

## **CHAPTER 2 GENERAL PROVISIONS**

### **NATURE OF AGREEMENT**

1. This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

### **AGREEMENT IS BINDING**

2. This Agreement is binding on the Parties.
3. The Parties are entitled to rely on this Agreement.
4. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that settlement legislation provide that this Agreement is binding on, and can be relied on by, all persons.

### **REPRESENTATION AND WARRANTY**

5. The Nisga'a Nation represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, it has the authority to enter, and it enters, into this Agreement on behalf of all persons who have any aboriginal rights, including aboriginal title, in Canada, or any claims to those rights, based on their identity as Nisga'a.
6. Canada and British Columbia represent and warrant to the Nisga'a Nation that, in respect of the matters dealt with in this Agreement, they have the authority to enter into this Agreement within their respective authorities.

### **NISGA'A CULTURE AND LANGUAGE**

7. Nisga'a citizens have the right to practice the Nisga'a culture, and to use the Nisga'a language, in a manner consistent with this Agreement.

### **CONSTITUTION OF CANADA**

8. This Agreement does not alter the Constitution of Canada, including:
  - a. the distribution of powers between Canada and British Columbia;
  - b. the identity of the Nisga'a Nation as an aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.
9. The *Canadian Charter of Rights and Freedoms* applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in this Agreement.
10. There are no "lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for the Nisga'a Nation, and there are no "reserves" as defined in the *Indian Act* for the use and benefit of a Nisga'a Village, or an Indian band referred to in the *Indian Act* Transition Chapter, and, for greater certainty, Nisga'a Lands and Nisga'a Fee Simple Lands are not "lands reserved for the Indians" within the meaning of the *Constitution Act, 1867*, and are not "reserves" as defined in the *Indian Act*.

## **APPLICATION OF FEDERAL AND PROVINCIAL LAWS**

11. If an authority of British Columbia referred to in this Agreement is delegated from Canada and:
  - a. the delegation of that authority is revoked; or
  - b. if a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that the delegation of that authority is invalidthe reference to British Columbia will be deemed to be a reference to Canada.
12. If an authority of Canada referred to in this Agreement is delegated from British Columbia and:
  - a. the delegation of that authority is revoked; or
  - b. if a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that the delegation of that authority is invalidthe reference to Canada will be deemed to be a reference to British Columbia.
13. Federal and provincial laws apply to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, Nisga'a citizens, Nisga'a Lands, and Nisga'a Fee Simple Lands, but:
  - a. in the event of an inconsistency or conflict between this Agreement and the provisions of any federal or provincial law, this Agreement will prevail to the extent of the inconsistency or conflict; and
  - b. in the event of an inconsistency or conflict between settlement legislation and the provisions of any other federal or provincial law, the settlement legislation will prevail to the extent of the inconsistency or conflict.
14. Any licence, permit, or other authorization, including the Commercial Recreation Tenure required to be issued by Canada or British Columbia as a result of this Agreement, will be issued under federal or provincial law, as the case may be, and is not part of this Agreement, but in the event of an inconsistency or conflict between this Agreement and:
  - a. that federal or provincial law; or
  - b. any term or condition of the licence, permit, or other authorizationthis Agreement will prevail to the extent of the inconsistency or conflict.

## **OTHER RIGHTS, BENEFITS, AND PROGRAMS**

15. Nisga'a citizens who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits of other Canadian citizens or permanent residents of Canada, applicable to them from time to time.
16. Subject to paragraph 6 of the Fiscal Relations Chapter, nothing in this Agreement affects the ability of the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations or Nisga'a citizens to participate in, or benefit from, federal or provincial programs for aboriginal people, registered Indians or other Indians, in accordance with general criteria established for those programs from time to time.
17. Nothing in this Agreement affects the ability of the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
18. Subject to the *Indian Act* Transition Chapter and paragraphs 5 and 6 of the Taxation Chapter, the *Indian Act* has no application to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions,

or Nisga'a citizens as of the effective date, except for the purpose of determining whether an individual is an "Indian".

#### **JUDICIAL DETERMINATIONS IN RESPECT OF VALIDITY**

19. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines any provision of this Agreement to be invalid or unenforceable:
  - a. the Parties will make best efforts to amend this Agreement to remedy or replace the provision; and
  - b. the provision will be severable from this Agreement to the extent of the invalidity or unenforceability, and the remainder of this Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.
20. No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.
21. A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

#### **FULL AND FINAL SETTLEMENT**

22. This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

#### **NISGA'A SECTION 35 RIGHTS**

23. This Agreement exhaustively sets out Nisga'a section 35 rights, the geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed, and those rights are:
  - a. the aboriginal rights, including aboriginal title, as modified by this Agreement, in Canada of the Nisga'a Nation and its people in and to Nisga'a Lands and other lands and resources in Canada;
  - b. the jurisdictions, authorities, and rights of Nisga'a Government; and
  - c. the other Nisga'a section 35 rights.

#### **MODIFICATION**

24. Notwithstanding the common law, as a result of this Agreement and the settlement legislation, the aboriginal rights, including the aboriginal title, of the Nisga'a Nation, as they existed anywhere in Canada before the effective date, including their attributes and geographic extent, are modified, and continue as modified, as set out in this Agreement.
25. For greater certainty, the aboriginal title of the Nisga'a Nation anywhere that it existed in Canada before the effective date is modified and continues as the estates in fee simple to those areas identified in this Agreement as Nisga'a Lands or Nisga'a Fee Simple Lands.

#### **RELEASE**

26. If, despite this Agreement and the settlement legislation, the Nisga'a Nation has an aboriginal right, including aboriginal title, in Canada, that is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement, the Nisga'a Nation releases that aboriginal right to Canada to the extent that the aboriginal right is

other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement.

27. The Nisga'a Nation releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, and whether known or unknown, that the Nisga'a Nation ever had, now has or may have in the future, relating to or arising from any act, or omission, before the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

## **CONSULTATION**

28. When Canada and British Columbia have consulted with or provided information to the Nisga'a Nation in respect of any activity, including a resource development or extraction activity, in accordance with their obligations under this Agreement and federal and provincial legislation, Canada and British Columbia will not have any additional obligations under this Agreement to consult with or provide information to the Nisga'a Nation in respect of that activity.

## **PROVINCIAL LAW**

29. Canada will recommend to Parliament that federal settlement legislation include a provision that, to the extent that a law of British Columbia does not apply of its own force to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens, that law of British Columbia will, subject to the federal settlement legislation and any other Act of Parliament, apply in accordance with this Agreement to the Nisga'a Nation, Nisga'a Villages, Nisga'a Institutions, Nisga'a Corporations, or Nisga'a citizens, as the case may be.

## **INDEMNITIES**

30. The Nisga'a Nation will indemnify and save harmless Canada or British Columbia, as the case may be, from any:
  - a. costs, excluding fees and disbursements of solicitors and other professional advisors;
  - b. damages;
  - c. losses; or
  - d. liabilities

that Canada or British Columbia, respectively, may suffer or incur in connection with, or as a result of, any claims, demands, actions, or proceedings relating to, or arising out of, any act, or omission, before the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

31. The Nisga'a Nation will indemnify and save harmless Canada or British Columbia, as the case may be, from any:
  - a. costs, excluding fees and disbursements of solicitors and other professional advisors;
  - b. damages;
  - c. losses; or
  - d. liabilities

that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any claims, demands, actions, or proceedings relating to, or arising out of, the

existence of an aboriginal right, including aboriginal title, in Canada of the Nisga'a Nation, that is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement.

32. A Party who is the subject of a claim, demand, action, or proceeding that may give rise to a requirement to provide payment to that Party pursuant to an indemnity under this Agreement:
  - a. will vigorously defend the claim, demand, action, or proceeding; and
  - b. will not settle or compromise the claim, demand, action, or proceeding except with the consent of the Party who has granted that indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

#### **OTHER ABORIGINAL PEOPLE**

33. Nothing in this Agreement affects, recognizes, or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than the Nisga'a Nation.
34. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that any aboriginal people, other than the Nisga'a Nation, has rights under section 35 of the *Constitution Act, 1982* that are adversely affected by a provision of this Agreement:
  - a. the provision will operate and have effect to the extent that it does not adversely affect those rights; and
  - b. if the provision cannot operate and have effect in a way that it does not adversely affect those rights, the Parties will make best efforts to amend this Agreement to remedy or replace the provision.
35. If Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with another aboriginal people, and that treaty or land claims agreement adversely affects Nisga'a section 35 rights as set out in this Agreement:
  - a. Canada or British Columbia, or both, as the case may be, will provide the Nisga'a Nation with additional or replacement rights or other appropriate remedies;
  - b. at the request of the Nisga'a Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies; and
  - c. if the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies, the provision of those additional or replacement rights or remedies will be determined in accordance with Stage Three of the Dispute Resolution Chapter.

#### **AMENDMENT PROVISIONS**

36. Except for any provision of this Agreement that provides that an amendment requires the consent of only the Nisga'a Nation and either Canada or British Columbia, all amendments to this Agreement require the consent of all three Parties.
37. Canada will give consent to an amendment to this Agreement by order of the Governor in Council.

38. British Columbia will give consent to an amendment to this Agreement by resolution of the Legislature of British Columbia.
39. If federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.
40. The Nisga'a Nation will give consent to an amendment to this Agreement by a resolution adopted by at least two thirds of the elected members of Nisga'a Lisims Government.
41. An amendment to this Agreement takes effect on a date agreed to by the parties to the amendment, but if no date is agreed to, on the date that the last Party required to consent to the amendment gives its consent.
42. Notwithstanding paragraphs 37 to 41, if the Nisga'a Nation adds land to Nisga'a Lands in accordance with paragraph 9 or 11 of the Lands Chapter, Appendix A will be deemed to be amended upon receipt by Canada and British Columbia of the written notice referred to in paragraph 9 or 11 of the Lands Chapter.
43. Notwithstanding paragraphs 37 to 41, whenever:
  - a. this Agreement provides:
    - i. that the Nisga'a Nation and Canada or British Columbia will negotiate and attempt to reach agreement in respect of a matter that will result in an amendment to this Agreement, including a change to an Appendix, and
    - ii. that if agreement is not reached, the matter will be finally determined by arbitration under the Dispute Resolution Chapter; and
  - b. those Parties have negotiated an agreement or the matter is determined by arbitrationthis Agreement will be deemed to be amended on the date the agreement or arbitrator's decision takes effect, as the case may be.

#### **FREEDOM OF INFORMATION AND PRIVACY**

44. For the purposes of federal and provincial access to information and privacy legislation, information that Nisga'a Government provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
45. If Nisga'a Government requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province for disclosure of that information, but Canada and British Columbia are not required to disclose to Nisga'a Government information that is only available to a particular province or particular provinces.
46. The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure, and confidentiality of personal, general, or other information.
47. Canada or British Columbia may provide information to Nisga'a Government in confidence if Nisga'a Lisims Government has made a law or has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
48. Notwithstanding any other provision of this Agreement:

- a. Canada and British Columbia are not required to disclose any information that they are required to withhold under any federal or provincial law;
- b. if federal or provincial legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied; and
- c. the Parties are not required to disclose any information that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act*.

#### **OBLIGATION TO NEGOTIATE**

49. Whenever the Parties are obliged under any provision of this Agreement to negotiate and attempt to reach agreement, unless the Parties otherwise agree, all Parties will participate in the negotiations.
50. Whenever this Agreement provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in the Dispute Resolution Chapter, but, the Parties or any of them, are not obliged to proceed to Stage Three of the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28 of the Dispute Resolution Chapter.
51. Except as set out in this Agreement, an agreement that is reached as a result of negotiations that are required or permitted under any paragraph of this Agreement is not part of this Agreement.

#### **CONFLICT AND INCONSISTENCY**

52. In this Agreement:
  - a. there is a conflict between laws if compliance with one law would be a breach of the other law; and
  - b. laws are not inconsistent merely because they make provision for the same subject matter.
53. If a Nisga’a law has an incidental impact on a subject matter in respect of which Nisga’a Government does not have jurisdiction to make laws, and there is an inconsistency or conflict between that incidental impact and a federal or provincial law in respect of that subject matter, the federal or provincial law prevails to the extent of the inconsistency or conflict.

#### **ENTIRE AGREEMENT**

54. This Agreement is the entire agreement among the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right, or obligation affecting this Agreement.
55. The Schedules and Appendices to this Agreement form part of this Agreement.

#### **INTERPRETATION**

56. Except as set out in this Agreement, in the event of an inconsistency or conflict between a provision of this Chapter and any other provision of this Agreement, the provision of this Chapter prevails to the extent of the inconsistency or conflict.
57. There is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.

**58.** In this Agreement:

- a. the use of the word “will” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the effective date or the event that gives rise to the obligation;
- b. unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- c. unless it is otherwise clear from the context, a reference to a “Chapter”, “paragraph”, “subparagraph”, “Schedule”, or “Appendix” means a chapter, paragraph, subparagraph, schedule, or appendix, respectively, of this Agreement;
- d. unless it is otherwise clear from the context, a reference in a chapter of this Agreement to a “paragraph”, “subparagraph”, or “Schedule” means a paragraph, subparagraph, or schedule of that chapter;
- e. headings and subheadings 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;
- f. a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for, or in replacement of, it;
- g. unless it is otherwise clear from the context, “provincial” refers to the province of British Columbia; and
- h. unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

**NO IMPLIED WAIVER**

- 59.** A provision of this Agreement, or the performance by a Party of an obligation under this Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
- 60.** No written waiver of a provision of this Agreement, of performance by a Party of an obligation under this Agreement, or of default by a Party of an obligation under this Agreement, will be a waiver of any other provision, obligation, or subsequent default.

**TIME OF THE ESSENCE**

- 61.** Time is of the essence in this Agreement.

**ASSIGNMENT**

- 62.** Unless otherwise agreed to by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party.

**ENUREMENT**

- 63.** This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

**NOTICE**



64. In paragraphs 65 to 68, “communication” includes a notice, document, request, approval, authorization, or consent.
65. Unless otherwise set out in this Agreement, a communication between or among the Parties under this Agreement must be:
- a. delivered personally or by courier;
  - b. transmitted by fax; or
  - c. mailed by prepaid registered post in Canada.
66. A communication will be considered to have been given, made, or delivered, and received:
- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
  - b. if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
  - c. if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
67. In addition to the provisions of paragraphs 65 and 66, the Parties may agree to give, make, or deliver a communication by means other than those provided in paragraph 65.
68. The Parties will provide to each other addresses for delivery of communications under this Agreement, and subject to paragraph 69, will deliver a communication to the address provided by each other Party.
69. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address, or transmitted to the fax number, of the intended recipient as set out below:

**For: Canada**  
Attention: Minister of Indian Affairs and Northern Development  
House of Commons  
Room 583, Confederation Building  
Ottawa, Ontario  
K1A 0A6  
Fax Number: (819) 953-4941

**For: British Columbia**  
Attention: Minister of Aboriginal Affairs  
Room 325, Parliament Buildings  
Victoria, British Columbia  
V8V 1X4  
Fax Number: (250) 356-1124

**For: Nisga’a Nation**  
Attention: President  
P.O. Box 231

New Aiyansh, British Columbia  
V0J 1A0

Fax Number: (250) 633-2367

- 70.** A Party may change its address or fax number by giving a notice of the change to the other Parties.