# Framework for Negotiation of the Reconciliation and Settlement Agreement

#### Between

Cheslatta Carrier Nation, on behalf of itself and its members, as represented by Chief and Council ("Cheslatta")

and

Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation ("BC")

(the "Parties")

August \_\_\_\_, 2016

#### WHEREAS:

- A. The Parties seek to resolve long-standing issues relating to impacts arising from the creation and operation of the Nechako reservoir and associated works.
- B. Cheslatta's perspective on the history of the Nechako reservoir is outlined in Appendix A.
- C. Cheslatta is on a journey of healing, celebrating courage, resilience, and reconciliation.
- D. The Parties share an interest in advancing the cultural, social, environmental, and economic well-being of Cheslatta and in advancing reconciliation between themselves in the spirit of a New Relationship.
- E. The Parties entered into a Memorandum of Understanding outlining the scope of initiatives to be discussed in the development of a reconciliation initiative.
- F. The Parties have explored the scope of initiatives, including their respective interests, under the Memorandum of Understanding and have secured the necessary mandates to proceed with the negotiation of the Reconciliation and Settlement Agreement.

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#### THEREFORE THE PARTIES AGREE AS FOLLOWS:

#### **PART 1 - INTERPRETATION**

**1.1 Definitions.** For the purpose of this Framework Agreement, the following definitions apply:

#### "Aboriginal Rights" means:

- a) asserted aboriginal rights, including aboriginal title; or
- b) determined aboriginal rights, including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act*, 1982;

"Cheslatta Territory" means the area of Cheslatta's asserted territory, as identified on the map attached as Appendix B;

"Early Implementation Components" means the benefits described in Part 9 and Appendix E;

"Effective Date" means the date on which the last Party executes and delivers the Framework Agreement;

"Framework Agreement" means this agreement and the appendices identified in s. 1.2:

"Memorandum of Understanding" means the Memorandum of Understanding between the Parties dated March 20, 2015;

"Main Table" means the lead negotiators at the main negotiation table;

"Reconciliation and Settlement Agreement" means an agreement to be negotiated by the Parties to advance reconciliation between the Parties and to redress any impacts related to the Nechako reservoir on Cheslatta's cultural, social, environmental, and economic well-being, including any impacts on Cheslatta's Aboriginal Rights;

"Rio Tinto" means Rio Tinto Alcan Inc. and includes its affiliates, predecessors, and successors, and the predecessors and successors of its affiliates; and

"Term Sheet" means a document to be developed by the Parties that sets out all of the substantive terms of the Reconciliation and Settlement Agreement.

**1.2 Appendices.** The following appendices are attached to and form a part of this Framework Agreement:

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Appendix A – Historical Context: Cheslatta's Perspective

Appendix B - Map of Cheslatta Territory

Appendix C - Negotiation Milestones

Appendix D – Strategy for Communications and Engagement with Stakeholders and Other First Nations

Appendix E - Early Implementation Components

#### **1.3 Interpretation.** For the purposes of this Framework Agreement:

- a) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- b) the recitals and headings are for convenience only, do not form a part of this Framework Agreement, and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Framework Agreement;
- c) 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;
- d) words importing gender include all other genders, and words in the singular include the plural and vice versa;
- e) in the calculation of time under this Framework Agreement, all references to "days" are to calendar days;
- f) any reference to a corporate entity includes any predecessor or successor to such entity; and
- g) there will be no presumption that doubtful expressions, terms or provisions in this Framework Agreement are to be resolved in favour of any Party.

#### **PART 2 - PURPOSES**

- **2.1 Purposes of Framework Agreement.** The purposes of this Framework Agreement are to:
  - a) establish a framework for negotiation of a Reconciliation and Settlement Agreement between the Parties, including negotiation elements as set out in 3.1, milestones for negotiations, approach to negotiations, and communications and engagement protocols;
  - b) provide funding contributions to facilitate Cheslatta's participation in negotiations; and

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 c) provide Early Implementation Components that will advance Cheslatta's near term cultural, social, environmental, and economic priorities.

#### PART 3 - ELEMENTS OF THE RECONCILIATION AND SETTLEMENT AGREEMENT

- 3.1 **Topics for Negotiation**. The Parties agree that discussions and negotiations will include the following main elements:
  - a) advancement of cultural, heritage, social, and training initiatives for Cheslatta members:
  - b) development of a land package, which may include:
    - i) Crown grants of fee simple land;
    - ii) resource use tenures;
    - iii) land designations, such as ecological reserves and old growth management areas;
    - iv) funding to support the purchase of private land; and
    - v) other measures as appropriate;
  - c) discussion and development of collaborative management arrangements for protected areas, as identified under the *Protected Areas of British Columbia Act*, S.B.C. 2000, c. 17;
  - d) facilitation of long-term economic opportunities for Cheslatta in areas such as:
    - i) forestry:
    - ii) agriculture;
    - iii) commercial recreation;
    - iv) transportation; and
    - v) other resource based sectors;
  - e) coordination with the BC Hydro and Power Authority to provide three-phase power to certain areas, including Cheslatta's industrial site;
  - f) financial payments to Cheslatta;
  - g) establishing a relationship with Rio Tinto to facilitate collaboration on Nechako reservoir management;
  - h) certainty provisions including releases and indemnities;
  - i) charting a path forward towards further reconciliation;
  - j) definitions of important terms, such as "Nechako Reservoir", "Impacts", and "Alcan Works";

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- k) implementation of the Reconciliation and Settlement Agreement; and
- l) other matters as mutually agreed.
- 3.2 **Mutual Interests.** The Parties will negotiate elements of the Reconciliation and Settlement Agreement consistent with their mutual economic, social, and environmental interests and their commitment to reconciliation.
- 3.3 **No Commitment to Agree.** The commitment to negotiate the substantive elements listed in 3.1 does not commit either Party to agree on any element or on any part of an element.

#### PART 4 - APPROACH TO NEGOTIATIONS

- 4.1 **Principles.** The Parties agree to undertake interest-based negotiations according to the principles of respect, equity, transparency, informed discussions, and collaboration, as identified in the Memorandum of Understanding.
- 4.2 **Timeline**. The Parties intend to proceed expeditiously with the negotiation of the Reconciliation and Settlement Agreement, consistent with the milestones in Appendix C, including executing a Term Sheet by December 15, 2016 and executing the Reconciliation and Settlement Agreement by August 31, 2017.
- 4.3 Necessary Approvals. The Parties understand that the Reconciliation and Settlement Agreement will require approvals by the Parties and execution by the Parties before it becomes legally binding. For clarity, prior to execution, BC will require approvals by the BC government and Cheslatta will require approval by its Chief and Council and ratification by Cheslatta members.
- 4.4 **Coordination**. The Parties will pursue coordination with other parties and stakeholders, such as Rio Tinto, forest licencees, Indigenous and Northern Affairs Canada and other federal agencies, and the British Columbia Hydro and Power Authority.
- 4.5 **Efficient Negotiation Process.** The Parties will pursue an effective and efficient negotiation process, including by:
  - a) using consistent formats and naming conventions;
  - b) assigning tasks based on the available technical capacity of both Parties:
  - c) avoiding duplication of technical information and analysis; and
  - d) using consistent drafting protocols, including single document drafting.

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- 4.6 **Considerations**. The Parties agree that:
  - a) acquisition by Cheslatta of existing private sector resource interests is intended to occur on a willing seller/willing buyer basis; and
  - b) in developing elements of the Reconciliation and Settlement Agreement, the Parties will seek to avoid incurring liabilities to BC to provide compensation to third parties.
- 4.7 **Rio Tinto.** The Parties agree to pursue a joint table with Rio Tinto on Nechako reservoir management. BC acknowledges that Nechako reservoir management is an issue of critical importance to Cheslatta and that a failure by Cheslatta to reach agreement with Rio Tinto on Nechako reservoir management may affect the negotiations between Cheslatta and BC contemplated under this Framework Agreement.

#### PART 5 - NEGOTIATION TEAMS AND MEETINGS

- 5.1 **Negotiation Teams.** The Parties will confirm their respective negotiation teams, including a lead negotiator, upon signing of this Framework Agreement.
- 5.2 **Main Table**. The Parties will establish a Main Table for negotiations and working groups as needed to support and inform the Main Table.
- 5.3 **Joint Work Plan.** The Parties will develop a joint work plan consistent with the milestones in Appendix C.
- 5.4 **Meetings**. The Parties will schedule meetings at their mutual convenience and in mutually agreed locations or by telephone conference.
- 5.5 **Responsibilities**. The Parties will establish responsibilities for developing meeting agendas, chairing meetings, and developing meeting records upon signing this Framework Agreement.
- 5.6 **Other Arrangements**. The Parties will establish other administrative and logistical arrangements by mutual agreement.

#### PART 6 - CONFIDENTIALITY DURING NEGOTIATIONS

6.1 **Negotiations.** The Parties will maintain the negotiations of this Framework Agreement, the Term Sheet, and the Reconciliation and Settlement Agreement as confidential except as necessary for internal communications within each Party and with each Party's advisors, or as required by law.

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- 6.2 **General Information**. Notwithstanding the above provision, the Parties may share general information on the progress of negotiations with potential partners, other stakeholders, and other First Nations on a confidential basis provided the confidentiality of negotiations is maintained.
- 6.3 **Framework Agreement**. This Framework Agreement is not confidential except for Appendix E, which is confidential unless otherwise agreed by the Parties, or as required by law.
- 6.4 **Confidential Information**. The Parties may share confidential information with one another, and the receiving Party will treat as confidential any information which is identified by the sharing Party as confidential, unless otherwise required by law.

# PART 7 - COMMUNICATIONS AND ENGAGEMENT WITH STAKEHOLDERS AND OTHER FIRST NATIONS

7.1 The Parties will work collaboratively to implement the Strategy for Communications and Engagement with Stakeholders and Other First Nations set out in Appendix D of this Framework Agreement.

## PART 8 - FUNDING CONTRIBUTION FOR CHESLATTA PARTICIPATION IN NEGOTIATIONS

- 8.1 **Funding for Participation in Negotiations**. BC will provide to Cheslatta:
  - a) \$100,000 within 30 days of the completion of a joint work plan initialed by both Parties' lead negotiators, following the signing of the Framework Agreement by the Parties;
  - b) \$100,000 within 30 days of the completion of a Term Sheet signed by the Parties; and
  - c) \$75,000 within 30 days of March 31, 2017 based on the Parties' reasonable and best efforts to complete the Term Sheet and an updated joint work plan initialed by both Parties' lead negotiators.
- 8.2 **Acknowledgement of Other Funding.** The Parties acknowledge that the participation funding contemplated under 8.1 is in addition to:
  - a) funding under the Memorandum of Understanding, which provides for negotiation and implementation capacity funding up to \$100,000 after March 31, 2016 and up to \$100,000 after March 31, 2017; and
  - b) implementation funding of \$150,000 as part of the Early Implementation Components, which is intended to support Cheslatta's coordination and project management of negotiations.

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8.3 Additional Funding. If after receiving satisfactory information from Cheslatta, BC is satisfied that additional funding is required in order for Cheslatta to conclude the Reconciliation and Settlement Agreement, then BC may provide additional funding to Cheslatta under the Term Sheet.

#### PART 9 - EARLY IMPLEMENTATION COMPONENTS

- 9.1 Early Implementation Components. BC will take steps to provide Cheslatta with the Early Implementation Components outlined in Appendix E, up to a maximum of \$2.3 million, including:
  - a) funding to support cultural and heritage initiatives;
  - b) funding to support workforce training and education;
  - c) funding to support economic initiatives;
  - d) potential short term salvage timber opportunities; and
  - e) funding to support the project management and implementation of this Framework Agreement.
- 9.2 **Appropriations**. Notwithstanding any other provision in this Framework Agreement, any payment of funds by BC to Cheslatta under this Framework Agreement is subject to:
  - a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138, to enable BC in any fiscal year or part thereof when such payment is required to make such payment; and
  - b) Treasury Board, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.
- 9.3 Part of Future Reconciliation or Settlement. The Parties agree that the Early Implementation Components constitute a contribution towards and comprise part of the total benefits to Cheslatta under the proposed Reconciliation and Settlement Agreement, or alternatively under any other future reconciliation or settlement agreement between the Parties, should the Parties not conclude the Reconciliation and Settlement Agreement.

#### **PART 10 - TERM AND TERMINATION**

- 10.1 **Term.** The term of this Framework Agreement will commence on the Effective Date and will continue until the later of:
  - a) the termination of the Framework Agreement in accordance with 10.2: or
  - b) the Effective Date of the Reconciliation and Settlement Agreement.

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- 10.2 **Termination**. Either Party may terminate this Framework Agreement by providing 60 days' written notice to the other Party with a detailed explanation of the reason for termination.
- 10.3 **Issue Resolution Meeting.** The Parties will meet within 30 days of the delivery of a notice of termination under 10.2 to attempt to address the issue underlying the termination notice. The Party that provided the termination notice may retract that notice at any time until the end of the 60-day period under 10.2.

#### PART 11 - REPRESENTATIONS AND WARRANTIES

- 11.1 **Cheslatta Representations**. Cheslatta represents and warrants to BC, with the intent and understanding that these warranties and representations will be relied on by BC in entering into this Framework Agreement, that:
  - a) it has the legal power, capacity, and authority to enter into this Framework Agreement on its own behalf and on behalf of its members;
  - b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Framework Agreement for, and on behalf of, its members; and
  - c) this Framework Agreement is valid and binding upon it.
- 11.2 **BC Representations**. BC represents and warrants to Cheslatta, with the intent and understanding that these warranties and representations will be relied on by Cheslatta in entering into this Framework Agreement, that it has the legal power, capacity, and authority to enter into this Framework Agreement and that this Framework Agreement is a valid and binding obligation of BC.

#### **PART 12 - GENERAL PROVISIONS**

- 12.1 **Legal Advice.** Both Parties confirm that each has had the full opportunity to review the terms and conditions of this Framework Agreement, and each have sought independent legal advice with respect to its terms and conditions.
- 12.2 **Further Approvals.** The Parties acknowledge that further mandates and approvals are required to enter into or to complete the negotiations described in this Framework Agreement. Negotiation mandates and any agreements reached between the Parties as a result of those negotiations, including the Reconciliation and Settlement Agreement, are subject to each



Party obtaining all required approvals, including any Cabinet and Treasury Board approvals.

- 12.3 No Implied Waiver. Any waiver of:
  - a) a provision of this Framework Agreement;
  - b) the performance by a Party of an obligation under this Framework Agreement; or
  - c) a default by a Party of an obligation under this Framework 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.

- 12.4 **Successors**. This Framework Agreement will enure to the benefit of and be binding on the Parties and their successors.
- 12.5 **No Admissions**. Nothing in this Framework Agreement or as part of any negotiations contemplated under this Framework Agreement will be construed as:
  - a) an admission by either Party of the nature, scope, validity or invalidity of any claim by Cheslatta in relation to Aboriginal Rights;
  - b) an admission by either Party of the validity or invalidity of any claim by Cheslatta against BC;
  - c) BC's admission of or agreement with the statements in Appendix A;
  - d) establishing, limiting or abrogating any Aboriginal Rights of Cheslatta;
  - e) an acknowledgment or admission by BC that it has an obligation to provide financial or economic accommodation or compensation to Cheslatta; or
  - f) in any way limiting the position either Party may take in any negotiations or in any proceeding including the negotiation of the Reconciliation and Settlement Agreement.
- 12.6 Not a Treaty. This Framework Agreement does not:
  - a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*;
  - b) establish, recognize, affirm, define, deny, limit, or amend any Aboriginal Rights; or
  - c) preclude the right of either Party to engage in further processes to establish the scope or the geographic extent of Aboriginal Rights in the Cheslatta Territory.

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- 12.7 **No Fettering.** This Framework Agreement does not affect the jurisdiction or fetter the discretion of any decision-making authority.
- 12.8 **Time**. Time is of the essence.
- 12.9 **Notice**. Any notice or document required or permitted to be given hereunder will be in writing and delivered to the Party to which it is to be given as follows:

to BC:

Geoff Recknell, Executive Director Ministry of Aboriginal Relations and Reconciliation 3726 Alfred Avenue Smithers, B.C. VOJ 2NO Fax: (250) 847-7501

Email: Geoff.Recknell@gov.bc.ca

to Cheslatta:

Chief and Council PO Box 909 Burns Lake, B.C. VOJ 1E0 Fax: 1-250-694-3632

Email: cheslattanation@yahoo.com

or to such other address as either Party may in writing advise. Any notice, document, or communication will be deemed to have been given on the business day when delivered or when transmitted with confirmation of transmission if done so during or before normal business hours in the city of the addressee and if after such normal business hours the next business day.

- 12.10 **Amendment.** This Framework Agreement may be amended from time to time by the agreement of the Parties in writing.
- 12.11 **Governing Law.** This Framework Agreement will be governed by and construed in accordance with the laws applicable in the Province of British Columbia.
- 12.12 **Validity of Agreement**. If any part of this Framework Agreement is void or unenforceable at law:
  - a) 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 Framework Agreement had been executed without the invalid part; and

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- 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 Framework Agreement.
- 12.13 **Execution in Counterparts.** This Framework Agreement may be entered into by each Party signing a separate copy of this Framework Agreement and delivering it to the other Party by electronic or facsimile transmission. All executed counterparts taken together will constitute one agreement.

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

**CHESLATTA CARRIER NATION as** EXECUTED in the presence of: represented by Chief and Council Witness as to the signature of the Chief Corrina Leween, Chief of Cheslatta and Council of Cheslatta Carrier Nation Carrier Nation Hazel Burt, Councillor of Cheslatta Carrier Nation Carrier Nation HER MAJESTY THE QUEEN IN RIGHT EXECUTED in the presence of: OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Aboriginal Relations and Reconciliation Witness as to the signature of the Minister of Aboriginal Relations and Honourable John Rustad, Minister of Reconciliation Aboriginal Relations and Reconciliation

### APPENDIX A - Historical Context: Cheslatta's Perspective

Cheslatta describes the history and impacts of the Nechako reservoir as follows:

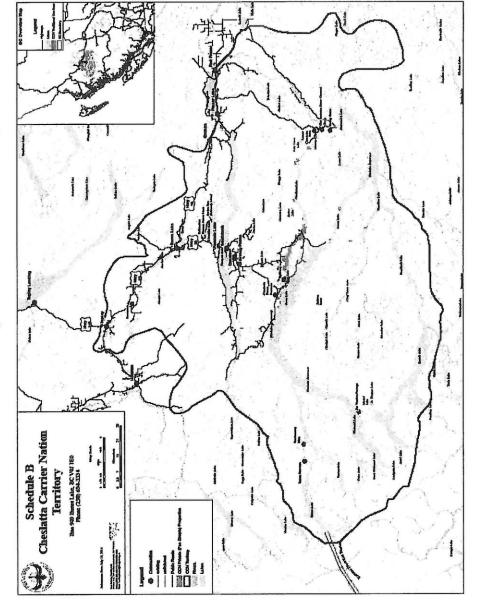
- The heart of the territory traditionally used and occupied by the Cheslatta t'en
  from time immemorial was flooded by the creation of the Nechako reservoir and
  associated works. These lands remain submerged and they continue in the
  memory and being of the Cheslatta t'en.
- 2. The Nechako reservoir was created in the early 1950s to provide for the production of electricity for Rio Tinto's aluminum smelter at Kitimat, British Columbia. Cheslatta asserts that BC played a pivotal role in the creation of the Nechako reservoir by enacting legislation, providing land, and granting licences.
- 3. The creation of the Nechako reservoir involved the following associated works: the Kenney Dam, the Nechako River Diversion Tunnels, the Skins Lake Spillway, the Cheslatta/Murray Dam, Tahtsa Lake Dam, the seven Saddle Dams, West Tahtsa Intake, Tunnel #1, Tunnel #2, and the Skins Lake Spillway Caretaker Compound.
- 4. The flooding inundated approximately 120,000 acres of Cheslatta Territory, destroying vegetation and drowning wildlife, inundating villages, campsites, archaeological and spiritual sites, traplines, and trails.
- 5. The flooding desecrated Cheslatta cemeteries and forced the Cheslatta t'en to be involuntarily relocated.
- 6. The creation of the Nechako reservoir and the associated works has adversely affected the Cheslatta t'en culturally, socially, environmentally, and economically. It has impeded and continues to impede access to lands, water and resources, and the ability to carry out Cheslatta's sustenance activities on what is now the Nechako reservoir, and on the Cheslatta Lake system and Nechako River.
- 7. The operation of the Nechako reservoir and the associated works results in ongoing periodic water releases at the Skins Lake Spillway that cause damage and destruction to Cheslatta land and resources and to this day still floats and exposes buried remains of Cheslatta t'en, thereby continuing the negative impacts to the Cheslatta t'en.
- 8. Cheslatta is on a journey of healing, celebrating courage, resilience, and reconciliation.







APPENDIX B - Map of Cheslatta Territory



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Framework for Negotiation of the Reconciliation and Settlement Agreement

### **APPENDIX C - Negotiation Milestones**

Milestones	Intended Timeframe
Negotiation start-up	May 2016
Framework Agreement negotiated and signed (focuses on process and structure of negotiations)	June-July 2016
Term Sheet negotiation (includes all substantive terms of agreement)	June-November 2016
Term Sheet approval and signing	December 2016
Drafting of Reconciliation and Settlement Agreement (includes all provisions of agreement)	January – May 2017
Approval of Reconciliation and Settlement Agreement	May 2017 – July 2017
Signing of Reconciliation and Settlement Agreement	August 2017
Reconciliation and Settlement Agreement Implementation Begins	September 2017



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### APPENDIX D - Strategy for Communications and Engagement with Stakeholders and Other First Nations

#### 1. Purpose of Communication Strategy

The purpose of the joint communication strategy is to establish agreed communication protocols for communication between the Parties themselves and communication by the Parties with other First Nations, stakeholders, and the public concerning the implementation of this Framework Agreement and negotiations of the Term Sheet and Reconciliation and Settlement Agreement.

The intent is to ensure that communications during implementation and negotiations phases support and enhance the Parties' ability to reach positive outcomes and increase the effectiveness of the Parties' efforts.

The strategy is not intended to limit the ability of either Party to share general information on the negotiations of the Term Sheet or Reconciliation and Settlement Agreement with other First Nations and stakeholders, provided that the confidentiality of negotiations is maintained.

#### 2. Engagement with Stakeholders

The Parties recognize that engaging stakeholders will be essential in developing positive outcomes that address both Parties' interests.

Each Party may engage directly with stakeholders or jointly with the other Party as appropriate and will endeavour to keep the other Party informed on the nature of this engagement.

BC will consult directly with stakeholders that may be affected by certain aspects of the implementation of this Framework Agreement and the development of the Term Sheet and Reconciliation and Settlement Agreement.

#### 3. Communication and Engagement with Other First Nations

The Parties agree that the asserted rights and title interests of other First Nations will be considered in implementing this Framework Agreement and in developing the Term Sheet and Reconciliation and Settlement Agreement that can be generally supported and stable over the long term.

BC will consult directly with other First Nations whose asserted rights and title interests may be affected by certain aspects of the implementation of this

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Framework Agreement and the development of the Term Sheet and Reconciliation and Settlement Agreement.

Cheslatta may engage directly with a number of other First Nations to inform them of issues relating to implementing this Framework Agreement and developing the Term Sheet and Reconciliation and Settlement Agreement.

#### 4. Communication with the Public

The Parties will consult with each other on any proposed public communications that relate to this Framework Agreement, the development of the Term Sheet and Reconciliation and Settlement Agreement, and Nechako reservoir management during the term of this Framework Agreement.

The Parties may undertake joint communications at key milestones (e.g. press releases) in developing the Reconciliation and Settlement Agreement.

#### 5. Key Messages

The Parties intend that the following key messages will form part of the communication and engagement with stakeholders, other First Nations, and the public, along with other messages that are developed jointly by the Parties:

- a. The negotiation between Cheslatta and BC is intended to achieve the Reconciliation and Settlement Agreement that addresses impacts of the Nechako reservoir on Cheslatta asserted aboriginal rights and title interests and contributes to broader reconciliation between the Parties;
- Cheslatta and BC are committed to developing partnerships with key stakeholders that have potential to advance economic and social objectives of Cheslatta;
- c. Cheslatta and BC share interests of advancing sustainable development while recognizing the rights and interests of other First Nations, stakeholders, and British Columbians; and
- d. The details of the negotiations are confidential but the Parties can share general information on the negotiations.

