

Amended Economic Benefits Agreement, 2009

This Agreement is dated for reference December 17, 2009.

BETWEEN:

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

(hereinafter "British Columbia")

AND:

DOIG RIVER FIRST NATION,
as represented by the Chief of the Doig River First Nation,
PROPHET RIVER FIRST NATION,
as represented by the Chief of the Prophet River First Nation, and
WEST MOBERLY FIRST NATIONS,
as represented by the Chief of the West Moberly First Nations

(hereinafter collectively the "Treaty 8 First Nations" and
individually each a "Treaty 8 First Nation")

1. PREAMBLE

- Whereas** The *Constitution Act, 1982*, section 35, recognizes and affirms the existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada;
- Whereas** The Treaty 8 First Nations are adherents to Treaty No. 8 and have rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;
- Whereas** British Columbia and the Treaty 8 First Nations seek to agree on the degree to which the Treaty 8 First Nations will share in revenues as calculated according to the formula set out in the appendices of this Agreement;
- Whereas** The Fort Nelson First Nation withdrew from the EBA by letter dated April 21, 2009, (attached as Appendix 7) and, as a result, British Columbia and the Doig River, Prophet River, and West Moberly First Nations wish to enter into this Amended Economic Benefits Agreement, 2009 in order to continue their relationship;
- Whereas** British Columbia made an Equity Payment of \$13,333,333 to the Trust pursuant to section 3.1 of the EBA;

- Whereas** The Parties anticipate that the Doig River, Prophet River and West Moberly First Nations will not withdraw from the EBA before January 1, 2010, that being after the end of Quarter 3 of Fiscal Year 2009/2010; and
- Whereas** British Columbia has, at the request of the Treaty 8 First Nations, provided a letter to three other First Nations that are adherents to Treaty No. 8, namely, Halfway River First Nation and Saulteau First Nations and Fort Nelson First Nation, stating that each of them will have the option to become parties to this Agreement, provided that they become parties, in the manner contemplated herein, by no later than April 30, 2010.

THEREFORE the Parties agree as follows.

2. DEFINITIONS

2.1 In this Agreement and the preamble hereto:

“Agreement” means this Amended Economic Benefits Agreement, 2009, including its Preamble and Appendices 1 to 4 and, for greater certainty, does not include Appendices 5, 6, and 7;

“Amending Agreement, 2008” means the Amending Agreement between British Columbia and the Doig River, the Prophet River, the West Moberly and the Fort Nelson First Nations, effective September 8, 2008, and attached to this Amended Economic Benefits Agreement, 2009 as Appendix 6;

“Annual Payments” means the payments to be made by British Columbia pursuant to sections 3.5.1 and 3.5.2 (which payments are subject to those adjustments described herein), and **“Annual Payment”** means any one such payment;

“British Columbia” has the meaning given to that term on page 1 of this Agreement;

“Completed Agreement” means an agreement on the subject matter of revenue sharing or resource management entered into between British Columbia and each of the Treaty 8 First Nations, which British Columbia and the Treaty 8 First Nations agree to designate as a **“Completed Agreement”**;

“EBA” means the economic benefits agreement entered into by British Columbia and four Treaty 8 First Nations (the Doig River, the Prophet River, the West Moberly and the Fort Nelson First Nations), effective March 18, 2008, and attached to this Amended Economic Benefits Agreement, 2009 as Appendix 5;

“Effective Dates” means 11:59:00 p.m. on December 31, 2009 for all provisions of this Agreement other than sections 3.2.1, 3.3.1 and 3.4.1, and these sections take effect on the date that all Parties have signed this Agreement;

“Equity Payments” means the payments to be made by British Columbia pursuant to sections 3.1, 3.2.2 through 3.2.5, 3.3.2 through 3.3.7 and 3.4.2 through 3.4.3, and **“Equity Payment”** means any one such payment;

“Final Agreement” means an agreement which links this Agreement and eight or more other Completed Agreements, which states that the issue of revenue sharing has been resolved to the satisfaction of the Parties, and which contains an amendment clause to incorporate any future Completed Agreements;

“Fiscal Year” refers to a one-year period commencing on April 1 of the relevant year;

“Fort Nelson” means Fort Nelson First Nation;

“Halfway” means Halfway River First Nation;

“Neutral Appointing Authority” means the British Columbia International Commercial Arbitration Centre or, if the Centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties;

“Opt-in Effective Date” means the effective date on which Halfway or Saulteau or Fort Nelson, as the case may be, becomes a party to this Agreement, which date will be specified in an amendment agreement (as more particularly described in sections 13.1 and 13.2);

“Parties” means British Columbia and the three Treaty 8 First Nations who are party to this Agreement and **“Party”** means any one of them;

“Quarter” means one of the following three-month periods:

- (a) Quarter 1: April 1 to June 30;
- (b) Quarter 2: July 1 – September 30;
- (c) Quarter 3: October 1 to December 31;
- (d) Quarter 4: January 1 to March 31;

“Saulteau” means Saulteau First Nations;

“Term” has the meaning set out in section 8.1;

“Treaty 8 First Nations” has the meaning given to that term on page 1 of this Agreement and is subject to modification in accordance with section 13.5; and

“Trust” means the trust established by the Treaty 8 First Nations pursuant to section 5.3.1.

3. ECONOMIC OBLIGATIONS OF BRITISH COLUMBIA

- 3.1 In the event that Halfway or Sauteau or Fort Nelson becomes a party to this Agreement with an Opt-in Effective Date no later than April 30, 2010, British Columbia will make an Equity Payment of \$3,333,333 to the Trust within thirty (30) days of the Opt-in Effective Date (and, for greater certainty, three such payments will be made if Halfway and Sauteau and Fort Nelson all become parties to this Agreement with respective Opt-in Effective Dates occurring no later than April 30, 2010).
- 3.2.1 The Parties agree that their obligations under section 3.2 of the EBA, as amended by the Amending Agreement, 2008, will be replaced with sections 3.2.2 to 3.2.5 of this Agreement.
- 3.2.2 British Columbia will make an Equity Payment of \$3,810,000 to the Trust within thirty (30) days following the date on which British Columbia and the Treaty 8 First Nations have ratified and signed four of the following Completed Agreements:
- (a) Government to Government Protocol Agreement;
 - (b) Collaborative Management Agreement for Provincial Parks;
 - (c) Mining and Minerals Agreement;
 - (d) Wildlife Collaborative Management Agreement;
 - (e) Strategic Land and Resource Planning Agreement;
 - (f) Long Term Oil and Gas Agreement;
 - (g) Forests and Range Resource Management Agreement;
 - (h) Crown Land Dispositions Agreement; and
 - (i) Culture and Heritage Agreement.
- 3.2.3 The Parties will make reasonable efforts to ratify and sign four of these agreements by December 31, 2009.

- 3.2.4 The payment amount referred to in section 3.2.2 is based on three Treaty 8 First Nations being parties to this Agreement at the time that the four Completed Agreements are ratified and signed. If, prior to that time, Halfway or Saulteau or Fort Nelson has become a party to this Agreement in the manner described herein, then the payment amount will be increased by an additional \$1,270,000 for each additional First Nation.
- 3.2.5 In the event that Halfway or Saulteau or Fort Nelson becomes a party to this Agreement after the said four Completed Agreements are ratified and signed and the Equity Payments under section 3.2.2 have been made, but with an Opt-in Effective Date no later than April 30, 2010, then British Columbia will make an additional payment to the Trust in the amount of \$1,270,000 within thirty (30) days of the Opt-in Effective Date (and, for greater certainty, up to three such payments will be made if Halfway and Saulteau and Fort Nelson become parties to this Agreement no later than April 30, 2010).
- 3.3.1 The Parties agree that their obligations under section 3.3 of the EBA, as amended by the Amending Agreement, 2008, will be replaced with sections 3.3.2 to 3.3.7 of this Agreement.
- 3.3.2 British Columbia will make an Equity Payment of \$500,000 to the Trust within thirty (30) days following each date on which British Columbia and the Treaty 8 First Nations ratify and sign each additional Completed Agreement that is not included within the list of four Completed Agreements for which payment is made pursuant to section 3.2.2, subject to a maximum of four such additional Equity Payments in respect of four additional Completed Agreements.
- 3.3.3 The Parties will make reasonable efforts to initial four additional Completed Agreements by December 31, 2009.
- 3.3.4 The Parties will make reasonable efforts to ratify and sign four additional Completed Agreements by April 30, 2010.
- 3.3.5 The payment amount referred to in section 3.3.2 is based on three Treaty 8 First Nations being parties to this Agreement at the time that each of the additional Completed Agreements referred to in section 3.3.2 is ratified and signed. If, prior to that time, Halfway or Saulteau or Fort Nelson has become a party to this Agreement in the manner described herein, then the payment amount will be increased by \$166,666 for each additional First Nation, in respect of each additional Completed Agreement.
- 3.3.6 In the event that Halfway or Saulteau or Fort Nelson becomes a party to this Agreement after one or more of the additional Completed Agreements referred to in section 3.3.2 is (or are) ratified and signed and the Equity Payments under section 3.3.2 have been made, but with an Opt-in Effective Date no later than April 30, 2010, then British Columbia will make an additional payment to the Trust in the amount of \$166,666 for each such additional Completed Agreement by each additional First Nation within thirty (30) days of the Opt-in Effective Date (and, for greater certainty, three payments of \$166,666 will

be made if Halfway and Sauteau and Fort Nelson have all become parties to this Agreement no later than April 30, 2010), in respect of each additional Completed Agreement.

3.3.7 The aggregate total of all possible payments made pursuant to section 3.3.2, and 3.3.5, is subject to a maximum of \$4,000,000, and no payment obligation will arise in relation to the fifth of the five Completed Agreements referred to in section 3.3.2 (and, for greater certainty, the payment obligation being limited only to a maximum of four of the five).

3.4.1 The Parties agree that their obligations under section 3.4 of the EBA will be replaced with sections 3.4.2 to 3.4.3 of this Agreement.

3.4.2 British Columbia will:

- (a) if the number of Treaty 8 First Nations party to this Agreement is three, make an Equity Payment of \$1,500,000 to the Trust within thirty (30) days following the date on which British Columbia and the Treaty 8 First Nations ratify and sign a Final Agreement;
- (b) if the number of Treaty 8 First Nations party to this Agreement is four, make an Equity Payment of \$2,000,000 to the Trust within thirty (30) days following the date on which British Columbia and the Treaty 8 First Nations ratify and sign a Final Agreement;
- (c) if the number of Treaty 8 First Nations party to this Agreement is five, make an Equity Payment of \$2,500,000 to the Trust within thirty (30) days following the date on which British Columbia and the Treaty 8 First Nations ratify and sign a Final Agreement; and
- (d) if the number of Treaty 8 First Nations party to this Agreement is six, make an Equity Payment of \$3,000,000 to the Trust within thirty (30) days following the date on which British Columbia and the Treaty 8 First Nations ratify and sign a Final Agreement;

provided that British Columbia will have no such obligation if a Final Agreement is not ratified and signed by April 30, 2010. The Parties agree that, by mutual agreement, this date may be extended.

3.4.3 In the event that Halfway or Sauteau or Fort Nelson becomes a party to this Agreement after the Final Agreement is ratified and signed and the Equity Payments under section 3.4.2 have been made, but with an Opt-in Effective Date no later than April 30, 2010, then British Columbia will make an additional payment to the Trust in the amount of \$500,000 within thirty (30) days of the Opt-in Effective Date (and, for greater certainty, three such payments will be made if Halfway and Sauteau and Fort Nelson become parties to the Completed Agreements and the Final Agreement no later than April 30, 2010.

- 3.5.1 British Columbia will pay to the Trust for each Fiscal Year during the Term an Annual Payment determined in accordance with the formula set out in Appendix 1 (and, for greater certainty, annual payments for the Fiscal Year 2007/2008, 2008/2009 and Quarter 1, Quarter 2 and Quarter 3 of 2009/10 are made under the EBA).
- 3.5.2 For greater certainty, the formula in Appendix 1 is: (i) capable of accommodating up to six Treaty 8 First Nations notwithstanding that, as of the date of signing of the Agreement, there are only three Treaty 8 First Nations, and (ii) contains mechanisms whereby Annual Payments are reduced on a proportionate basis if one or more Treaty 8 First Nations withdraw(s) from the Agreement.
- 3.6 The Annual Payment referred to in sections 3.5.1 and 3.5.2 is subject to a minimum payment which is equal to the sum of the first three quarterly payments for each Fiscal Year as more particularly described in Appendix 1, and is based on the assumption that none of the Treaty 8 First Nations have withdrawn from this Agreement. For clarity, the minimum payment amount for a Fiscal Year is based on the number of Treaty 8 First Nations that are Parties and have not withdrawn from the Agreement as at the last day of each of the first three Quarters of that Fiscal Year; and for illustration purposes, the minimum payment is: \$2,571,435 if the number of Treaty 8 First Nations is three; \$3,428,580 if the number of Treaty 8 First Nations is four; \$4,285,725, if the number of Treaty 8 First Nations is five; and \$5,142,870 if the number of Treaty 8 First Nations is six.
- 3.7 Annual Payments will be made as follows:
- (a) with regard to the Annual Payment for Quarter 1, Quarter 2 and Quarter 3 of each Fiscal Year during the Term other than Quarter 1, Quarter 2 and Quarter 3 of the Fiscal Year 2009/20010, within thirty (30) days following the end of the relevant Quarter; and
 - (b) with regard to the Annual Payment for Quarter 4 of each Fiscal Year during the Term, within one hundred and eighty (180) days following the end of the relevant Quarter 4.

For greater certainty, if this Agreement is terminated prior to the last day of a Quarter, no partial Annual Payment will be payable for that Quarter.

- 3.8 In the event of termination of this Agreement, the calculation and payment of Annual Payments in accordance with the formula set out in Appendix 1 are subject to the following rules:
- (a) if this Agreement is terminated prior to the last day of a Quarter, no partial Annual Payment will be payable for that Quarter;

- (b) if this Agreement is terminated prior to the last day of Quarter 2 of a Fiscal Year, the minimum Annual Payment amount for that Fiscal Year is equal to the "Quarter 1 Annual Payment";
 - (c) if this Agreement is terminated prior to the last day of Quarter 3 of a Fiscal Year, the minimum Annual Payment amount for that Fiscal Year is equal to the "Quarter 1 Annual Payment" plus the "Quarter 2 Annual Payment";
 - (d) if this Agreement is terminated prior to the last day of Quarter 4 of a Fiscal Year, the minimum Annual Payment amount for that Fiscal Year is equal to the "Quarter 1 Annual Payment" plus the "Quarter 2 Annual Payment" plus the "Quarter 3 Annual Payment";
 - (e) if this Agreement is terminated on or after the last day of Quarter 1 of a Fiscal Year but prior to the last day of that Fiscal Year, a calculation is to be made following the end of that Fiscal Year using the formula in Appendix 1, in conjunction with all other applicable provisions of this Agreement, in order to determine whether any amount in excess of the applicable minimum Annual Payment is payable to the Trust; and
 - (f) any payment due under subsection (e) above will be made within one hundred and eighty (180) days following the end of the Fiscal Year in question and, for purposes of section 3.9, will be deemed to be a Quarter 4 Annual Payment.
- 3.9 In support of the amounts of Annual Payments, British Columbia will, along with each Quarter 4 Annual Payment, provide to the Treaty 8 First Nations a statement setting out the documents, reports, figures and calculations relied upon by British Columbia to calculate the Quarter 4 Annual Payment in accordance with Appendix 1, for that Fiscal Year.
- 3.10 Annual Payments will be subject to adjustment by British Columbia from time to time on the following basis:
- (a) with respect to the calculation of each Quarter 4 Annual Payment made by British Columbia during the Term, the value imputed to the variable identified in Appendix 1 as OGR_t will, on the basis of available updated information, be reviewed and re-calculated by British Columbia on four (4) separate occasions: one (1), two (2), four (4) and six (6) years following the end of that Quarter;
 - (b) if the review and re-calculation reveals an overpayment by British Columbia, British Columbia will adjust the next occurring Quarter 4 Annual Payment to offset the overpayment (and if there is no subsequent Quarter 4 Annual Payment, the Treaty 8 First Nations will repay or cause the Trust to repay the amount of the overpayment to British Columbia); and

- (c) if the review and re-calculation reveals an underpayment by British Columbia, British Columbia will adjust the next occurring Quarter 4 Annual Payment to compensate for the underpayment (and if there is no subsequent Quarter 4 Annual Payment, British Columbia will pay to the Trust the amount of the underpayment).

For clarity, the calculation of the variable identified in Appendix 1 as EB2_t is not subject to re-calculation.

- 3.11 Either British Columbia or all of the Treaty 8 First Nations that have not withdrawn from this Agreement may request a review of the variable EB2_t contained in Appendix 1, on one occasion during the term of this Agreement, and only after March 31, 2014. For greater certainty, this provision is not intended to represent an opportunity to re-calculate Annual Payments already made, but as an opportunity to examine the content of the variable for the purpose of future calculations.
- 3.12 The aggregate of all payments attributable to a Fiscal Year pursuant to section 3.5.1 and 3.5.2 will be subject to a cap in the amount determined in accordance with Appendix 2 (which amount is subject to adjustment in the manner set out in Appendices 2 and 3). For clarity, the actual calculations to be made pursuant to Appendix 1 are to be based on actual totals, not the cap. For further clarity, the maximum payment amount for a Fiscal Year is based on the number of Treaty 8 First Nations that are Parties and have not withdrawn from the Agreement as at the last day of each Quarter of that Fiscal Year; and for illustration purposes, the maximum payment is \$10,015,000 (in 2007 dollars) if the number of Treaty 8 First Nations is three; the maximum payment is \$13,353,333 (in 2007 dollars) if the number of Treaty 8 First Nations is four; \$16,691,667 (in 2007 dollars) if the number of Treaty 8 First Nations is five; and \$20,030,000 (in 2007 dollars) if the number of Treaty 8 First Nations is six.
- 3.13 If, during the term of the Final Agreement, British Columbia and another First Nation enter into an agreement that deals with the sharing of economic benefits derived from resources located in the British Columbia portion of the territory encompassed by Treaty No. 8, and that agreement, in the view of the Treaty 8 First Nations, may provide benefits that exceed the benefits in this Agreement, British Columbia will disclose that agreement and the Parties, by mutual agreement, may review and amend this Agreement accordingly.
- 3.14 Notwithstanding any other provision of this Agreement, the payment of any monies by British Columbia under this Agreement is subject to the appropriation of funds by the Legislative Assembly of British Columbia, and to Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any such appropriation.
- 3.15 All payments which British Columbia is obliged to make pursuant to the Agreement are to be remitted to the Trust. For greater certainty, British Columbia will not be obligated

to make any payments under this Agreement until the Treaty 8 First Nations have complied with section 5.3.1 to the reasonable satisfaction of British Columbia.

4. OTHER OBLIGATIONS OF BRITISH COLUMBIA

- 4.1 British Columbia will monitor progress in the development of new arrangements and enhanced relationships with First Nations in British Columbia and consider jointly with the Treaty 8 First Nations whether to amend the Agreement to reflect these developments.
- 4.2 In the absence of a consultation and accommodation process provided for in a Completed Agreement, consultation and accommodation will be conducted in accordance with the following process:
- (a) British Columbia will provide to a potentially affected Treaty 8 First Nation advance written notification of a proposed provincial Crown authorized activity that may adversely affect any of its rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, together with all relevant information about the proposed activity;
 - (b) British Columbia will provide a reasonable period of time for the Treaty 8 First Nation to prepare its views on the proposed provincial Crown authorized activity;
 - (c) British Columbia will provide a reasonable opportunity for a potentially affected Treaty 8 First Nation to present its views as to potential adverse impacts on the exercise of any of its rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, together with any suggestions as to how any such impact may be avoided, mitigated, minimized or otherwise accommodated (other than by compensation), and British Columbia will provide a reasonable opportunity to discuss the views and attempt to resolve any concerns;
 - (d) British Columbia will undertake a full and fair consideration of any views presented by a potentially affected Treaty 8 First Nation;
 - (e) In the absence of a presentation of views by a Treaty 8 First Nation within a reasonable period of time, British Columbia will undertake a full and fair consideration of all relevant information available to the provincial Crown authority respecting how to avoid, mitigate, minimize or otherwise accommodate (other than by compensation) any potential adverse impacts on the exercise of any of its rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, the provincial Crown authority having taken reasonable steps to inform itself of any such adverse impacts on such rights; and

- (f) British Columbia will provide, in writing where appropriate, to a potentially affected Treaty 8 First Nation notification of the decision taken and how the views presented by the potentially affected Treaty 8 First Nation were taken into account.
- 4.3 For greater certainty, the Parties, by mutual agreement, may amend section 4.2 to take into account changes in the Province's legal obligations to consult.
- 4.4 British Columbia will vigorously defend and may settle or compromise any claim or proceeding referred to in section 5.8 on a principled basis in accordance with the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, but in no case will British Columbia settle or compromise the claim or proceeding without first consulting with the Treaty 8 First Nations.
- 4.5 British Columbia will, to the extent practical, work co-operatively with Treaty 8 First Nations in the conduct of British Columbia's defence to any claim or proceeding referred to in section 5.8 with the intent of reducing, as much as is reasonably possible, the amount payable by Treaty 8 First Nations by way of indemnity under section 5.8.

5. OBLIGATIONS OF THE TREATY 8 FIRST NATIONS

- 5.1 The Treaty 8 First Nations agree that this Agreement is a Completed Agreement and that it resolves, for the Term of this Agreement, all claims arising with respect to the issues of:
 - (a) revenue generation, including revenue-sharing and economic benefits; and
 - (b) compensation for infringement, during the Term of this Agreement, of rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, but not including compensation for alleged past infringements of rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, or for alleged infringements that may occur subsequent to the termination of this Agreement.
- 5.2 The Treaty 8 First Nations agree that by complying with section 4.2 or, if applicable, with the consultation process provided for in another Completed Agreement, British Columbia will be deemed to have fulfilled its duty to consult with respect to a proposed provincial Crown authorized activity that may adversely affect rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 5.3.1 The Treaty 8 First Nations will, prior to December 31, 2009, establish and maintain throughout the Term a Trust to receive Equity Payments and Annual Payments, and provide to British Columbia a legal opinion stating that:

- (a) the Trust is validly constituted according to the terms of this Agreement;
 - (b) the trustees of the Trust are legally capable of accepting rights granted and obligations imposed under this Agreement;
 - (c) the Trust may not be collapsed until the last payment due under this Agreement has been received or the Agreement has otherwise been terminated; and
 - (d) the primary purpose of the Trust is to benefit the membership of the Treaty 8 First Nations.
- 5.3.2 Notwithstanding any other provision of this Agreement, the Treaty 8 First Nations will not be entitled to receive all or any part of the Quarter 4 Annual Payment for Fiscal Year 2009/2010 if the Treaty 8 First Nations do not satisfy the provisions of section 5.3.1, unless British Columbia in its sole discretion agrees to extend the date for satisfaction of the provisions.
- 5.4.1 The Treaty 8 First Nations will repay or will cause the Trust to repay any and all payments made to them pursuant to sections 3.1, 3.2.2 through 3.2.5, and 3.3.2 through 3.3.7 under this Agreement, if a Final Agreement is not ratified and signed by April 30, 2010 (or such extended date as the Parties may have agreed upon).
- 5.4.2 The Treaty 8 First Nations will repay or cause the Trust to repay any and all payments made to them pursuant to section 3.1 of the EBA, if a Final Agreement is not ratified and signed by April 30, 2010 (or such extended date as the Parties may have agreed upon).
- 5.5 The Treaty 8 First Nations will repay or will cause the Trust to repay the payment made to them pursuant to section 3.4.2 and 3.4.3 if this Agreement is terminated prior to the fifth anniversary of the effective date of the Final Agreement. This repayment obligation will be reduced by 20% at the end of each successive twelve-month period during the term of the Final Agreement.
- 5.6 Each Treaty 8 First Nation will pay their own costs related to the negotiation and implementation of the Completed Agreements and the Final Agreement.
- 5.7 The Treaty 8 First Nations will not encourage, financially support or actively participate in actions, by members of any First Nation that is a party to Treaty No. 8, which interfere with provincial Crown authorized activities. The Treaty 8 First Nations, as soon as possible, will take all reasonable steps to bring an end to any interference with provincial Crown authorized activities by members of a Treaty 8 First Nation, and will work co-operatively with British Columbia where appropriate.
- 5.8 The three Treaty 8 First Nations will indemnify British Columbia, up to an aggregate maximum of \$ 5 million, for any claim or proceeding brought against British Columbia by:

- (a) a member of any of the Treaty 8 First Nations based upon an alleged infringement of rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982* arising out of a provincial Crown authorized activity occurring during the Term of this Agreement while the First Nation was a signatory to this Agreement; and
 - (b) a member of any of the Treaty 8 First Nations based upon a claim with respect to the representation and warranties of each of the Treaty 8 First Nations.
- 5.9 If Halfway or Saulteau or Fort Nelson, as the case may be, becomes a party on the basis of an Opt-in Effective Date that is no later than April 30, 2010, the indemnity amount in section 5.8 will be increased by an additional \$ 1.666666 million for each additional Treaty 8 First Nation who becomes party to this Agreement.

6. JOINT OBLIGATIONS OF THE PARTIES

- 6.1 A Party may initiate discussions with the other Parties if issues arise which, in the opinion of the Party, may jeopardise this Agreement. The Parties will work together to resolve the issues.
- 6.2 The Parties have reciprocal duties to act in good faith in the fulfilment of any constitutional obligations under the *Constitution Act, 1982* or in any consultation process in any Completed Agreement.

7. LEGAL PROCEEDINGS

- 7.1 Nothing in this Agreement will limit the Treaty 8 First Nations' or British Columbia's ability to refer in any court proceeding to the payments made by British Columbia to the Treaty 8 First Nations (by way of the Trust) under this Agreement.
- 7.2 During the Term, and prior to commencing a legal proceeding against British Columbia or to becoming a co-plaintiff or co-petitioner in any proceeding against British Columbia, a Treaty 8 First Nation may provide notice to British Columbia of its intention to do so. If agreement is reached on terms and conditions for placing the legal proceeding in abeyance, British Columbia will not exercise its option to terminate this Agreement. If the legal proceeding includes any person or entity other than British Columbia or a First Nation that is a party to Treaty No. 8, and that person or entity will not consent to an abeyance, British Columbia will contest the legal proceeding without exercising British Columbia's option to terminate this Agreement.
- 7.3 The Treaty 8 First Nations will be able to defend against proceedings commenced by persons, entities or governments where such a defence is necessary to protect the Treaty 8

First Nations' rights as recognized and affirmed by section 35(1) of the *Constitution Act, 1982* from competing or adverse claims made in those other proceedings.

- 7.4 The Parties acknowledge that each has a different position regarding the location of the western boundary of the geographic area of Treaty No. 8 and that nothing in this Agreement is an admission of fact or liability in relation to claims arising with respect to this matter, including the litigation by the Treaty 8 First Nations seeking a declaration of the western boundary of Treaty No. 8 in British Columbia. Further, the Parties may negotiate, by mutual agreement, amendments to the Agreement if the western boundary of Treaty No. 8 is finally determined in a binding decision.

8. TERM OF THIS AGREEMENT

- 8.1 The Term of this Agreement will commence on the date it is signed by all Parties and will continue until March 31, 2022, unless this Agreement terminates due to:
- (a) the mutual agreement of the Parties; or
 - (b) termination under any of the sections in Part 9 of this Agreement.

9. WITHDRAWAL AND TERMINATION

- 9.1 A Treaty 8 First Nation may, upon written notice to all other Parties, withdraw from this Agreement and, with the exception of sections 3.10(b), 5.1, 5.4.1 and 5.4.2, 5.5 and 5.8, which will survive the withdrawal, the obligations of the Treaty 8 First Nations under this Agreement will cease to be binding on that Treaty 8 First Nation, and British Columbia's obligations under this Agreement to that Treaty 8 First Nation will also cease to be binding on British Columbia.
- 9.2 The obligation under section 5.2 of a Treaty 8 First Nation which withdraws from the Agreement survives the withdrawal only with respect to provincial Crown authorized activities for which authorization was given prior to withdrawal.
- 9.3 The Treaty 8 First Nations that have not withdrawn from this Agreement will, if they all agree to do so, have the right to terminate this Agreement if British Columbia is not in compliance with its obligations under this Agreement.
- 9.4 Without limiting any other remedies that may be available to British Columbia, British Columbia will have the right to terminate this Agreement if any of the Treaty 8 First Nations:

- (a) is not in compliance with its obligations under this Agreement;
- (b) commences (in its own name or in the name of its chief acting on behalf of the First Nation) any proceeding against British Columbia, or activates a proceeding in abeyance, other than:
 - (i) a proceeding alleging that the Crown has failed to consult properly in relation to a Crown authorization which potentially infringes a right or rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;
 - (ii) a claim that British Columbia has failed to pay any monies due under this Agreement;
 - (iii) a claim that relates to reserve lands, or entitlement to reserve lands, of a Treaty 8 First Nation, such claims to include treaty land entitlement, trespass, rights of way, subsurface rights, improper takings, and reserve cut-offs; and
 - (iv) a claim that relates in any way to a proposed or actual treaty between British Columbia and a First Nation that is not a party to Treaty No. 8.

9.5 For greater certainty:

- (a) the right to terminate this Agreement will not arise in relation to any proceeding that was commenced prior to March 18, 2008; and
- (b) section 9.4 does not represent an admission that British Columbia is a proper party or has any liability in relation to any of the proceedings identified therein.

9.6 If the Parties do not ratify and sign a Final Agreement by April 30, 2010 or such extended date as may be agreed to under section 5.4.1 and 5.4.2, then British Columbia may terminate this Agreement.

9.7 If one or more Treaty 8 First Nations withdraws from this Agreement, then British Columbia will have the right to terminate this Agreement.

9.8 Without limiting any of the termination rights set out in this Part 9, if any Completed Agreement is terminated due to:

- (a) a breach by a Treaty 8 First Nation party to the Completed Agreement;
- (b) the exercise of a right to terminate contained in a Completed Agreement based on a reason other than default; or

- (c) the expiration of the term of the Completed Agreement, in the absence of a renewal or replacement;

then British Columbia will have and the Treaty 8 First Nations that have not withdrawn from this Agreement, if they all agree to do so, will have the right to terminate this Agreement.

- 9.9 For purposes of any calculation required to be made in this Agreement, a Treaty 8 First Nation will be deemed to have withdrawn from this Agreement on the last day of the Quarter immediately preceding the Quarter in which its withdrawal becomes effective pursuant to section 9.1.

10. DISPUTE RESOLUTION

- 10.1 For the purposes of this Part 10, a dispute is defined as any disagreement (i) about which written notice of a dispute is given under section 10.2, and (ii) which relates to the interpretation of this Agreement, provided that no part of this Part 10 applies in respect of any aspect of a Crown authorization of an activity which potentially infringes a right or rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982* (including, without limitation, any aspect of section 4.2).
- 10.2 Any Party may give written notice of a dispute to the other Parties, which notice must include a summary of the particulars of the dispute.
- 10.3 Within ten (10) working days of receipt of a notice under section 10.2, all Parties will meet and will attempt to resolve the dispute through unassisted collaborative negotiation.
- 10.4 If the meeting under section 10.3 fails to resolve the dispute, any Party may refer the dispute to mediation by delivering a notice to commence mediation to the other Parties, and the Parties will, unless otherwise agreed, participate in the mediation process set out in sections 10.5 to 10.11.
- 10.5 If all Parties fail to agree on a mediator within ten (10) working days after notice to commence mediation is delivered under section 10.4, on written request of a Party that is copied to the other Parties the appointment will be made by the British Columbia Mediator Roster Society using the Society's mediation rules.
- 10.6 At any time prior to the conclusion of the mediation, a Party may give the mediator and the other Parties a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the Party has justifiable doubts as to the mediator's independence or impartiality.

- 10.7 A mediator's appointment terminates if the mediator is required to withdraw under section 10.6, the mediator withdraws from office for any reason, or all Parties agree to a termination of the mediation or this Agreement.
- 10.8 If a mediator's appointment terminates under section 10.7 and all Parties want to continue a mediated process, a replacement mediator will be jointly appointed by the Parties within ten (10) working days of termination of the mediator's appointment and, failing agreement, on the written request of a Party that is copied to the other Parties the appointment will be made by the British Columbia Mediator Roster Society using the Society's mediation rules.
- 10.9 Each Party will each submit to the mediator within five (5) working days of the mediator's appointment, a summary of the facts and its views on the issue in dispute.
- 10.10 The first mediation session must take place no later than ten (10) working days following the appointment of the mediator.
- 10.11 Mediation sessions must not extend beyond fifteen (15) working days after the first mediation session and the following will apply:
- (a) the mediation process and all proceedings in connection therewith will be and will remain confidential;
 - (b) the mediator will not issue a report or make any recommendations unless requested to do so in writing by all Parties;
 - (c) a Party may withdraw from mediation at any time by providing written notice of its intent to the mediator; and
 - (d) each Party will assume its own expenses related to the mediation, and half the expenses and fees of the mediator will be paid by the Treaty 8 First Nations and half by British Columbia.
- 10.12 If the mediation process fails to resolve the dispute, the Parties may jointly agree to refer the dispute to an arbitrator pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55.
- 10.13 If the Parties agree to arbitration pursuant to section 10.12, then the following will apply:
- (a) the arbitrator will be chosen jointly by the Parties, and failing agreement, the appointment will be made by a Neutral Appointing Authority on the written request of a Party that is copied to the other Parties;
 - (b) the arbitration process and all proceedings in connection therewith will be and will remain confidential;

- (c) the decision of the arbitrator will be binding on the Parties for the term of this Agreement; and
- (d) each Party participating in the arbitration will bear its own costs of participation, British Columbia will bear one-half of the expenses and fees of the arbitrator or arbitrators, and those Treaty 8 First Nations that have not withdrawn from this Agreement and that have participated in the arbitration will bear the other one-half of said expenses and fees.

11. NOTICE

11.1 Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing and will be effectively given:

- (a) by delivery to the address of the Party set out in section 11.2, on the date of delivery; or
- (b) by pre-paid registered mail to the address of the Party, mentioned in this Agreement, on the date the registered mail is delivered; or
- (c) by facsimile, to the facsimile number of the Party, mentioned in this Agreement, on the date the facsimile is sent.

11.2 The address and facsimile numbers of the Parties are:

<p>Treaty 8 First Nations:</p> <p>c/o Treaty 8 Tribal Association</p> <p>10233 – 100th Avenue</p> <p>Fort St. John, BC, V1J 1Y8</p> <p>Fax: 250-785-2021</p>	<p>British Columbia:</p> <p>Implementation and Legislation Unit</p> <p>Ministry of Aboriginal Relations and Reconciliation</p> <p>PO Box 9100, Stn PROV GOVT</p> <p>Victoria, BC V8W 9B1</p> <p>Fax: 250-952-4485</p>
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Either the Treaty 8 First Nations or British Columbia may, upon written notice provided to the other Parties at their address for service, amend their respective address for service.

12. AMENDMENT OF AGREEMENT

- 12.1 Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.

13. HALFWAY OR SAULTEAU OR FORT NELSON BECOMING PARTIES

- 13.1 The Treaty 8 First Nations acknowledge that they have asked British Columbia to grant to Halfway and Saulteau and Fort Nelson the option to become parties to this Agreement, and British Columbia has agreed to do so provided that if one of these three First Nations wishes to become a party to this Agreement it must (i) have obtained ratification of the terms of this Agreement (in the manner contemplated by section 17.1) and have signed the amending agreement referred to in section 13.2 by no later than April 30, 2010, (ii) become a party to each Completed Agreement that is in effect between British Columbia and the Treaty 8 First Nations, and become a party to the Final Agreement if it is in effect, (iii) become part of and participate in any negotiations concerning Completed Agreements that are not in effect, (iv) become a beneficiary under the Trust, and (v) not have commenced a legal proceeding against British Columbia during the Term of this Agreement (other than a legal proceeding that is permitted in section 9.4(b) or a legal proceeding put into abeyance in the manner described in section 7.2).
- 13.2 The Treaty 8 First Nations acknowledge that the option to become parties to this Agreement is only available on the basis that Halfway or Saulteau or Fort Nelson, as the case may be, becomes a party on the basis of an Opt-in Effective Date that is no later than April 30, 2010. In any other case, British Columbia will be entitled, in its sole discretion, to determine whether Halfway or Saulteau or Fort Nelson, as the case may be, is to be permitted to opt in to the Agreement; and if so, British Columbia, the Treaty 8 First Nations and Halfway or Saulteau or Fort Nelson, as the case may be, will meet to negotiate and attempt to agree on the terms by which the opt-in is to be effectuated.
- 13.3 In the event that Halfway or Saulteau or Fort Nelson is to become a party to this Agreement, the Parties will jointly prepare an amending agreement by which Halfway or Saulteau or Fort Nelson, as the case may be, becomes a party as of the date to be specified in the amending agreement.
- 13.4 The Treaty 8 First Nations will execute such documents as are reasonably necessary in order to effectuate an amendment to this Agreement incorporating Halfway or Saulteau or Fort Nelson, as the case may be, as a party hereto, including the amendment agreement referred to in section 13.2.

- 13.5 If Halfway or Sauteau or Fort Nelson, as the case may be, becomes a party to this Agreement on the basis of an Opt-in Effective Date that is no later than April 30, 2010, the term "Treaty 8 First Nation" as used throughout this Agreement will, as of the Opt-in Effective Date, include that First Nation.
- 13.6 If Halfway or Sauteau becomes a party to this Agreement on the basis of an Opt-in Effective Date that is no later than April 30, 2010, British Columbia will, in addition to any other payment required to be made under this Agreement, make a payment to the Trust in the amount of \$1,500,000. For greater certainty, if Halfway and Sauteau become parties to this Agreement in this manner, then two such payments will be made.
- 13.7 For purposes of the formula set out in Appendix 1, if an Opt-in Effective Date occurs during a Quarter, the relevant First Nation will be deemed to have become a party to this Agreement as of the first day of that Quarter.

14. INTERPRETATION OF AGREEMENT

- 14.1 Treaty 8 First Nations and their members may enter into business relationships with other companies or persons who choose to do so.
- 14.2 Treaty 8 First Nations and their members may participate in government programs for which they are eligible.
- 14.3 This Agreement is not a treaty or a land claims agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982*.
- 14.4 Nothing in this Agreement is to be interpreted as defining, creating, recognizing, suspending, affirming, denying, derogating, abrogating or amending any existing rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982* of Treaty 8 First Nations.
- 14.5 Nothing in this Agreement is intended, nor shall it be deemed, to fetter or derogate from any statutory, regulatory or delegated authority under the Statutes of British Columbia.
- 14.6 The Parties acknowledge that each has a different position regarding the interpretation of Treaty No. 8 and the interpretation of section 35(1) of the *Constitution Act, 1982*, and that nothing in this Agreement is to be construed as an acceptance or an admission by British Columbia or Treaty 8 First Nations of the position of any other Party.
- 14.7 Nothing in this Agreement is to be construed as an acknowledgement or acceptance by British Columbia of Treaty 8 First Nations' assertions of Aboriginal rights or title or an admission of fact or liability, including, without limitation, claims for compensation of any kind arising in relation to such assertions.

- 14.8 Other than as provided in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or current or future court actions.
- 14.9 Nothing in this Agreement is to be interpreted as granting or is intended to grant any interest in land and the payments to be made under this Agreement are not royalty payments and are not to be construed as payments of royalties.
- 14.10 In this Agreement, words in the singular include the plural and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 14.11 In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacement thereof.
- 14.12 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a Party unless such waiver is expressed in writing by the Party.
- 14.13 This Agreement shall be governed by the applicable laws of Canada and British Columbia.
- 14.14 This Agreement may be executed in counterparts and/or by facsimile by the Parties.
- 14.15 This Agreement is a Completed Agreement.
- 14.16 The Parties agree that in the event of a conflict between this Agreement and the EBA, the terms of this Agreement will prevail.


15. WITHDRAWAL OF THE FORT NELSON FIRST NATION FROM THE EBA

- 15.1 The Fort Nelson First Nation withdrew from the EBA effective April 21, 2009 (see Appendix 7).
- 15.2 In accordance with section 5.4 of the EBA, on or before December 31, 2009, the Treaty 8 First Nations party to this Agreement will repay or will cause the Trust to repay to British Columbia Fort Nelson's proportionate share of the Equity Payment made pursuant to section 3.1 of the EBA, in the amount of \$3,333,333.25.


16. RATIFICATION

16.1 Ratification of this Agreement, a Completed Agreement and a Final Agreement by each Treaty 8 First Nation will take place according to the internal processes of each Treaty 8 First Nation, and will include, at a minimum, a Band Council Resolution, in respect of each of the above Agreements.


SIGNED this 7 day of Dec, 2009
in the presence of:


Witness

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


Honourable George Abbott

SIGNED this 7 day of Dec, 2009
in the presence of:


Witness

DOIG RIVER FIRST NATION,
as represented by the Chief


Chief Norman Davis

SIGNED this 7 day of Dec, 2009
in the presence of:


Witness


PROPHET RIVER FIRST NATION,
as represented by the Chief


Chief Lynette Tsakoza

SIGNED this 7 day of Dec, 2009
in the presence of:


Witness

WEST MOBERLY FIRST NATIONS,
as represented by the Chief


Chief Roland Willson

APPENDIX 1:

CALCULATION OF QUARTERLY ANNUAL PAYMENTS (also see transition rules for year $t = 3$ at the end of Appendix 1)

Quarter 1 Annual Payment = $Q1EBP_t = [1/6 \times Q1FN_t \times \$1,714,290]$

Quarter 2 Annual Payment = $Q2EBP_t = [1/6 \times Q2FN_t \times \$1,714,290]$

Quarter 3 Annual Payment = $Q3EBP_t = [1/6 \times Q3FN_t \times \$1,714,290]$

Quarter 4 Annual Payment =

$$Q4EBP_t = \frac{1}{24} \times \sum_{Q=1}^4 FN_{Qt} \times [(6/7 \times EB1_t) + EB2_t] - (Q1EBP_t + Q2EBP_t + Q3EBP_t)$$

Where:

$Q1FN_t$ = the number of Treaty 8 First Nations that have not withdrawn from this Agreement as of the last day of Quarter 1 of the t^{th} Fiscal Year and that were Parties for the entirety of that Quarter

$Q2FN_t$ = the number of Treaty 8 First Nations that have not withdrawn from this Agreement as of the last day of Quarter 2 of the t^{th} Fiscal Year and that were Parties for the entirety of that Quarter

$Q3FN_t$ = the number of Treaty 8 First Nations that have not withdrawn from this Agreement as of the last day of Quarter 3 of the t^{th} Fiscal Year and that were Parties for the entirety of that Quarter

$\sum FN_{Qt}$ = the sum of the number of Treaty 8 First Nations that have not withdrawn from this Agreement as of the last day of each Quarter of the t^{th} Fiscal Year and that were Parties for the entirety of each such Quarter

Q = Quarters 1 through 4

t = Fiscal Year for which payment is being made under this Agreement and, for further certainty, no payments are made under this Agreement with respect to Fiscal Year 1, Fiscal Year 2 and the first three quarters of Fiscal Year 3, which are/were made under the EBA.

Specifically:

$t = 1$ = April 1, 2007 to March 31, 2008

$t = 2$ = April 1, 2008 to March 31, 2009

$t = 3$ = April 1, 2009 to March 31, 2010

$t = 4$ = April 1, 2010 to March 31, 2011

$t = 5$ = April 1, 2011 to March 31, 2012

$t = 6$ = April 1, 2012 to March 31, 2013

$t = 7$ = April 1, 2013 to March 31, 2014

$t = 8$ = April 1, 2014 to March 31, 2015

$t = 9$ = April 1, 2015 to March 31, 2016
 $t = 10$ = April 1, 2016 to March 31, 2017
 $t = 11$ = April 1, 2017 to March 31, 2018
 $t = 12$ = April 1, 2018 to March 31, 2019
 $t = 13$ = April 1, 2019 to March 31, 2020
 $t = 14$ = April 1, 2020 to March 31, 2021
 $t = 15$ = April 1, 2021 to March 31, 2022

$$EB1_t = 0.5\% \times (OGR_t)$$

Where:

OGR_t = collected provincial royalties, calculated in accordance with the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation as amended from time to time, collected from oil and gas activities from the area set out in Appendix 4 that is bounded by the "British Columbia/Alberta Border", the "British Columbia Northern Border" and the "E.B.A. Royalty Line". This variable will be measured by estimates from the *Oil Ledger Report* and the *Gas Ledger Report* as extracted from the Ministry of Finance's Petroleum Royalty Management System (PRMS).

$$EB2_t = \$2,500,000 \text{ when } t = 1$$

And thereafter, for $t = 2$ through to 15 inclusive

$$EB2_t = EB2_{t-1} \times [1 + 0.25 \times (\Delta \text{Oil \& Gas Activity}_{t-1 \text{ to } t}) + 0.15 \times (\Delta \text{Forestry Activity}_{t-1 \text{ to } t}) + 0.60 \times (\Delta \text{Mining Activity}_{t-1 \text{ to } t})]$$

Where:

$t-1$ = previous Fiscal Year

$$\Delta \text{Oil \& Gas Activity}_{t-1 \text{ to } t} = [(1/3) \times (NW_t - NW_{t-1})/NW_{t-1} + (1/3) \times (SL_t - SL_{t-1})/SL_{t-1} + (1/3) \times (P_t - P_{t-1})/P_{t-1}]$$

Where:

NW = number of new wells drilled on Crown land within the area set out in Appendix 4 that is bounded by the "British Columbia/Alberta Border", the "British Columbia Northern Border" and the E.B.A. Oil and Gas and Coal Activity Line" that were authorized by the Oil and Gas Commission as measured by estimates of *Wells Drilled Based On Rig Release Date* as extracted from the Oil and Gas Commission Database.

SL = number of kilometres of new seismic lines constructed on Crown land within the area set out in Appendix 4 that is bounded by the "British Columbia/Alberta Border", the "British Columbia Northern Border" and the "E.B.A. Oil and Gas and Coal Activity Line" that were authorized by the Oil and Gas Commission as measured by estimates of *New Cut Geophysical Lines with Final Plan Cut Length* as extracted from the Oil and Gas Commission Database.

P = number of kilometres of new pipelines constructed on Crown land within the area set out in Appendix 4 that is bounded by the "British Columbia/Alberta Border", the "British Columbia Northern Border" and the "E.B.A. Oil and Gas and Coal Activity Line" that were authorized by the Oil and Gas Commission as measured by estimates of *Approved Pipeline Length on a "Leave to Open" Status* as extracted from the Oil and Gas Commission Database. See Technical Note below for determining estimates on Crown land.

$$\Delta \text{Forestry Activity}_{t-1 \text{ to } t} = (F_t - F_{t-1})/F_{t-1}$$

Where:

F = the volume of logs in cubic metres harvested on Crown land in the Fort Nelson forest district + the volume of logs in cubic metres harvested on Crown land in the Peace forest district, as measured by estimates of Species "All", Product "All", Grade "Exclude Firmwood Rejects (all grades except Z)", and Billing Type "All" extracted from the Ministry of Forests and Range's Harvest Billing System (HBS).

Where:

The Fort Nelson forest district and the Peace forest district are as described in the Forest Regions and Districts Regulation as amended from time to time.

$$\Delta \text{Mining Activity}_{t-1 \text{ to } t} = (C_t - C_{t-1})/C_{t-1}$$

Where:

C = metric tonnes of coal extracted on Crown land within the area set out in Appendix 4 that is bounded by the "British Columbia/Alberta Border", the "British Columbia Northern Border", and the "EBA Oil and Gas and Coal Activity Line" as measured by estimates of *Marketed Coal Production* as produced by the Ministry of Energy, Mines and Petroleum Resources.

For clarity, in the event that Halfway, Saulteau and Fort Nelson never become parties to this Agreement, the number of First Nations in the context of the formula above will never exceed 3.

The Parties acknowledge and agree that the methods used to collect and record provincial royalty information and activity data, as set out in this Agreement, may change from time to time. In the event of changes to any of these methods, British Columbia will, as soon as practicable, provide Treaty 8 First Nations with a written statement describing the revised method for collecting and recording the data and the date the revised method comes into effect.

Technical Note:

The activity measure for pipelines (P) is available in the following sub-categories:

- Crown Land (CL),
- Private Land (PL), and
- Crown-Private Mix (CPM).

Therefore, in order to capture estimates of activity on all Crown land (ACL), estimates for this variable will be calculated on the following basis in each fiscal year:

$$ACL = CL + (\% CPM)$$

Where:

$$\%CPM = (CL \div TL) \times CPM \quad \text{and}$$

$$TL = CL + PL + CPM$$

Where:

TL = the sum of crown and private lands

Transition Rules for Fiscal Year 2009- 2010

There is no obligation under this Amended Economic Benefits Agreement, 2009 for British Columbia to make the Quarter 1 Annual Payment, the Quarter 2 Annual Payment, and the Quarter 3 Annual Payment for the Fiscal Year April 1, 2009 to March 31, 2010, as those payments are/were governed by the EBA.

The calculation of the Quarter 4 Annual Payment for Fiscal Year 3 is amended as follows:

$$\sum_{Q=1}^4 FN_{Qt}$$

is 9 plus the number of Treaty 8 First Nations that are party to this agreement on March 31, 2010.

$$(Q1EBP_3 + Q2EBP_3 + Q3EBP_3)$$

is \$2,571,435; and

EB₂, which is part of the calculation of EB₃,

is \$2,275,000.

If Q4EBP₃ as determined under these transition rules is negative, then Q4EBP_t is deemed to be zero.

APPENDIX 2:

MAXIMUM AMOUNT PAYABLE BY BRITISH COLUMBIA IN A FISCAL YEAR

(also see transition rules for year $t = 3$ at the end of Appendix 2)

$$\text{Annual Payment Ceiling} = \text{EBPC}_t = \left[\frac{1}{24} \times \left(\sum_{Q=1}^4 \text{FN}_{Qt} \right) \times (\$20,030,000_{2007s}) \right]$$

Where:

Q = Quarters 1 through 4

$\sum \text{FN}_{Qt}$ = the sum of the number of Treaty 8 First Nations that have not withdrawn from this Agreement as of the last day of each Quarter of the t^{th} Fiscal Year and that were Parties throughout each such Quarter

t = Fiscal Year for which payments are being made

Specifically:

- $t = 3$ = April 1, 2009 to March 31, 2010
- $t = 4$ = April 1, 2010 to March 31, 2011
- $t = 5$ = April 1, 2011 to March 31, 2012
- $t = 6$ = April 1, 2012 to March 31, 2013
- $t = 7$ = April 1, 2013 to March 31, 2014
- $t = 8$ = April 1, 2014 to March 31, 2015
- $t = 9$ = April 1, 2015 to March 31, 2016
- $t = 10$ = April 1, 2016 to March 31, 2017
- $t = 11$ = April 1, 2017 to March 31, 2018
- $t = 12$ = April 1, 2018 to March 31, 2019
- $t = 13$ = April 1, 2019 to March 31, 2020
- $t = 14$ = April 1, 2020 to March 31, 2021
- $t = 15$ = April 1, 2021 to March 31, 2022

Note:

For periods $t = 3$ through to $t = 15$ the ceiling value of $\$20,030,000_{2007s}$ will be adjusted annually by changes in annual British Columbia Final Domestic Demand Implicit Price Index (BCFDDIPI) published by Statistics Canada as follows:

$$\text{CAP}_t = \$20,030,000 \times [\text{BCFDDIPI}_t / \text{BCFDDIPI}_{2007}]$$

Where: BCFDDIPI_{2007} is the value of BCFDDIPI for the calendar year 2007 published by Statistics Canada, or estimated according to Appendix 3 if not available, at the same time that values for BCFDDIPI_t are published or estimated in accordance with Appendix 3.

For clarity, BCFDDIPI for calendar year 2007 will apply to Fiscal Year 2007/08. (See Appendix 3)

For clarity, in the event that Halfway, Saulteau and Fort Nelson never become parties to this Agreement, the number of First Nations in the context of the formula above will never exceed 3.

Transition Rules for Fiscal Year 2009- 2010

$$\sum_{Q=1}^4 FN_{Q_t}$$

is 9 plus the number of Treaty 8 First Nations that have not withdrawn from this Agreement as of the last day of the 4th Quarter of the third Fiscal Year and that were Parties throughout the 4th Quarter of the third Fiscal Year;

The maximum Quarter 4 Annual Payment is the Annual Payment Ceiling minus \$2,571,435.

APPENDIX 3:

FORECASTING THE BRITISH COLUMBIA FINAL DOMESTIC DEMAND IMPLICIT PRICE INDEX

British Columbia Final Domestic Demand Implicit Price Index (BCFDDIPI) published by Statistics Canada is available on a time-lagged basis. For the purposes of this agreement the BCFDDIPI estimate for calendar year n will be calculated as follows:

- If a British Columbia estimate of BCFDDIPI is not available, of Year n , and the most recent estimate is for Year $n-1$, then
 - $BCFDDIPI_n = (BCFDDIPI_{n-1}) \times (BCFDDIPI_{n-1} / BCFDDIPI_{n-2})$
- If a British Columbia estimate of BCFDDIPI is not available, of Year n , and the most recent estimate is for Year $n-2$, then
 - $BCFDDIPI_n = (BCFDDIPI_{n-2}) \times (BCFDDIPI_{n-2} / BCFDDIPI_{n-3})^2$

Where:

n=1= Calendar 2007	n=9= Calendar 2015
n=2= Calendar 2008	n=10= Calendar 2016
n=3= Calendar 2009	n=11= Calendar 2017
n=4= Calendar 2010	n=12= Calendar 2018
n=5= Calendar 2011	n=13= Calendar 2019
n=6= Calendar 2012	n=14= Calendar 2020
n=7= Calendar 2013	n=15= Calendar 2021
n=8= Calendar 2014	

APPENDIX 4 - MAP 1

