

EXECUTION VERSION

**SITE C PROJECT
TRIPARTITE LAND AGREEMENT**

This Agreement is dated 27 September, 2016

BETWEEN:

SAULTEAU FIRST NATIONS, a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 for and on behalf of itself and all of its Members, as represented by its Chief and Council

("SFN")

AND:

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

("British Columbia")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the authority of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 1-5

("BC Hydro")

WHEREAS:

- A. BC Hydro is undertaking the Site C Project as part of an overall regeneration program to invest in and renew British Columbia's electricity system and as a source of clean and renewable energy;
- B. The Site C Project is located on lands that are close to the SFN community and used by SFN for traditional purposes;
- C. SFN is an adherent to Treaty 8 and has Section 35 Rights over the location of the Site C Project;
- D. The Parties acknowledge that the Site C Project will have impacts on SFN Section 35 Rights and related interests and values;

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- E. BC Hydro has been issued the Environmental Assessment Certificate and Federal Decision Statement authorizing the Site C Project, with conditions, and BC Hydro is legally obligated to and will comply with the conditions contained therein;
- F. Concurrent with this Agreement, BC Hydro and SFN have entered into an Impact and Benefits Agreement and a Contracting Agreement relating to the Site C Project and its Operation; and
- G. This Agreement provides for the transfer of certain Lands to SFN and the protection of other lands, identified in the Schedules to this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

"Adequate Survey" means a survey that meets the requirements for Land Title Office registration as defined under the *Land Title Act*;

"Agency" means any permitting, regulatory or government decision-making body from whom an Authorization is required or to whom an application for an Authorization is made, or that is making a decision or developing a plan in respect of the Site C Project;

"Agreement" means this Tripartite Land Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;

"Area of Critical Community Interest" means the area identified for illustrative purposes in Schedule A "1";

"Authorization" means any approval, permit, licence, tenure or other authorization applied for, issued or required to enable the Site C Project and its Operation, each on terms acceptable to BC Hydro, including the expiry of any applicable appeal or limitation periods, including:

- a) the Federal Decision Statement authorizing the Site C Project, issued to BC Hydro on October 14, 2014, and re-issued on November 25, 2014, pursuant to the *Canadian Environmental Assessment Act* (Canada);

- b) the provincial Environmental Assessment Certificate #E14-02 authorizing the Site C Project, issued to BC Hydro on October 14, 2014 pursuant to the *Environmental Assessment Act* (BC);
- c) any required approval by Fisheries and Oceans Canada, Transport Canada, Natural Resources Canada or any other federal department;
- d) any decision by a Public Official to approve, enable or support the Site C Project and its Operation; and
- e) any amendments to the foregoing which may be required from time to time, except any Material Change;

"Band Council Resolution" means a resolution of the SFN band council, duly passed in accordance with the *Indian Act*, approving the principal terms of this Agreement, the Impact and Benefits Agreement and the Contracting Agreement, authorizing a representative to execute and enter into the agreements on behalf of SFN and its Members, and expressly confirming the approval of the principal terms of the agreements pursuant to a duly held referendum which complied with SFN governance requirements and processes;

"Closing Date" means the date or dates following SFN's notice under 8.2 that it is ready to receive a transfer of the Lands and on which the documents for the transfer of the Lands to a Designated Entity are uploaded to the electronic meet and are filed in the Land Title Office;

"Contaminated Lands" means any lands selected by SFN under 6.1 that are or are likely to be contaminated to a level requiring remediation at law or that would be inconsistent with SFN's intended use of those lands without required remediation;

"Contracting Agreement" means the Contracting Agreement entered into concurrently with this Agreement between BC Hydro and SFN in connection with the Site C Project, as such agreement may be amended from time to time;

"Crown Corridor" means a highway, as defined in the *Transportation Act*, and the area of any other licence, easement, right-of-way or road over Crown land that is used for transportation or public utility purposes and that, where the Lands are not surveyed or have to be re-surveyed, is identified in Schedule A "1";

"Crown Grant" means a Crown grant as defined in the *Land Act*;

"Designated Entity" means a company, society or other entity incorporated or established under federal or provincial law which is capable of holding fee simple title to the Lands, all the shares of which or interests in are wholly owned directly or indirectly, legally and beneficially, by SFN, and which SFN has designated to take fee simple title to any of the Lands;

"Effective Date" means the date at the top of the first page of this Agreement;

"GST" means the goods and services tax imposed under the *Excise Tax Act (Canada)* or equivalent tax imposed under federal or provincial law;

"Impact and Benefits Agreement" means the Impact and Benefits Agreement entered into concurrently with this Agreement between BC Hydro and SFN, as such agreement may be amended from time to time;

"In-Service Date" means the date, of which notice is provided by BC Hydro to British Columbia and SFN, on which the first of the six generating units that form part of the Site C Project is, in the determination of BC Hydro, capable of continuously generating electricity in a manner that meets BC Hydro's system interconnection requirements, as those requirements are described in the BC Hydro document entitled "60kV to 500 kV Technical Interconnection Requirements for Power Generators" and as that document may be updated, amended or replaced from time to time;

"Land Management Measures" means the measures identified and implemented under 14.4 to protect the Peace-Boudreau Protected Area;

"Lands" means the lands identified for illustrative purposes in Schedule A "1" and described in Schedule A "2";

"Material Change" means any change to the Site C Project that:

- a) cannot reasonably be considered to constitute part of the Site C Project or its Operation within the intended operating parameters as set out in the applicable initially issued Authorizations; and
- b) causes new and substantial incremental impacts on SFN Section 35 Rights which have not been avoided, mitigated or otherwise accommodated;

"Member" means an individual who is an "Indian" as defined in the Indian Act, and in respect of SFN, is a "member of a band" as defined in the Indian Act;

"Operation" means the ongoing use, operation and maintenance, repair, replacement, upgrade or removal of all or any part of the constructed Site C Project;

"Parties" means British Columbia, BC Hydro and SFN, or their permitted successors or assigns, and "Party" means any one of them;

"Peace-Boudreau Protected Area" means the area of approximately 13,000 hectares of land to be identified pursuant to 14.2 and shown for illustrative purposes in Schedule B "1";

"Permitted Encumbrances" means the valid and lawful reservations, exceptions, liens, charges and interests described in Part 1 of Schedule A "3" and the utility and local government interests set out in Part 2 of Schedule A "3" for each of the Lands, or any other encumbrances agreed to by the Parties and registered as a charge on title;

"Proceeding" means any claim, demand, cause of action or action made before a court or any proceeding before a court, including a judicial review or appeal of an Agency or a court decision, or any hearing before an Agency or other board, commission, tribunal, arbitrator or other judicial, quasi-judicial or administrative decision-maker;

"Project Decommissioning" means the permanent removal from services of all or substantially all of the permanent structures and facilities constituting or associated with the Site C Project, the commencement of which BC Hydro will provide notice to SFN pursuant to the Impact and Benefits Agreement, and does not include the temporary removal from services of such structures and facilities, the removal from services of selected structures or facilities from time to time, or the removal of temporary works required to construct the Site C Project;

"PST" means the sales tax imposed under the *Sales Tax Act (BC)* or equivalent tax imposed under federal or provincial law;

"Public Official" means:

- a) the British Columbia Cabinet or Treasury Board, or the board of directors of BC Hydro;
- b) any minister, provincial official, employee, contractor, agent or representative of British Columbia, including any statutory decision-maker; or
- c) any director, officer, employee, contractor, agent or representative of a government corporation, including BC Hydro;

"Section 35 Rights" or **"SFN Section 35 Rights"** means the Aboriginal and treaty rights, including as an adherent to Treaty 8, which are now or may be asserted or established by or on behalf of SFN or its Members pursuant to, or interpreted by a court of competent jurisdiction as recognized and affirmed by, Section 35(1) of the *Constitution Act, 1982*;

"Site C Project" means the proposed third dam and hydroelectric generating station on the Peace River and associated structures on or adjacent to the Peace

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River in northwestern British Columbia, as more fully described in Schedule C "1";

"Site C Project and its Operation" means the Site C Project and its Operation, the Site C Project or its Operation, or both;

"Stage 1 PSI" means the first stage of a "preliminary site investigation", as that term is used in the *Contaminated Sites Regulation*, B.C. Reg. 375/96;

"Treaty 8" means Treaty No. 8, a treaty concluded on several dates in 1899 and in subsequent years between Her Majesty the Queen by her Commissioners for Canada and the Cree, Beaver, Chipewyan and other First Nations, inhabitants of the territory described in the Treaty 8 document, and each other signatory or adherent to Treaty 8, including SFN; and

"Works" includes licences, easements, rights-of-way, roads, telecommunication services, components, equipment, infrastructure and facilities, including transmission lines, related to the generation, transmission or distribution of electricity.

1.2 Schedules. The following are the Schedules to this Agreement:

Land Transfer Schedules

- Schedule A "1" – Map(s) of Lands
- Schedule A "2" – Description of Lands
- Schedule A "3" – Permitted Encumbrances
- Schedule A "4" – Form of Permitted Encumbrances
- Schedule A "5" – GST Certificate
- Schedule A "6" – Property Transfer Tax

Land Protection Schedules

- Schedule B "1" – Map of Peace-Boudreau Protected Area

Site C Project Schedules

- Schedule C "1" – Site C Project Description

1.3 Schedule A "1". For greater certainty, Schedule A "1" will identify those Lands which may be added to the applicable SFN Indian Reserve under 13.1 and those Lands whose reservation as an SFN Indian Reserve will be reviewed by British Columbia on a case-by-case basis under 13.2.

1.4 Amendment of Schedules. The Parties acknowledge that the Schedules may need to be updated by agreement of the Parties after the Effective Date.

ARTICLE 2 – PURPOSE

2.1 Purpose. The purpose of this Agreement is to:

- a) provide for the transfer to SFN of those parcels of provincial Crown land identified as Lands, and to implement those Land Management Measures, identified in this Agreement;
- b) confirm that SFN and its Members have been adequately consulted and accommodated with respect to the impacts of the Site C Project and its Operation on and any infringement of SFN Section 35 Rights; and
- c) provide British Columbia and BC Hydro with legal certainty with respect to the Site C Project and its Operation.

2.2 Impact and Benefits Agreement. The Parties agree that BC Hydro and SFN will enter into and execute the Impact and Benefits Agreement concurrent with the execution of this Agreement, in order to:

- a) ensure that BC Hydro provides benefits to SFN in relation to the Site C Project; and
- b) establish and foster a long term, collaborative and positive working relationship between BC Hydro and SFN with respect to the Site C Project and its Operation.

2.3 Contracting Agreement. The Parties agree that BC Hydro and SFN will enter into and execute the Contracting Agreement concurrent with the execution of this Agreement, in order to:

- a) promote employment, training and contracting opportunities to and with SFN and its Members;
- b) provide SFN Designated Businesses, as defined in the Contracting Agreement, with the opportunity to be awarded work related to the construction of the Site C Project; and
- c) define the mechanisms by which BC Hydro and SFN will work together to foster the economic opportunities related to the construction of the Site C Project.

2.4 Separate Agreements. This Agreement is a separate agreement from the Impact and Benefits Agreement and Contracting Agreement and is governed by its terms.

ARTICLE 3 - TERM AND TERMINATION

- 3.1 **Coming Into Effect.** This Agreement commences on the Effective Date and continues in force and effect for the life of the Site C Project and its Operation, unless terminated in accordance with 3.3.
- 3.2 **Delay, Suspension or Abandonment.** If BC Hydro determines, at any time and in its sole discretion, to delay, suspend or abandon the Site C Project or its Operation, British Columbia may, in its sole discretion, on 60 prior days' notice to SFN and BC Hydro delay or suspend the transfer of the Lands and the implementation of the Land Management Measures.
- 3.3 **Termination.** Any Party may, on 60 prior days' notice to the other Parties, and in addition to any other remedies it may have, terminate this Agreement:
- a) in the event any of the representations or warranties of another Party under Article 4 are or become incorrect; or
 - b) BC Hydro has abandoned the Site C Project and terminated the Impact and Benefits Agreement.
- 3.4 **Effect of Termination or Abandonment.**
- a) SFN may retain any Lands transferred to it by British Columbia before the termination of this Agreement or the abandonment of the Site C Project and its Operation; and
 - b) any Land Management Measures implemented in accordance with this Agreement before the termination of this Agreement or the abandonment of the Site C Project and its Operation will continue in force and be maintained by British Columbia,
- provided that any such Lands transferred or Land Management Measures implemented will, together with benefits received by SFN under the Impact and Benefits Agreement and Contracting Agreement, be deemed to constitute adequate consultation and accommodation with respect to any potential adverse impact on or infringement of SFN Section 35 rights resulting from the Site C Project and its Operation up to the date of termination or abandonment, other than with respect to its decommissioning.
- 3.5 **Survival of Lands Conditions.** Notwithstanding 3.2 or 3.3, where any of the Lands are transferred under this Agreement, Articles 9, 12 and 13 will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 **SFN Representations.** SFN represents and warrants to British Columbia and BC Hydro, with the intent and understanding that they will be relied on by British Columbia and BC Hydro in entering into this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement for and on behalf of SFN and its Members, including in relation to SFN Section 35 Rights, and to carry out its obligations under this Agreement;
 - b) it is the proper and exclusive representative of the holders of the SFN Section 35 Rights;
 - c) all necessary actions have been taken to authorize the execution of this Agreement by SFN and the representative signing this Agreement on behalf of SFN and its Members is authorized to do so;
 - d) any and every entity designated by the SFN for the purposes of this Agreement will be a Designated Entity which has and will have the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
 - e) this Agreement is a valid and legally binding obligation of SFN and its Members.
- 4.2 **British Columbia Representations.** British Columbia represents and warrants to SFN and BC Hydro, with the intent and understanding that they will be relied on by SFN and BC Hydro in entering into this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement;
 - b) all necessary actions have been taken to authorize the execution of this Agreement, including the authorization of the individual signing this Agreement; and
 - c) this Agreement is a valid and legally binding obligation of British Columbia.
- 4.3 **BC Hydro Representations.** BC Hydro represents and warrants to SFN and British Columbia, with the intent and understanding that they will be relied on by SFN and British Columbia in entering into this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement;

- b) all necessary actions have been taken to authorize the execution of this Agreement, including the authorization of the individual signing this Agreement; and
 - c) this Agreement is a valid and legally binding obligation of BC Hydro.
- 4.4 **Survival of Representations.** The representations and warranties of each of the Parties under 4.1 to 4.3 will survive the execution and completion of any transactions under this Agreement and will continue in full force and effect for the benefit of the other Parties.

ARTICLE 5 – CONDITIONS PRECEDENT

- 5.1 **Required Documents.** SFN will prior to or upon the execution of this Agreement, deliver to British Columbia and BC Hydro a fully executed and duly passed Band Council Resolution expressly confirming the approval of the principal terms of this Agreement pursuant to a duly held referendum which complied with SFN's governance requirements and processes.
- 5.2 **Conditions Precedent (General).** The following items are conditions precedent to the transfer of the Lands and, where applicable, to the implementation of the Land Management Measures:
- a) SFN having delivered the documents under 5.1, and BC Hydro and SFN having executed the Impact and Benefits Agreement and the Contracting Agreement relating to the Site C Project and its Operation;
 - b) the Parties' representations and warranties under this Agreement being and continuing to be true and correct;
 - c) the Parties' having complied with all applicable terms and conditions under this Agreement;
 - d) British Columbia having, with respect to each parcel of Lands to be transferred or Land Management Measures to be implemented:
 - i) consulted with First Nations, third parties who are entitled to the benefit of the Permitted Encumbrances, and local governments or governmental authorities;
 - ii) not created, or having resolved, any financial liability British Columbia may have, including third party claims for compensation;
 - iii) obtained all required approvals, including Cabinet and Treasury Board approval; and

- iv) sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure; and
 - e) the Site “C” Project not being subject to delay, suspension or abandonment.
- 5.3 **Conditions Precedent to Land Transfers.** In addition to and without limiting the conditions precedent under 5.2, the following items are conditions precedent to the transfer the Lands to SFN:
 - a) where any portions of the Lands are not surveyed or have to be re-surveyed, an Adequate Survey of the relevant Lands having been completed on or before the applicable Closing Date;
 - b) if the Lands are transferred in phases, all obligations of SFN and each Designated Entity having been fully performed in accordance with this Agreement with respect to all previously transferred Lands; and
 - c) British Columbia having given notice that the minister responsible has authorized the disposition of the Lands in accordance with provincial law.
- 5.4 **Waiver of Conditions Precedent.** The conditions precedent under 5.2 and 5.3 are for the sole benefit of British Columbia and may be waived by British Columbia on notice to BC Hydro and SFN.

ARTICLE 6 – LAND SELECTION

- 6.1 **Land Selection.** Within one year after the Effective Date, or such other time as the Parties may agree, SFN will make best efforts to identify provincial Crown lands of interest to SFN for inclusion as the Lands, such lands to comprise not less than 15,500 acres (6,272 hectares), and to be located within SFN's traditional territory in the following areas:
 - a) up to 1,000 acres (404.69 hectares) in or near urban areas that are within, or adjacent or in close proximity to, a municipal boundary, including lands for economic development; and
 - b) not less than 14,500 acres (5,867.94 hectares) in rural areas, which may include lands in the Peace Moberly Tract, the Area of Critical Community Interest and other areas of cultural importance.
- 6.2 **Interim Protection of Lands.** As soon as practical after SFN identifies the lands under 6.1, British Columbia will pursue interim land protection measures for those

lands, each such measure to remain in place from the date it is implemented to the earlier of:

- a) the date British Columbia and SFN agree that the lands will not form part of the Lands and will be replaced with alternative land under 6.5; or
- b) the date the parcel of the lands, which is subject to the measure, is transferred to SFN.

6.3 Statusing of Land Selection. As soon as practical, and in any case within one year after SFN's identification of land under 6.1, or such other time as the Parties may agree, British Columbia will complete the statusing of those lands having regard for:

- a) the location of the lands;
- b) any interests in or encumbrances on the lands; and
- c) the appraised, or where available the assessed, value of the lands.

6.4 Finalization of Land Selection. After the land statusing is complete, British Columbia and SFN will discuss any issues or concerns relating to the lands identified by SFN under 6.1 and will make best efforts to resolve those issues or concerns with a view to finalizing the land selection.

6.5 Alternative Lands. If British Columbia and SFN are unable to reach agreement on the transfer of certain lands identified by SFN under 6.1, SFN may select other provincial Crown lands of interest to SFN for inclusion as the Lands under 6.1.

6.6 Completion of Land Schedules. On finalization of all or some of the selection of the lands under 6.4, the relevant Schedules will be updated by agreement of the Parties and will form part of this Agreement.

ARTICLE 7 – APPRAISAL AND SURVEY OF LANDS

7.1 Appraisals. Before the Lands are surveyed in accordance with 7.2, the Parties will jointly review the terms of reference for the appraisal of the Lands.

7.2 Surveys. BC Hydro will ensure that there is an Adequate Survey of the exterior boundaries of each parcel of the Lands, including any surveys required by statute for the registration of any third party Permitted Encumbrance. For greater certainty, any internal boundary surveys will be the sole responsibility of SFN, including those required for any subdivision of the Lands.

- 7.3 **Survey Protocol.** For the purposes of 7.2, the Parties will develop and agree on a protocol for the priority and timing of Adequate Surveys for the Lands, including proposed Closing Dates, having regard for:
- a) SFN's priorities;
 - b) efficiency and economy, including the availability of British Columbia land surveyors;
 - c) the necessity to clarify the boundaries due to imminent public or private development on adjacent lands; and
 - d) the requirements under provincial law.
- 7.4 **Lands Programs Branch.** The development of a survey protocol under 7.2 will include the ministries responsible for the transfer of provincial Crown land.

ARTICLE 8 – QUANTITY AND TRANSFER OF LANDS

- 8.1 **Quantity and Registration of Lands.** British Columbia will transfer to SFN not less than 15,500 acres (6,272.63 hectares) of land. All Lands transferred under 8.3 will be registered in the Land Title Office.
- 8.2 **Pre-Closing Deliveries by SFN.** Not less than 60 days before the Closing Date determined by the Parties under 8.4, SFN will deliver to British Columbia a direction identifying a Designated Entity that will take fee simple title to the Lands under 8.3.
- 8.3 **Closing Deliveries by British Columbia.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.2 and 5.3, British Columbia will, with respect to each transfer, provide the Designated Entity identified under 8.2 with a Crown Grant transferring the indefeasible title to the Lands on the Closing Date.
- 8.4 **Determination of Closing Date.** The Parties will determine the Closing Date for the transfer of indefeasible title to the Lands. The Closing Date will be in accordance with the survey protocol developed and agreed to by the Parties under 7.3.
- 8.5 **Closing Deliveries by SFN.** Not less than 14 days before the Closing Date, SFN will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to British Columbia:

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- a) a certificate signed by an officer of the Designated Entity in the form attached as Schedule A "5" confirming the Designated Entity's GST registration number and registered status;
 - b) a letter of undertaking signed by SFN's legal counsel undertaking, among other things, that British Columbia will be provided with the GST certificate (Schedule A "5");
 - c) a consent signed by SFN in relation to the Property Transfer Tax in the form attached as Schedule A "6"; and
 - d) all such other documents that may be necessary or advisable for SFN or a Designated Entity to provide to complete the transactions contemplated under this Agreement.
- 8.6 **Closing Procedure.** The legal counsel for SFN and British Columbia will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:
- a) provide a letter of undertaking to legal counsel for the other Parties;
 - b) use the Land Title and Survey Authority electronic filing system; and
 - c) provide all documents filed under 8.5 to legal counsel to the other Parties.

ARTICLE 9 – CONDITION OF LANDS

- 9.1 **Mutual Intention.** The Parties acknowledge their mutual intention to not transfer Contaminated Lands to SFN unless SFN has made an informed decision.
- 9.2 **Informed Decision.** The Parties acknowledge and agree that informed decision making is a key principle that will guide them throughout the land selection and transfer processes.
- 9.3 **Site Investigations.** To support the Parties' ability to make an informed decision, BC Hydro will provide SFN with \$150,000 for the costs of a Stage 1 PSI, or such other investigations as SFN reasonably requires to make an informed decision, on any of the Lands identified pursuant to 6.1. BC Hydro will provide such funding within 30 days of the execution of this Agreement..
- 9.4 **No Transfer of Lands.** Subject to 9.5, British Columbia will not transfer any lands to SFN, and SFN will not accept any lands for transfer from British Columbia, that:

- a) British Columbia has identified as Contaminated Lands through the statusung process under 6.3; or
 - b) SFN has identified as Contaminated Lands through the investigations performed pursuant to 9.3 or otherwise.
- 9.5 **SFN Election.** SFN may elect, in its sole discretion, whether as a result of SFN's investigations under 9.3 or otherwise, to accept Contaminated Lands identified under 9.4, and if SFN so elects and advises British Columbia in writing, British Columbia will transfer such lands to SFN in accordance with and subject to all the terms and conditions of this Agreement.
- 9.6 **No Blanket Release** For greater certainty, 9.7 – 9.11 will not apply to the lands identified by SFN under 6.1 until the Parties have made an informed decision about the environmental condition of the Lands, and an informed decision to transfer those Lands, and indefeasible title to those Lands has been transferred to the Designated Entity and registered in the Land Title Office.
- 9.7 **Lands "As Is".** SFN acknowledges and agrees that any of the Lands acquired by a Designated Entity under this Agreement are acquired "as is".
- 9.8 **Viability of Lands.** SFN acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning:
 - a) physical access to the Lands including, without limitation, overland access;
 - b) the economic feasibility of the development of the Lands;
 - c) the fitness of the Lands for any particular use, including the intended use of the Lands by SFN or by a Designated Entity; or
 - d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.
- 9.9 **Environmental Condition.** SFN:
 - a) waives the requirement, if any, of British Columbia or BC Hydro to provide a site profile as defined in the *Environmental Management Act* for any of the Lands; and
 - b) acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning the environmental condition of the Lands (including surface water and groundwater), including the presence or absence of any toxic, hazardous, dangerous or

potentially dangerous substances on or under the Lands or on or under any surrounding or neighbouring land, or the current or past uses of the Land or any surrounding or neighbouring land.

9.10 Environmental Remediation. SFN, having made an informed decision to accept the Lands, will from and after the Closing Date:

- a) subject to section 9.11, assume all environmental liabilities relating to the Lands including all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- b) release British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability with respect to all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances originating and migrating from the Lands; and
- c) indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including reasonable legal fees, losses, damages, or any other liability that they may suffer or incur, directly or indirectly, arising out of or in connection with all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances originating and migrating from the Lands.

9.11 Responsible Persons. Nothing in this Agreement precludes SFN from recovering the costs incurred in the inspection or remediation of any contaminated site on the Lands transferred to SFN, from any party, other than British Columbia or BC Hydro, who may be determined to be a responsible person under the *Environmental Management Act* or other relevant statutes or regulations in respect of the contamination of that site.

ARTICLE 10 – ENCUMBRANCES

10.1 Permitted Encumbrances. Upon receipt of the updated Schedules under 6.6, SFN will become familiar with the existence and terms of the Permitted Encumbrances and, if satisfied, will, on the Closing Date, accept and cause the Designated Entity to accept fee simple title to the Lands subject to the Permitted Encumbrances, and will not do, or allow to be done, anything that would interfere with any rights under any such Permitted Encumbrances or that would otherwise result in any claim against British Columbia or BC Hydro by anyone claiming by, through or under such a Permitted Encumbrance.

10.2 Form of Permitted Encumbrances. The Permitted Encumbrances will be in the form to be attached as Schedule A "4" upon completion of the land statusing and finalization of land selection pursuant to 6.4, and will include any modifications that SFN and the holder of the Permitted Encumbrance may have agreed to in writing.

10.3 Amendments to Permitted Encumbrances. The Parties acknowledge and agree that between the Effective Date and the Closing Date, British Columbia may require that the Permitted Encumbrances be amended to:

- a) comply with current provincial policies and practices, and any legal requirements; and
- b) correct any errors or omissions to the form of Permitted Encumbrances attached as Schedule A "4",

provided that British Columbia will fully inform and discuss any proposed amendments with BC Hydro and SFN prior to the Closing Date.

10.4 Amendments Form Part of Agreement. Where any amendments are made under 10.3, Schedule A "3" (Permitted Encumbrances) will be revised and will, as revised, form part of this Agreement.

10.5 Unregistered Interests. British Columbia and SFN will make best efforts to resolve any issues or concerns relating to any valid and lawful interest in the Lands that are identified before or after the Closing Date and that are not registered in the Land Title Office.

10.6 Indemnity for Charges. SFN will indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against all claims, demands, causes of action, actions, expenses, costs, including reasonable legal fees, losses, damages or any other liability that they may suffer or incur, directly or indirectly, in connection with or as a result of any Proceeding arising out of SFN's or a Designated Entity's acts or omissions in connection with any Permitted Encumbrance where the Proceeding is settled or is successful. For greater certainty, such indemnity will not apply where SFN's or the Designated Entity's alleged act or omission was done in accordance with this Agreement or any applicable legislation.

10.7 Conduct of Litigation. For the purposes of 10.6:

- a) British Columbia will notify BC Hydro and SFN of any Proceeding to which the indemnity may apply;
- b) British Columbia will have exclusive conduct of the Proceeding in accordance with the *Attorney General Act*;

- c) British Columbia will not settle any Proceeding without first discussing and seeking to reach agreement on the terms of settlement with BC Hydro and SFN; and
- d) SFN may intervene in the Proceeding at its own expense.

ARTICLE 11 – TRANSACTION COSTS

- 11.1 **Crown Grant.** British Columbia is responsible for preparing the Crown Grants relating to the Lands.
- 11.2 **Registration, Tax and Other Costs.** BC Hydro is responsible for the following costs in connection with the transfer of the Lands:
- a) any costs associated with any appraisals necessary for the valuation of the Lands;
 - b) the cost associated with ensuring the Lands have an Adequate Survey;
 - c) any costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the Lands;
 - d) any fees charged by the Land Title Office or the Land Title and Survey Authority relating to the registration of the Lands and Permitted Encumbrances; and
 - e) the determination and payment of property transfer tax payable under the *Property Transfer Tax Act*.
- 11.3 **GST, PST and Other Charges.** BC Hydro is responsible for any federal or provincial sales tax, including GST and PST.
- 11.4 **Annual Taxes and Other Costs.** The Designated Entity is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, British Columbia and BC Hydro are not required to assume any financial or other obligations with respect to the Lands.
- 11.5 **Effect of Delay, Suspension or Abandonment.** British Columbia will not be liable for or otherwise obligated to reimburse BC Hydro for any costs incurred by BC Hydro under 11.2 or 11.3, including any survey costs, in the event the Site C Project and its Operation is delayed, suspended or abandoned under 3.2.

ARTICLE 12 – STATUS OF LANDS

- 12.1 **Status and Use of Lands.** Subject to Lands that are added to reserves in accordance with 13.2 or 13.3, the Lands transferred to SFN or a Designated Entity under this Agreement:
- a) will not be "lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act*; and
 - b) will be governed by provincial law and any applicable law or agreements relating to consultation and accommodation.

ARTICLE 13 – ADDITIONS TO RESERVE

- 13.1 **Additions to Reserve.** British Columbia understands that SFN may, in accordance with Canada's Addition to Reserve (ATR) policy, seek Indian reserve status for some or all of the Lands.
- 13.2 **Additions of Proximate Lands to Reserve.** Where the Lands are adjacent or in close proximity to SFN's existing reserves, British Columbia will not object to and may support a request by SFN to the Federal Crown for the transfer and designation of such Lands as reserve land provided there has been or will be a satisfactory resolution to any access, servicing or third party interests in land that will be directly impacted by the parcel becoming reserve land.
- 13.3 **Additions of Other Lands to Reserve.** British Columbia will consider on a case-by-case basis the transfer and designation of any Lands as reserve land which are not adjacent or in close proximity to SFN's existing reserve.
- 13.4 **Resolution of Issues.** The Parties acknowledge and agree that British Columbia's consideration under 13.3 may include access, servicing and third party interests in a parcel of land that may be directly impacted by the parcel becoming reserve land, and that issues may arise in its ability to address these kinds of concerns. If such issues or concerns arise, the following steps will be undertaken:
- a) British Columbia will inform SFN of any issues or concerns;
 - b) British Columbia will make reasonable efforts to resolve the issues or concerns and keep SFN informed of its progress in resolving them;
 - c) British Columbia will work collaboratively with SFN to resolve any issues or concerns, if SFN so chooses to participate;

- d) if the issues or concerns are:
 - i. resolved, British Columbia will not object to and may support a request by SFN to the Federal Crown for the transfer and designation of such Lands as reserve land; or
 - ii. not resolved after making such efforts, and British Columbia does not consent to a request for additions to reserve, then SFN will not request that the Federal Crown transfer and designate the Lands under 13.3 as reserve land, provided that British Columbia does not unreasonably withhold its consent.
- 13.5 **Notice of Support or Non-objection.** British Columbia will notify SFN and the Federal Crown in writing if it supports or does not object to SFN's proposals under 13.2 and 13.3.
- 13.6 **SFN Acknowledgements.** SFN acknowledges and agrees that:
- a) neither British Columbia nor BC Hydro is responsible for any applications or any costs or expenses that may be required in connection with the addition of the Lands under 13.2 or 13.3 to reserve status, including any costs or expenses associated with environmental or other studies; and
 - b) this Agreement does not impose any obligations on British Columbia or BC Hydro to construct or provide at its cost or expense any work or service to or for the benefit of the Lands under 13.2 or 13.3, including any roads, sewers, drains, water supply, lighting, garbage disposal, or other works or services of improvement or convenience.

ARTICLE 14 – LAND MANAGEMENT MEASURES

- 14.1 **Significance of Designation.** The Parties agree that the designation of the Peace-Boudreau Protected Area is a significant part of this Agreement, and that British Columbia will endeavour to complete the designation within a reasonable time after the execution of this Agreement.
- 14.2 **Determination of Boundary.** As soon as practical after the Effective Date, British Columbia and SFN will review and agree on the boundaries for the Peace-Boudreau Protected Area and complete Schedule B "1" accordingly having regard for:
- e) general consistency with the boundary of the "Peace River-Boudreau Lake Protected Area" set out in the 1999 Dawson Creek Land and Resource Management Plan;

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- f) any other agreements between British Columbia and SFN relating to the Peace-Boudreau Protected Area;
 - g) any interests in the lands, including any fee simple interests, leases, tenures or encumbrances, including road and utility rights-of-way, and access to adjacent or proximate lands;
 - h) any adjustments that may be required as a result of the potential inundation from the Site C Project;
 - i) adjustments that may be required as a result of the statusing process; and
 - j) other reasons as agreed by the Parties.
- 14.3 **Designation Recommendation.** Within a reasonable time after the execution of this Agreement, British Columbia will recommend a designation of the Peace-Boudreau Protected Area, under the *Environment and Land Use Act* or another relevant statute or regulation, that will protect approximately 13,000 hectares of land not otherwise affected by inundation.
- 14.4 **Land Management and Protection Measures.** The designation of the Peace-Boudreau Protected Area under this Article 14 will, at a minimum, be consistent with the Dawson Creek Land and Resource Management Plan (1999), including the provisions relating to oil and gas tenures and activities. For greater certainty, nothing prevents British Columbia from proposing greater land protection in a designation recommendation.

ARTICLE 15 - FORCE MAJEURE

- 15.1 **Force Majeure.** If a Party is prevented from completing its obligations under this Agreement due to any event or circumstance that was not caused by and is not reasonably within its control it will not be deemed to be in default or breach of this Agreement.
- 15.2 **Notice of Force Majeure.** The Party affected by a force majeure event under 15.1 will deliver notice to the other Parties explaining the nature of the force majeure event or circumstance, the date it commenced and its anticipated duration, if known.
- 15.3 **No Effect on Quantum of Lands.** Notwithstanding 15.1, in no circumstances will the total amount of land to be transferred and protected under this Agreement be less than the amounts set out in this Agreement provided that where any such lands cannot be transferred or protected due to a force majeure event, the Parties will identify alternative lands in accordance with the process and conditions set out in this Agreement.

ARTICLE 16 – LEGAL CERTAINTY

- 16.1 **Consultation and Accommodation.** In consideration for the promises of and obligations to be performed by British Columbia and BC Hydro and the benefits received by SFN under this Agreement, together with the Impact and Benefits Agreement and the Contracting Agreement, SFN acknowledges and agrees on its own behalf and on behalf of its Members that:
- (a) SFN has been adequately consulted and accommodated with respect to the impacts of the development and construction of the Site C Project and its Operation on SFN Section 35 Rights, including with respect to any infringement of SFN Section 35 Rights;
 - (b) SFN will not oppose or object to the development and construction of the Site C Project and its Operation;
 - (c) SFN will not seek any additional financial consideration or economic or other accommodation from BC Hydro, British Columbia or any other entity, with respect to the impacts of the Site C Project or its Operation on SFN Section 35 Rights, including in connection with any renewal or issuance of an Authorization;
 - (d) this Agreement, together with the Impact and Benefits Agreement and the Contracting Agreement, is entered into in full and final satisfaction of any past, present or future claim by SFN or its Members regarding the adequacy of consultation and accommodation with respect to, or any impacts on or infringement of, SFN Section 35 Rights resulting from the development and construction of the Site C Project or its Operation;
 - (e) SFN will recognize and respect all Authorizations that have been or may be granted, and will ensure that such Authorizations will be recognized and preserved unaltered in form and substance in any self-government agreement or other agreement, including in the exercise of any rights or powers granted pursuant to those agreements, that SFN (or any other group of which it forms a part) may enter into with Canada, British Columbia or both, or that SFN may obtain through litigation or court declaration;
 - (f) SFN will not support or engage in any action that might interfere with, frustrate, delay or stop the construction of the Site C Project or its Operation, including challenging or opposing the granting or validity of an Authorization in any Proceeding on any grounds; and
 - (g) If SFN becomes aware that one or more Members is engaging in or intends to engage in any action that might interfere with, frustrate, delay or

stop the construction of the Site C Project or its Operation, SFN will, of its own accord or at the request of one of British Columbia or BC Hydro, make reasonable efforts to prevent, resolve or remedy those actions, taking into account community and cultural processes, traditions and practices, including providing notice to the requesting Party of such actions, working cooperatively with the requesting Party to prevent, resolve or remedy the action, participating in discussions with the requesting Party, and providing written and affidavit material to support the requesting Party in seeking and obtaining injunctive relief in respect of the actions of the Member(s), provided however that SFN will not be required to commence legal proceedings or seek injunctive relief against individual Members.

16.2 Participation in Consultation and Authorization Processes. SFN may require a reasonable opportunity to review applications for Authorizations and participate in any permitting, regulatory or other government decision-making process relating to the issuance or renewal of any Authorization, the Site C Project or its Operation, including by raising any environmental concerns or proposing reasonable avoidance or mitigation measures as part of such process, provided that such participation and any concerns raised by SFN or its Members:

- a) are not based on the argument that there has been inadequate consultation or accommodation with respect to, or an infringement of, its Section 35 Rights resulting from the Site C Project and its Operation;
- b) are consistent with SFN's non-opposition to the Site C Project, and do not in any way derogate from or breach any of its acknowledgements, agreements or obligations under this Agreement; and
- c) are raised in an effective and efficient manner and are completed in a timely manner in keeping with the timelines established by the relevant Agency.

16.3. Custom Consultation Process. The Parties acknowledge that British Columbia or BC Hydro may agree with SFN on a process for the efficient and effective review of applications for Authorizations in a manner consistent with SFN's obligations under this Agreement.

ARTICLE 17 – INDEMNITY

17.1 SFN Indemnity. Subject to 17.2 and 17.6, SFN will indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against any and all Proceedings, including reasonable expenses, costs, legal fees, losses, damages or any other liability that they may suffer or incur, directly or indirectly, as a result of:

- a) any Proceedings commenced by SFN or its Members against or involving British Columbia, BC Hydro or any Public Official relating to the validity of this Agreement, the validity of any of the Authorizations, or SFN's non-opposition to the Site C Project or its Operation; or
 - b) any Proceedings for contribution or indemnity brought against British Columbia, BC Hydro or any Public Official by a third party in connection with any Proceeding commenced against such third party, by SFN or any of its Members in respect of any matter relating to the validity of this Agreement, the validity of any of the Authorizations, or SFN's non-opposition to the Site C Project or its Operation.
- 17.2 **Limit on SFN Indemnity.** The indemnification by SFN set out in this Article will not apply to any Proceedings commenced, or any adverse action taken, by Members acting without SFN's authority or approval where SFN has made reasonable efforts to prevent, resolve or remedy such actions, taking into account community and cultural processes, traditions and practices in accordance with 16.1(g).
- 17.3 **British Columbia Indemnity.** Subject to 17.6, British Columbia will indemnify and save harmless SFN from any cause of action, loss, cost or damage that SFN may incur, directly or indirectly, as a result of a breach of this Agreement by British Columbia.
- 17.4 **BC Hydro Indemnity.** Subject to 17.6, BC Hydro will indemnify and save harmless SFN from any cause of action, loss, cost or damage that SFN may incur, directly or indirectly, as a result of a breach of this Agreement by BC Hydro.
- 17.5 **Set Off.** Any financial harm incurred or suffered by British Columbia or BC Hydro as a result of SFN's breach of this Agreement, including any requirement to indemnify British Columbia or BC Hydro, may be set off by BC Hydro against any payments payable by BC Hydro to SFN under the Impact and Benefits Agreement.
- 17.6 **Other Remedies.** No Party will have any claim against or liability to another Party in relation to this Agreement under any cause of action or theory of liability for any special, indirect, incidental, punitive, exemplary or consequential losses or damages, including pure economic loss, or loss of opportunity, profit, revenues, production, earnings or contract.

ARTICLE 18 - NON-DEROGATION AND NO PREJUDICE

- 18.1 **Non-derogation.** The Parties acknowledge and agree that nothing in this Agreement in any way defines, amends or denies the existence of any SFN Section 35 Rights.

- 18.2 **Past Impacts.** The Parties acknowledge and agree that, subject to sections 18.3 and 18.4, this Agreement does not affect or limit SFN's legal remedies regarding, and is not intended to compensate SFN or its Members for, any past or ongoing impacts on or infringements of SFN Section 35 Rights resulting from any past Works, including the W.A.C. Bennett Dam, Gordon M. Shrum Generating Station, Peace Canyon Dam, and the Peace Canyon Generating Station, or to prevent or limit SFN's ability to negotiate or pursue compensation related to any such past or ongoing impacts or infringements.
- 18.3 **Non-interference.** SFN acknowledges and agrees, for greater certainty, that any legal rights or remedies asserted or pursued by SFN in connection with the matters described in 18.2 must not directly or indirectly affect, frustrate or interfere with the construction of the Site C Project or the ongoing Operation of the Site C Project within its intended operating parameters.
- 18.4 **No Admission.** The Parties acknowledge and agree that nothing in this Agreement, and in particular 18.2, constitutes an acknowledgement, admission or confirmation of any kind by or on behalf of British Columbia or BC Hydro of any impact on or infringement of SFN Section 35 Rights by, or of any liability of British Columbia or BC Hydro to SFN or its Members or any cause of action or claim of SFN or its Members in relation to, the Site C Project, its Operation or any past or existing Works, including for purposes of any applicable statutory or common law limitations or otherwise.
- 18.5 **Other Claims.** The Parties acknowledge and agree that nothing in this Agreement, the Impact and Benefits Agreement or the Contracting Agreement will preclude SFN from pursuing:
- a) claims against British Columbia or BC Hydro for damages, including damages to property, arising from negligent acts or omissions or wilful misconduct on the part of British Columbia or BC Hydro and its employees, servants, agents, contractors and subcontractors in connection with the Site C Project or its Operation;
 - b) claims against British Columbia or BC Hydro in respect of any breach of its obligations under this Agreement, the Contracting Agreement, or the Impact and Benefits Agreement, except as such claims may be limited in accordance with terms thereof; or
 - c) other civil claims that are not based on impacts of the Site C Project or its Operation on SFN Section 35 Rights.

ARTICLE 19 - DISPUTE RESOLUTION

- 19.1 **Representatives.** If a dispute arises between the Parties regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed

representatives will meet as soon as is practicable to attempt to resolve the dispute.

- 19.2 **Senior Representatives.** If the Parties are unable to resolve the dispute at that level, the interpretation issue will be raised to more senior levels of the Parties.
- 19.3 **Other Means.** Any Party may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 20 - NOTICES

- 20.1 **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 copier, when received as follows

if to British Columbia: Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O. Box Stn. Prov. Govt.
Victoria, B.C. V8W 9B1
Fax: (250) 387-6073

if to BC Hydro: British Columbia Hydro and Power Authority
6911 Southpoint Drive, 10th floor
Burnaby, British Columbia V3N 4X8
Attention: Al Leonard, Director, Aboriginal Relations
Fax: 604-528-2822

if to SFN: Saulteau First Nations
PO Box 1020
Chetwynd, British Columbia V0C 1J0
Attention: Chief and Council
Fax: 250-788-7261

- 20.2 **Change of Address.** Any Party may, from time to time, give written or e-mail notice to the other Parties of any change of address or facsimile number of the

Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

ARTICLE 21 - INTERPRETATION

21.1 Interpretation. For purposes of this Agreement:

- a) 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;
- b) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- c) the use of the singular includes the plural and the use of the plural includes the singular;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) in the calculation of time under this Agreement, "business days" means any day from Monday to Friday, except any such day that is a statutory holiday in British Columbia;
- f) any reference to a corporate entity includes any predecessor or successor to such entity;
- g) any reference to the delivery on the Closing Date of an agreement, document or instrument "in the form" of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- h) 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
- i) the rule of construction that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement, and there will be no presumption that doubtful or ambiguous expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

21.2 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.

21.3 Not a Treaty. This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
- b) define, amend or deny the existence of SFN Section 35 Rights or any responsibilities of the Parties except as set out in this Agreement.

ARTICLE 22 – ENTIRE AGREEMENT

22.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and, except as set out in this Agreement, British Columbia and BC Hydro have not made any representation, warranty, collateral agreement or agreed to any condition, right or obligation affecting this Agreement. For greater certainty, without limiting the generality of the foregoing, nothing in the negotiation of this Agreement, or in any correspondence or document leading to this Agreement, including any term sheet, forms part of this Agreement.

22.2 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:

- 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 declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

Notwithstanding 22.2(a) and (b), if any part of Article 16, 17 or 18 is declared or held invalid, in addition to any other remedy it may have, British Columbia is entitled to immediately terminate this Agreement on notice to BC Hydro and SFN.

ARTICLE 23 - GENERAL

- 23.1 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of another Party, do further lawful acts and deliver such further documents in a timely fashion as are reasonably required from time to time in order to fully perform and carry out the terms of this Agreement.
- 23.2 **Successors.** This Agreement will enure to the benefit of and be binding on British Columbia, BC Hydro and SFN and their successors and, without limiting the generality of the foregoing, this Agreement and SFN's obligations under it will be assumed and adopted by any successor organization or government, or any new organization or government that effectively replaces SFN, under any self-government agreement or other agreement that SFN, or any other group of which it forms a part, may enter into with Canada, British Columbia or both, or that SFN may obtain through litigation or court declaration.
- 23.3 **Assignment.** BC Hydro may assign all or part of its rights and obligations under this Agreement to any successor or assignee of BC Hydro's rights and obligations relating to the Site C Project provided that any such successor or assignee agrees in writing to be bound by the terms of this Agreement. SFN may not assign its rights or obligations under this Agreement, in whole or in part, except as may be required to give effect to 23.2.
- 23.4 **Amendment.** This Agreement may be amended by the Parties in writing.
- 23.5 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.
- 23.6 **Legal Advice.** Each Party acknowledges that it has obtained or has had the opportunity to obtain independent legal advice relating to the terms and conditions of this Agreement, the Impact and Benefits Agreement and the Contracting Agreement, and that the signatories have read and understand the terms and conditions of the foregoing agreements.
- 23.7 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.

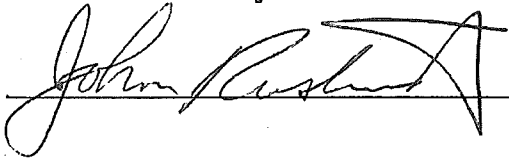
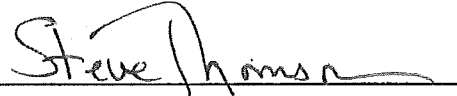
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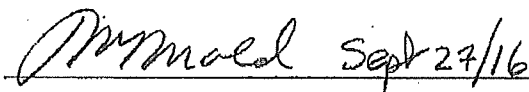
IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

Signed on behalf of the Saulteau First Nations by

Signed on behalf of Her Majesty the Queen In Right of British Columbia of British Columbia by

 _____
 _____

Signed on behalf of British Columbia Hydro And Power Authority by


 _____

Jessica L. McDonald
President & CEO

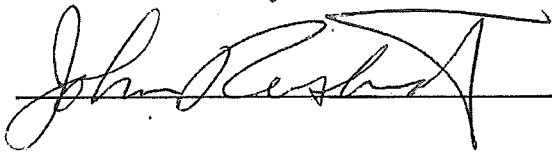
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Signed on behalf of the Saulteau First Nations by



Signed on behalf of Her Majesty the Queen In Right of British Columbia of British Columbia by





Signed on behalf of British Columbia Hydro And Power Authority by

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Schedule A "1" – Map of Lands for Illustrative Purposes

To be completed at a later date pursuant to Article 6.

2020-2021
2021-2022

Schedule A "2" – Description of Lands

To be completed at a later date pursuant to Article 6.

Where the Lands are registered in the Land Title Office or have been adequately surveyed, insert the legal description.

Where the Lands are not surveyed or have to be re-surveyed in order for title to be raised in the Land Title Office, insert the following (or similar) description:

the area [of approximately X hectares] as shown for illustrative purposes in Schedule 1 and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor, or any submerged lands

Schedule A "3" Part 1 – Permitted Encumbrances

Permitted Encumbrances

all interests registered on title under the *Land Title Act* as of the Closing Date

all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land

all exceptions and reservations contained in section 50(1) of the *Land Act*

any conditional or final water license or substituted water license issued or given under the *Water Sustainability Act*, or any prior enactment of British Columbia of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant

all subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of British Columbia of British Columbia of like effect

all other liens, charges and encumbrances granted by British Columbia, with the prior written consent of the Saulneau First Nations prior to the Closing Date

all existing interests on the Lands in favour of existing interest holders, including any such interests or interest holders that may not have been identified in this Schedule prior to the transfer of the Lands

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Schedule A "3" Part 2 - Permitted Encumbrances-Interests Not Registered on Title

Interests Not Registered on Title

Utility and local government interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands shown in Schedule A "1"

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Schedule A "4" – Form of Permitted Encumbrances

To be completed at a later date pursuant to Article 6.

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Schedule A "5" – GST Certificate

**CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER
(FORM 221(2)(b))**

Certificate as to Registration Status of Purchaser

(Paragraphs 221(2)(b) and (c))

FROM: *[the "Vendor"]*

TO: *[the "Purchaser"]*

RE: *[the "Property"]*

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF *THE EXCISE TAX ACT* (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is *[number]* and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED *[month, day, year]*.

[Name of Corporate Vendor]

[Name of Individual Vendor]

Per: _____

Schedule A "6"

**Consent of Saulteau First Nations in relation to
Property Transfer Tax Matters**

TO WHOM IT MAY CONCERN:

1. Article ____ of the Site C Tripartite Land Agreement (the Agreement) between the Province of British Columbia, BC Hydro and the Saulteau First Nations ("SFN"), executed [date of execution], provides that BC Hydro is responsible for property transfer tax payable under the *Property Transfer Tax Act* (RSBC 1996), c. 378 in relation to the transfer of land under the Agreement (the Property Transfer Tax).
2. In the event that:
 - a. an exemption from Property Transfer Tax is not enacted prior to the date on which payment of that tax is due, or
 - b. the Province pays the Property Transfer Tax,then SFN hereby
 - c. authorizes the Ministry of Finance and the Ministry of Aboriginal Relations and Reconciliation, and BC Hydro to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and
 - d. agrees that if there is any refund payable in respect of the Property Transfer Tax paid by the Province or BC Hydro, then the amount of that refund may be retained by payee.

Executed on the ____ day of _____, 20__

Signature of the duly authorized signatory for the Saulteau First Nations

Name and Title (please print)

Schedule B "1" – Map of Peace-Boudreau Protected Area

To be completed at a later date pursuant to 14.2.

Schedule C "1" – Site C Project Description

The Site C Project is the project described in Volume 1, sub-sections 4.3 to 4.5 of the Amended Environmental Impact Statement for the Site C Clean Energy Project prepared by BC Hydro and submitted to the Joint Review Panel on August 2, 2013, and as authorized by the EAC and FDS.