referred to in this section 13.11 as the “**Indemnified Persons**”), the Parties intend and hereby agree that this Agreement will not benefit or create any right or cause of action in favour of any Person other than the Parties and that no Person, other than the Parties, will be entitled to rely on the provisions of this Agreement set forth herein.
- (b) Despite the foregoing, the Parties acknowledge to each of the Indemnified Persons their direct rights against the applicable Party under sections 8.1 - 8.5, which are intended for the benefit of, and will be enforceable by, each applicable Indemnified

Person, his or her heirs and his or her legal representatives, and for such purpose, the Province or the Partnership, as applicable, confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.

**13.12 Governing Law.** This Agreement will be governed by and constructed in accordance with Applicable Laws.

**13.13 Amendment.** This Agreement may not be amended, modified or supplemented except by written agreement of the Parties.

**13.14 Amendments to Partnership Agreement.** The Partnership covenants and agrees that, except with the written consent of the Province, sections 1.9 – 1.11, 2.3, 2.16, 3.1 – 3.3, 3.6, 3.7, 5.1, 5.2, 5.5, 6.1, 6.2, 7.1, 7.2, 8.12, 8.13, 10.1 – 10.7, 11.20, 11.21, 11.23, 13.4, 14.4, 17.6 and 17.7 and the definitions of Approved Purposes, Distributable Income, Expenses, Investment Income, Permitted Expenses, Permitted Investments, Reserves, as well as defined terms included in such sections of the Partnership Agreement, will remain unamended for the Term of this Agreement. Any such amendment or deletion of any such provision without the written consent of the Province will be void ab initio and of no force and effect.

**13.15 Appropriation.**

- (a) Notwithstanding any other provision of this Agreement, any payment to be provided by the Province to the Partnership pursuant to this Agreement is subject to there being sufficient monies available in an appropriation, as defined in the Financial Administration Act, to enable the Province in any Fiscal Year or part thereof when such payment is required, to make such payment.
- (b) Where a payment that is due from the Province to the Partnership under this agreement is not made because there are insufficient monies available in an appropriation as defined in the *Financial Administration Act*, the payment that is otherwise payable under this Agreement will be carried forward to and become payable in the next Fiscal Year that there are sufficient monies in an appropriation until the outstanding payment is made.

**13.16 Survival of Covenants.** Any covenant, term or provision of this Agreement which, in order to be effective must survive the termination of this Agreement, will survive any such termination.

**13.17 Confidential Information.**

- (a) The Partnership and the PTOs will keep confidential any and all information provided by the Province pursuant or in relation to this Agreement that the Province identifies as “confidential” and will not disclose such information to any other person, unless compelled to do otherwise by law, provided however that the Partnership and the PTOs may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors are subject to obligations of confidentiality.

- (b) The Province will keep confidential information any and all information provided by the Partnership or the PTOs pursuant or in relation to this Agreement that the Partnership or the PTOs, as the case may be, identify as “confidential”, and will not disclose such information to any other person, except in accordance with the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 164 or as otherwise required by law.

**13.18 Counterparts and Delivery.** This Agreement may be executed in several counterparts, each of which so executed will be deemed to be an original, and such counterparts together will constitute one and the same instrument and notwithstanding their date of execution will be deemed to bear a date as of the date first above written. An executed copy of this Agreement may be delivered by a Party by facsimile or electronic means of transmission.

**13.19 Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile, when received as follows:

- (a) if to the Province:

Ministry of Indigenous Relations and Reconciliation  
PO Box 9100 Stn Prov Govt  
Victoria, BC V8W 9B1

- (b) if to the Partnership:

BC First Nations Gaming Revenue Sharing Limited Partnership  
c/o BCFN GRS GP INC.  
106-2370 Bering Road  
Westbank, BC V4T 3J6

with a copy to:

Bram Rogachevsky  
BR Law  
200–1626 West Second Avenue  
Vancouver, BC V6J 1H4  
bram@brlaw.com

and with a copy to:

Al Hudec  
Farris LLP  
2500–700 West Georgia St  
Vancouver BC V7Y 1B3  
ahudec@farris.com

- (c) if to BCAFN:

1004 Landooz Road  
Prince George, BC V2K 5S3

- (d) if to First Nations Summit:

100 Park Royal South  
West Vancouver, BC V7T 1A2

- (e) if to UBCIC:

401–312 Main Street  
Vancouver, BC V6A 2T2

**13.20 Extensions or Abridgements of Time.** The time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties.

**13.21 Limit of Liability.** Notwithstanding any other provisions of this Agreement:

- (a) Only the Province and not BCLC or any Other Agent of the Province will be liable for the payment of the amounts which the Province has agreed to pay pursuant to Article 3; and
- (b) the maximum amount of any liability of the Province under this Agreement will be limited to the amounts which the Province has agreed to pay pursuant to Article 3 of this Agreement, and in no event will BCLC or any Other Agent of the Province or the Province be liable in respect of any matter arising out of or related to this Agreement for consequential or indirect damages or any non-compensatory monetary award.

**13.22 No Liability of Limited Partners.** The Province acknowledges that the Limited Partners are limited partners in the Partnership and that nothing in this Agreement, and no act or omission of a Limited Partner will be construed as or result in the creation of liability against or a right of recourse of the Province against such Limited Partner.

**13.23 Assignment.** The Partnership will not:

- (a) assign this Agreement or any of its rights or obligations under this Agreement, including by operation of law or by way of amalgamation, merger, reorganization, arrangement or any other direct or indirect manner, mortgage, charge, pledge or grant any other interest in and to this Agreement or any of its rights or obligations under this Agreement; or
- (b) cause the General Partner or any other entity through which the Partnership may, with the prior written consent of the Province, directly or indirectly implement the rights and obligations of the Partnership under this Agreement, to amalgamate,

merge, reorganize or enter into any other similar arrangement or mortgage, charge, pledge or grant any other interest in and to this Agreement or any of its rights or obligations under this Agreement,

in each case without the prior written consent of the Province, which consent may not be unreasonably withheld.

- 13.24 Provincial Reorganization.** The Partnership acknowledges and agrees that the Province may cause an internal reorganization of the provincial government of British Columbia or agents of the Province that may affect BCLC and Other Agents of the Province. The Province acknowledges that, notwithstanding any such internal reorganization of the provincial government of British Columbia or any Other Agent of the Province, including BCLC, the Province will remain bound by the obligations and agreements and will be entitled to the rights, remedies and benefits of the Province under this Agreement.
- 13.25 Reorganization of First Nations Organizations.** The Province acknowledges and agrees that an internal reorganization of one or more of the PTOs may occur during the Term. The PTOs acknowledge that, notwithstanding any such internal reorganization, any successor organizations will remain bound by the obligations and agreements and will be entitled to their respective rights, remedies and benefits under this Agreement.
- 13.26 Gaming Control Act Amendments.** In the event that an amendment to the *Gaming Control Act* results in a change that does not constitute a Change Event but which otherwise impacts this Agreement, the Parties will discuss in good faith changes to this Agreement which may be necessary or desirable to align this Agreement with such amendments.
- 13.27 Successors and Assigns.** This Agreement will ensure to the benefit of and be binding upon the Partnership and its successors and permitted assigns and the Province and its assigns.
- 13.28 Force Majeure.** Notwithstanding any other provision of this Agreement, if, by reason of Force Majeure, any Party is unable to perform in whole or in part its obligations under this Agreement, then in such event and during such period of inability to perform, such Party will be relieved of those obligations to the extent it is so unable to perform and such inability to perform and any failure to perform which is so caused will not make such Party liable to the other Party, and any time period in which such obligation is to be performed will be extended for such period of inability to perform; provided that the Party experiencing such Force Majeure provides the other Party with prompt notice thereof and uses all reasonable efforts to otherwise perform its obligations.
- 13.29 Time of Essence.** Time is of the essence of this Agreement.
- 13.30 Further Acts and Assurances.** The Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

**13.31 No Implied Waiver.** Any waiver of:

- (a) a provision of this Agreement;
- (b) the performance by a Party of an obligation under this Agreement; or
- (c) a default or breach by a Party of an obligation under this Agreement,

will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default or breach.

**13.32 No Fettering.** Nothing in this Agreement will be interpreted in a way that would affect or unlawfully interfere with any legislative authority of the provincial government of British Columbia or fetter the discretion given to any decision-making authority or otherwise be construed as an agreement by the Province to restrict, limit or otherwise fetter in any manner the Province's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any right or authority regarding legislation, regulations, policies or any other authority of the Province.

**13.33 Validity of Agreement.** The Parties will not challenge the validity of any provision of this Agreement. If any part of this Agreement is declared or held invalid for any reason by a court of competent jurisdiction or pursuant to such other decision-making agreed to by the Parties under section 11.4:

- (a) subject to law, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
- (b) the Parties will negotiate and attempt to reach agreement on a replacement for the part of this Agreement declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

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**13.34 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement with effect as of the Effective Date.

**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF BRITISH COLUMBIA,  
as represented by THE MINISTER OF  
INDIGENOUS RELATIONS AND  
RECONCILIATION**



---

Honourable Scott Fraser,  
Minister of Indigenous Relations and  
Reconciliation

**BC FIRST NATIONS GAMING REVENUE  
SHARING LIMITED PARTNERSHIP, by its  
general partner, BCFN GRS GP INC.**

DocuSigned by:



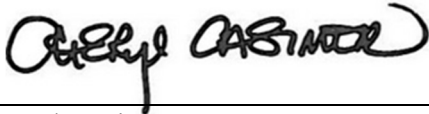
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Michael Bonshor, Co-Chair

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Cody Hall, Co-Chair

**FIRST NATIONS SUMMIT**



Cheryl Casimer  
(?aqłsmaknik piłak pałkiy)



Robert Phillips



Lydia Hwitsum

**BC ASSEMBLY OF FIRST NATIONS**



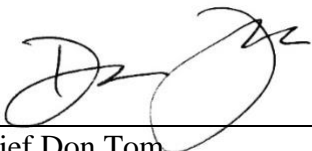
Terry Teegee

**UNION OF BRITISH COLUMBIA  
INDIAN CHIEFS**



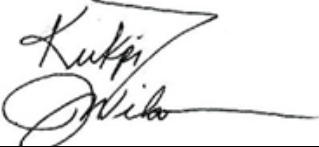
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Grand Chief Stewart Phillip (ʔaʔsiwł)



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Chief Don Tom



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Judy Wilson (Kukpi7), Secretary Treasurer

## **SCHEDULE A ELIGIBLE FIRST NATIONS**

As of August 2, 2019

The initial list of Eligible First Nations was developed by cross-referencing lists maintained by Canada,<sup>1</sup> British Columbia,<sup>2</sup> and the BCAFN<sup>3</sup> as of May 2019. Combined, these separately maintained lists include all British Columbia Indian Bands, Treaty First Nations including the Nisga'a Nation and Self Governing First Nations Established by Statute.

The initial list of Eligible First Nations is subject to amendment in accordance with the provisions of the Revenue Sharing Agreements and in particular the principles set forth in sections 4.1 and 4.2 therein; and in accordance with the Second Amended BC First Nations Gaming Revenue Sharing Limited Partnership Agreement and in particular the principles set forth in sections 1.9 and 1.10 therein; and pursuant to the process of Periodic Review.

<b>Number</b>	<b>Name</b>
1	?Akisq'nuk First Nation
2	?aq'am
3	?Esdilagh First Nation
4	Adams Lake
5	Ahousaht
6	Aitchelitz
7	Ashcroft
8	Beecher Bay (Scia'new)
9	Binche Whut'en
10	Blueberry River First Nations
11	Bonaparte
12	Boothroyd
13	Boston Bar First Nation
14	Bridge River
15	Burns Lake
16	Campbell River (Wei Wai Kum)
17	Canim Lake (Tsq'escen')
18	Cape Mudge (We Wai Kai)
19	Cayoose Creek
20	Chawathil
21	Cheam
22	Cheslatta Carrier Nation

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<sup>1</sup> First Nations Profiles online: Indigenous and Northern Affairs Canada <fnppn.aandc-aadnc.gc.ca/fnp/Main/Search/FNListGrid.aspx?lang=eng>.

<sup>2</sup> Indigenous Organizations & Services online: British Columbia <<https://www2.gov.bc.ca/gov/content/governments/indigenous-people/aboriginal-organizations-services>>.

<sup>3</sup> Community Profiles online: British Columbia Assembly of First Nations <<https://bcafn.ca/community-profiles>>.

Number	Name
23	Coldwater
24	Cook's Ferry
25	Cowichan
26	Da'naxda'xw First Nation
27	Dease River First Nation
28	Ditidaht
29	Doig River First Nation
30	Douglas (Xa'xtsa)
31	Dzawada'enuxw First Nation
32	Ehattesaht
33	Esk'eteme
34	Esquimalt
35	Fort Nelson First Nation
36	Gitanmaax
37	Gitanyow
38	Gitga'at First Nation
39	Gitsegukla
40	Gitwangak
41	Gitxaala Nation
42	Glen Vowell
43	Gwa'sala-Nakwaxda'xw
44	Gwawaenuk Tribe
45	Hagwilget Village
46	Haisla Nation
47	Halalt
48	Halfway River First Nation
49	Heiltsuk
50	Hesquiaht
51	High Bar
52	Homalco
53	Hupacasath First Nation
54	Huu-Ay-Aht First Nations
55	Iskut
56	K'ómoks First Nation
57	Ka:'yu:'k't'h'/Che:k:tlés7et'h' First Nations
58	Kanaka Bar
59	Katzie
60	Kispiox
61	Kitasoo
62	Kitselas
63	Kitsumkalum
64	Klahoose First Nation
65	Kwadacha

Number	Name
66	Kwakiutl
67	Kwantlen First Nation
68	Kwaw-kwaw-Apilt
69	Kwiahah
70	Kwikwasut'inuxw Haxwa'mis
71	Kwikwetlem First Nation
72	Lake Babine Nation
73	Lax Kw'alaams
74	Leq' a: mel First Nation
75	Lheidli T'enneh
76	Lhoosk'uz Dene Nation
77	Lhtako Dene Nation
78	Lil'wat Nation
79	Little Shuswap Lake
80	Lower Kootenay
81	Lower Nicola
82	Lower Similkameen
83	Lyackson
84	Lytton
85	Malahat First Nation
86	Mamalilikulla First Nation
87	Matsqui
88	McLeod Lake
89	Metlakatla
90	Mowachaht/Muchalaht
91	Musqueam
92	N'quatqua
93	Nadleh Whuten
94	Nak'azdli Whut'en
95	Namgis First Nation
96	Nanoose First Nation
97	Nazko First Nation
98	Nee-Tahi-Buhn
99	Neskonlith
100	New Westminster (Qayqayt)
101	Nicomen
102	Nisga'a Nation <sup>4</sup>
103	Nooaitch
104	Nuchatlaht
105	Nuxalk Nation
106	Okanagan

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<sup>4</sup> See note 1 in Schedule "B" Distribution Formula.

<b>Number</b>	<b>Name</b>
107	Old Massett Village Council
108	Oregon Jack Creek
109	Osoyoos
110	Pacheedaht First Nation
111	Pauquachin
112	Penelakut Tribe
113	Penticton
114	Peters First Nation
115	Popkum
116	Prophet River First Nation
117	Qualicum First Nation
118	Quatsino
119	Saik'uz First Nation
120	Samahquam
121	Saulteau First Nations
122	Seabird Island
123	Sechelt (shíshálh)
124	Semiahmoo
125	Shackan
126	Shuswap
127	Shxw'ow'hamel First Nation
128	Shxwhá:y Village
129	Simpcw First Nation
130	Siska
131	Skatin Nations
132	Skawahlook First Nation
133	Skeetchestn
134	Skidegate
135	Skin Tyee
136	Skowkale
137	Skuppah
138	Skwah
139	Snuneymuxw First Nation
140	Soda Creek (Xat'súll)
141	Songhees First Nation
142	Soowahlie
143	Splatsin
144	Spuzzum
145	Sq'éwlets (Scowlitz)
146	Squamish
147	Squiala First Nation
148	Stellat'en First Nation
149	Sts'ailes

Number	Name
150	Stswecem'c Xgat'tem First Nation
151	Stz'uminus First Nation
152	Sumas First Nation
153	T'it'q'et
154	T'Sou-ke First Nation
155	Tahltan
156	Takla Nation
157	Taku River Tlingit
158	Tk'emlúps te Secwépemc
159	Tl'azt'en Nation
160	Tl'etinqox Government
161	Tla-o-qui-aht First Nations
162	Tla'amin Nation
163	Tlatlasikwala
164	Tlowitsis First Nation
165	Tobacco Plains
166	Toosey
167	Toquaht
168	Ts'kw'aylaxw First Nation
169	Ts'uubaa-asatx (Lake Cowichan First Nation)
170	Tsal'alh (Seton Lake)
171	Tsartlip
172	Tsawout First Nation
173	Tsawwassen First Nation
174	Tsay Keh Dene
175	Tseshaht
176	Tseycum
177	Ts'ideldel First Nation (Alexis Creek)
178	Tsleil-Waututh Nation
179	Tzeachten
180	Uchucklesaht
181	Ucluelet First Nation (Yuułu?ıł?ath Government)
182	Ulkatcho
183	Union Bar First Nation
184	Upper Nicola
185	Upper Similkameen
186	West Moberly First Nations
187	Westbank First Nation
188	Wet'suwet'en First Nation
189	Whispering Pines/Clinton
190	Williams Lake
191	Witset First Nation (Moricetown)
192	Wuikinuxv Nation



<b>Number</b>	<b>Name</b>
193	Xaxli'p
194	Xeni Gwet'in First Nations Government
195	Yakweakwioose
196	Yale First Nation
197	Yekooche First Nation
198	Yunesit'in Government

## **SCHEDULE B DISTRIBUTION FORMULA**

This Schedule “B” provides details as to how the Distribution Formula is to be applied with respect to individual Eligible First Nations.

The Distribution Formula and its application are subject to amendment in accordance with the provisions of the Agreement and in particular the principles set forth in sections 4.3 and 4.4 therein; and in accordance with the Second Amended BC First Nations Gaming Revenue Sharing Limited Partnership Agreement and in particular the principles set forth in section 1.11 therein; as well as pursuant to the process of Periodic Review.

### **Initial Distribution Formula**

The initial Distribution Formula is as follows:<sup>5</sup>

- 50% of revenues distributed to each Eligible First Nation on an equal basis (the “**Base Share**”);
- 40% of revenues distributed in proportion to the population of each Eligible First Nation; and
- 10% of revenues distributed to “remote and isolated” Eligible First Nations communities.

### **Population Criteria**

Indigenous Services Canada’s published First Nation population information is the basis for determining population and membership of Eligible First Nations. Registered population information is sourced from the Indian Registration System (IRS)<sup>6 7</sup> and is updated monthly.<sup>8</sup>

The General Partner will calculate the Distributive Share of each Eligible First Nation for the 2019/2020 Fiscal Year using population data current as of June 30, 2019.

For every subsequent Fiscal Year, the General Partner will calculate the Distributive Shares of the Eligible First Nations as of the Record Date for Distribution (as defined in the Partnership Agreement) using population information current as of March of the immediately preceding Fiscal Year.

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<sup>5</sup> In recognition of their unique historical context, in applying the Distribution Formula the Nisga’a Nation is allocated one Base Share for each of its four villages and population and remoteness criteria are applied on a village-by-village basis. For greater certainty, in all other respects the Nisga’a Nation will be considered one Eligible First Nation and in particular will be entitled to only one Partnership interest and one vote at meetings of Partners or Shareholders.

<sup>6</sup> First Nations Profiles Definitions online: Indigenous and Northern Affairs Canada at Registered Population <fnp-ppn.aandc-aadnc.gc.ca/fnp/Main/Definitions.aspx> [First Nations Profiles Definitions].

<sup>7</sup> First Nations Profiles online: Indigenous and Northern Affairs Canada <fnp-ppn.aandc-aadnc.gc.ca/fnp/Main/Search/FNListGrid.aspx?lang=eng> [First Nations Profiles].

<sup>8</sup> Frequently Asked Questions online: Indigenous and Northern Affairs Canada <fnp-ppn.aandc-aadnc.gc.ca/fnp/Main/FAQ.aspx?lang=eng> [Frequently Asked Questions].

## Remoteness Criteria

Until a more comprehensive study of remoteness can be completed, Indigenous Services Canada's geo-zone classification system is the basis for determining the remoteness of Eligible First Nations communities. Geo-zone information can be found under the General Information/Geography link located on the First Nation Profile provided for each First Nation in British Columbia.<sup>9</sup> This geo-zone information is sourced from the Band Classification Manual<sup>10</sup> and is updated annually by Canada.<sup>11</sup>

First Nations communities fall within one of four geo-zones.<sup>12</sup> Zones 3 and 4 are considered remote and isolated for purposes of the calculation of Distributive Shares by the General Partner. Zone 3 is defined as "located over 350 km from the nearest service centre with year-round road access." Zone 4 is defined as "the First Nation has no year-round road access to a service centre and, as a result, experiences a higher cost of transportation." The 10% share of the Distribution Formula for remote and isolated Eligible First Nations communities will be divided equally amongst all Eligible First Nations classified as having a Zone 3 or Zone 4 geo-zone classification.

The General Partner calculated the Distributive Share of each Eligible First Nation for the 2019/2020 Fiscal Year using remoteness data captured as of June 30, 2019. Forty-three First Nations were classified as remote and isolated. As of Effective Date Canada had not published geo-zone information for Binche Whut'en First Nation or New Westminster First Nation; remoteness was determined by referencing other information provided by Canada.

For every subsequent Fiscal Year, the General Partner will calculate the Distributive Shares of the Eligible First Nations as of the Record Date for Distribution using information current as of March of the immediately preceding Fiscal Year.

## Aggregation of First Nations

In accordance with section 4.2 of the Agreement, if two or more Eligible First Nations aggregate into one Nation or entity, such Nation or entity will be entitled to a collective Distributive Share that is equivalent to the previous individual Distributive Shares of the Eligible First Nations.

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<sup>9</sup> First Nations Profiles, *supra* note 7.

<sup>10</sup> M Chan & D Dahm, "Band Classification Manual" (2000) online: Indigenous and Northern Affairs Canada <[publications.gc.ca/collections/Collection/R22-1-2000E.pdf](http://publications.gc.ca/collections/Collection/R22-1-2000E.pdf)>.

<sup>11</sup> Frequently Asked Questions, *supra* note 8.

<sup>12</sup> First Nations Profiles Definitions at Geography, *supra* note 6.

## **SCHEDULE C**

[Intentionally deleted]

**SCHEDULE D**  
**FORM OF PARTNERSHIP REPORT TO PROVINCE**

TO: PROVINCE OF BRITISH COLUMBIA

The undersigned confirms that it received from the Province payments totaling \$\_\_\_\_\_ for the Fiscal Year ending March 31, \_\_\_\_\_.

We received the Compliance Reports for the year end as contemplated by section 6.1 of the Long-Term BC First Nations Gaming Revenue Sharing and Financial Agreement from [number] Limited Partner which received distributions during the Fiscal Year then ended. We did not receive such reports from [number] Limited Partner(s), comprising a total of \$\_\_\_\_\_ in distributions.

We report, based on the Compliance Reports received, that out of such funds, the following amounts were, during the year so ended, expended on, as follows:

- |        |   |         |
|--------|---|---------|
| (i)    | Health and wellness   | \$_____ |
| (ii)   | Infrastructure, safety, transportation and housing  | \$_____ |
| (iii)  | Economic and business development   | \$_____ |
| (iv)   | Education, language, culture and training   | \$_____ |
| (v)    | Community development and environmental protection  | \$_____ |
| (vi)   | Capacity building, fiscal management and governance of Eligible First Nations and their territories and members | \$_____ |
| (viii) | Permitted Expenses  | \$_____ |

We further report that as of the commencement of such Fiscal Year the balance held in Permitted Investments was \$\_\_\_\_\_ and as of the end of the Fiscal Year such balance was \$\_\_\_\_\_.

Date: \_\_\_\_\_

**BC FIRST NATIONS GAMING REVENUE  
SHARING LIMITED PARTNERSHIP, by its  
general partner, BCFN GRS GP INC.**

by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **SCHEDULE E**

### **ALTERNATIVE DISPUTE RESOLUTION PROCEDURE**

#### **Definitions**

1. In this Schedule:
  - (a) **“Arbitrators”** means the panel of three arbitrators appointed pursuant to paragraphs 7 and 8;
  - (b) **“Chair”** means the chair appointed pursuant to paragraph 8;
  - (c) **“Claimant”** means a Party that commences a dispute resolution process pursuant to paragraph 5;
  - (d) **“Dispute”** has the meaning attributed to such term in section 11.1(a);
  - (e) **“Disputing Party”** means a party to a Dispute;
  - (f) **“Paragraph”** means a paragraph of this Schedule “E”;
  - (g) **“Respondent”** means a Party who is not the Claimant, and the term **“Respondents”** will, where there is only one Respondent, refer to that Respondent;
  - (h) **“Section”** means a section of the Agreement; and

all other defined terms will have the meanings attributed to them in the Agreement.
2. All Disputes which are to be determined according to the terms of this Schedule “E” pursuant to section 11.4 will be finally decided by binding arbitration in accordance with the provisions of the *Arbitration Act* except to the extent that those provisions are expressly modified by the provisions of the Agreement and this Schedule “E”.
3. The Province will appoint at least one representative of the Ministry of Indigenous Relations and Reconciliation and one representative of the Ministry of Finance to be present at the arbitration to instruct counsel.
4. No individual will be appointed to arbitrate a Dispute pursuant to this Schedule “E” unless he or she agrees in writing to be bound by the provisions of this Schedule “E”.

#### **Commencement of Dispute Resolution**

5. A Disputing Party may commence a dispute resolution as Claimant by delivering a written notice of arbitration (the **“Notice of Arbitration”**) to each of the Respondents.
6. The Notice of Arbitration will include in the text or in one or more attachments:
  - (a) the full names, descriptions and addresses of the Parties;

- (b) a demand that the Dispute be referred to arbitration pursuant to this Schedule “E”;
  - (c) a general description of the Dispute;
  - (d) the relief or remedy sought; and
  - (e) the name of the individual the Claimant nominates as an arbitrator.
7. The arbitrator nominated by the Claimant will be independent of each Disputing Party, will not be or have been in the employ of or on contract with the Claimant at any time and will be qualified by education and experience to determine the subject matter of the Dispute. Such qualified arbitrator nominated by the Claimant will be one of the panel of Arbitrators who will resolve the Dispute. Within 15 Business Days of the date of receipt by the Respondent of the Notice of the Arbitration, the Respondents will by notice to the Claimant, jointly appoint a second arbitrator to serve on the panel of Arbitrators who will resolve the Dispute, and the arbitrator nominated by the Respondents will also be independent of each Disputing Party, will not be or have been in the employ of or on contract with any Respondent at any time and will be qualified to determine the subject matter of the Dispute.
  8. Within 5 Business Days of the appointment of the second arbitrator by the Respondents, the appointees of the Claimant and Respondents will, by notice to the Disputing Parties, appoint a third and final arbitrator to act as chair of the Arbitrators, failing which a chair will be appointed by the British Columbia International Commercial Arbitration Centre on the application of any Disputing Party on notice to the other Disputing Parties. Such Chair will be independent of each Disputing Party, will not be or have been in the employ of or on contract with any Disputing Party at any time and will be qualified to determine the subject matter of the Dispute.
  9. Subject to the *Arbitration Act*, the Agreement and this Schedule “E”, the Arbitrators may conduct the arbitration in such manner as the Arbitrators consider appropriate.

### **Pleadings**

10. The following will apply to the arbitration of any Dispute:
  - (a) within 7 Business Days of the appointment of the last of the three Arbitrators, the Claimant will deliver to all the Respondents and the Arbitrators a written statement (the “**Statement**”) concerning the Dispute setting forth, with particularity, the Claimant’s position with respect to the Dispute and the material facts upon which the Claimant intends to rely;
  - (b) within 10 Business Days after the delivery of the Statement, each Respondent will deliver to the Claimant and the Arbitrators a written response (an “**Answer**”) to the Statement setting forth, with particularity, the Respondent’s position on the Dispute and the material facts upon which the Respondent intends to rely;

- (c) if any Respondent fails to deliver an Answer within the time limit in paragraph 10(b), that Respondent will be deemed to have waived any right to provide an Answer to the Statement and the arbitration may continue without further notice to that Respondent;
- (d) within 7 Business Days after the earlier of: (i) the day all Answers have been delivered, and (ii) the 10th Business Day referred to in paragraph 10(b), the Claimant may deliver to all the Respondents and the Arbitrators a written reply (a **“Reply”**) to the Answer of each Respondent, setting forth, with particularity, the Claimant’s response, if any, to the Answer;
- (e) within the time limit in paragraph 10(b), a Respondent may also deliver to the Claimant, each other Respondent and the Arbitrators a counter-statement (a **“Counter-Statement”**) setting forth, with particularity, any additional Dispute for the Arbitrators to decide. Within 10 Business Days of the delivery of a Counter-Statement, the Claimant will deliver to each Respondent and the Arbitrators an Answer to the Counter-Statement. If the Claimant fails to deliver an Answer to the Counter-Statement within such 10-Business Day period, the Claimant will be deemed to have waived any right to provide an Answer to the Counter-Statement. Within 7 Business Days after the delivery of an Answer to the Counter-Statement, the Respondents may deliver to the Claimant and the Arbitrators a Reply to such Answer. Any Dispute submitted to arbitration in accordance with this paragraph 10(e) will be governed by, and dealt with as if it were the subject of a Statement in accordance with, this Schedule “E”, except that it will be decided by the Arbitrators already appointed, and will be determined by the Arbitrators accordingly; and
- (f) the time limits referred to in paragraphs 10(a) to 10(f) may be extended by the Chair for such period not to exceed an aggregate of 20 Business Days for such reasons as the Arbitrators in the Arbitrators’ discretion may determine to be appropriate upon application in writing made to the Arbitrators by the Claimant or any Respondent on notice to each other Disputing Party to the arbitration, either before or within 3 Business Days after the expiry of the relevant time limit and, in the event that the other Disputing Party or Disputing Parties wishes to oppose the application, the other Party or Parties will be given an opportunity to make submissions on the application.

The Parties to the Agreement have set the time limits in this paragraph 10 after due consideration of the amount of time necessary to complete each step and it is their express desire that no extension of any time limit will be granted except in extraordinary circumstances, the onus for the proof of the existence of which lies on the Disputing Party seeking an extension.

### **Case Conferences**

11. Within 7 Business Days of the appointment of the last of the three Arbitrators, or as soon as possible thereafter, the Chair will convene a case conference for the determination of



any preliminary or interlocutory matter, to provide for planning and scheduling of the arbitration, and to determine the timing or desirability of expert reports.

12. Issues to be determined at the first case conference after the completion of the steps contemplated by paragraph 10 or the expiry of the time limit for any mandatory step not taken by such time will include the following:
  - (a) any request for an adjournment of the case conference and the terms, if any, of any adjournment;
  - (b) the identification and narrowing of the issues in the arbitration;
  - (c) the desirability of the Disputing Parties engaging in further settlement negotiations or some other dispute resolution process, with or without the assistance of a mediator;
  - (d) fixing a date, time and place for the Hearing (as defined in paragraph 13 of this Schedule “E”);
  - (e) the manner of presentation of evidence at the Hearing; and
  - (f) a timetable for the disclosure by each Disputing Party to each other Disputing Party of the evidence in that Disputing Party’s possession, power, or control which is relevant to any issue in the Dispute.

### **The Hearing**

13. At the date, time and place fixed at a case conference or, if no case conference has been held, at a date, time and place fixed by the Chair within 40 Business Days of the appointment of the Chair, or as soon as possible thereafter, the Arbitrators will convene a hearing (the “**Hearing**”).
14. Unless otherwise determined by the Chair, the presentation of a Disputing Party’s case at the Hearing will include the delivery of a pre-hearing memorandum to the Arbitrators and to each other Disputing Party including the following elements:
  - (a) a statement of facts;
  - (b) a statement of each issue to be determined;
  - (c) a statement of the applicable law on which the Disputing Party relies;
  - (d) a statement of the relief requested including the basis for any damages claimed;
  - (e) witness statements setting out the direct evidence of each witness on which the Disputing Party relies, including the name and capacity of each witness; and
  - (f) an appendix containing all other sworn statements, expert reports or transcripts or portions of transcripts on which the Disputing Party intends to rely at the Hearing.

15. The pre-hearing memorandum of the Claimant will be delivered not less than 15 Business Days before the date of the Hearing. The pre-hearing memorandum of each Respondent will be delivered not less than 7 Business Days before the date of the Hearing.
16. At the Hearing, the Arbitrators will consider any evidence as would be admissible in a court of law and any other evidence the Arbitrators consider appropriate to determine the Dispute. Evidence may be presented in written or oral form as the Disputing Party presenting the evidence considers appropriate, provided that direct evidence will be in the form of witness statements or expert reports and that no written statement or expert report of any witness will be accepted by the Arbitrators unless each other adverse Disputing Party has been given an opportunity at the Hearing to cross-examine the witness (or in event of the death or incapacity of the witness, a replacement witness) on the information contained in the written statement. The Arbitrators will determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of any evidence offered.
17. The Arbitrators will have the right to exclude any witness except a Disputing Party representative from the Hearing during the testimony of any other witness.
18. The Arbitrators will not, without the written consent of all Disputing Parties, retain an expert.

#### **Awards**

19. The Arbitrators may make preliminary, interim, interlocutory, partial and final awards. Any award will be considered to be validly made if it is approved by the majority of the Arbitrators. An award may grant any remedy or relief which the Arbitrators consider just and equitable and consistent with the intentions of the Disputing Parties under the Agreement. The Arbitrators will state in the award whether or not the Arbitrators view the award as final or interim, for purposes of any judicial proceedings in connection with such award. Subject to section 53 of the *Arbitration Act*, the Arbitrators' final award will be made within 20 Business Days of the conclusion of the Hearing, or as soon as possible thereafter.
20. All awards for the payment of money will include interest calculated in accordance with the terms of the Agreement.
21. All awards will be in writing and will state reasons.
22. In determining the allocation of the costs of the Arbitration, the Arbitrators will invite submissions as to costs and may consider, among other things, the outcome of the dispute, any offer of settlement made by any Party during the course of the arbitration, the good faith of the Disputing Parties and the encouragement of and participation in good faith discussions to resolve the Dispute.
23. Executed copies of all awards will be delivered by the Arbitrators to the Disputing Parties as soon as is reasonably possible.

24. Any appeal brought by a Disputing Party from an award of the Arbitrators will be brought in accordance with sections 59 and 60 of the *Arbitration Act*.
25. Once an award is not subject to any right of appeal, the Disputing Party against whom the award is made will undertake to satisfy it without delay.

#### **Additional Matters**

26. All case conferences and Hearings will be conducted in Vancouver, British Columbia in the English language.
27. All notices or other communications required or permitted to be given under this Schedule “E” to a Disputing Party will be given in the manner specified in section 13.19 of the Agreement. All notices or other communications and all other documents required or permitted by this Schedule “E” to be given by the Disputing Parties to the Arbitrators will be given in accordance with the Arbitrators’ instructions.