

## **INTRODUCTION**

This Agreement incorporates all minor changes agreed to by the Parties in the first Minor Change Agreement dated January 31, 2011, the Second Minor Change Agreement dated August 9, 2011, the Third Minor Change Agreement dated November 10, 2011 and the Fourth Minor Change Agreement dated November 14, 2011.



Signed by the Parties to the Yale First Nation Final Agreement and dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 2012 / Signé par les parties à l'Accord définitif de la Première Nation de Yale et ayant comme date de référence le \_\_\_\_\_ 2012.

**FOR YALE FIRST NATION / POUR LA PREMIÈRE NATION DE YALE** signed in the province of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2012 / Signé dans la province de \_\_\_\_\_ le \_\_\_\_\_ 2012.

\_\_\_\_\_  
Norman Robert Hope  
Chief, Yale First Nation/chef de la Première Nation de Yale

\_\_\_\_\_  
Witnessed by/Témoin : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ /  
\_\_\_\_\_

**FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA/POUR SA MAJESTÉ LA REINE DU CHEF DU CANADA** : signed in the province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2012 / Signé dans la province de \_\_\_\_\_ le \_\_\_\_\_ 2012.

\_\_\_\_\_  
Her Majesty the Queen in Right of Canada as represented by/Sa Majesté la Reine du chef du Canada représentée par : The Honourable John Duncan, P.C., M.P., Minister of Indian Affairs and Northern Development/l'honorable John Duncan, C.P., député, ministre des Affaires indiennes et du Nord canadien.

\_\_\_\_\_  
Witnessed by/Témoin : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ /  
\_\_\_\_\_

**FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA/POUR SA MAJESTÉ LA REINE DU CHEF DE LA COLOMBIE-BRITANNIQUE** : signed in the province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2012 / Signé dans la province de \_\_\_\_\_ le \_\_\_\_\_ 2012.

\_\_\_\_\_  
Her Majesty the Queen in Right of British Columbia as represented by/Sa Majesté la Reine du chef de la Colombie-Britannique représentée par : the Honourable Mary Polak, Minister, Aboriginal Relations and Reconciliation/ l'honorable Mary Polak, ministre - Aboriginal Relations and Reconciliation

\_\_\_\_\_  
Witnessed by/Témoin : \_\_\_\_\_  
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\_\_\_\_\_ /  
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**PREAMBLE****WHEREAS**

1. Yale First Nation asserts that they have used, occupied and governed their traditional territory from time immemorial;
2. Yale First Nation has never entered into a treaty or land claims agreement with the Crown;
3. The *Constitution Act, 1982*, recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, and the courts have stated that aboriginal rights include aboriginal title;
4. The Parties are committed to the reconciliation of the prior presence of Yale First Nation and the sovereignty of the Crown through the negotiation of this Agreement which will establish a new government-to-government relationship based on mutual respect;
5. Yale First Nation asserts that they have an inherent right to self-government, and the Government of Canada has negotiated self-government in this Agreement based on its policy that the inherent right to self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*;
6. Yale First Nation's existing aboriginal rights are recognized and affirmed by the *Constitution Act, 1982*, and the Parties have negotiated this Agreement under the British Columbia treaty process to provide certainty in respect of those rights and to allow them to continue and to have effect and be exercised as set out in this Agreement;
7. Canada and British Columbia acknowledge the perspective of Yale First Nation that harm and losses in relation to their aboriginal rights have occurred in the past and express regret if any actions or omissions of the Crown have contributed to that perspective, and the Parties rely on this Agreement to move them beyond the difficult circumstances of the past;
8. Canada and British Columbia acknowledge the aspirations of Yale First Nation to participate more fully in the economic, political, cultural and social life of British Columbia in a way that preserves and enhances the collective identity of Yale First Nation and to evolve and flourish as a self-sufficient and sustainable community;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**



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## CHAPTER 1 DEFINITIONS

### 1.1 DEFINITIONS

1.1.1 In this Agreement;

“**Adequate Survey**” means a survey that:

- a. accurately and unambiguously describes the extent of a parcel of land, including the location of the natural boundary as defined in the *Land Act*, to current technical survey standards having regard to current posting requirements with permanent survey monuments at all corners; and
- b. meets the requirements of the registry where the survey plan will be recorded;

“**Administrative Penalty**” means a sanction or monetary penalty assessed and imposed under a statutory regime in which liability for breach of a regulatory requirement and the sanction or quantum of the monetary penalty is determined through an administrative process, rather than through prosecution or through an action in the civil courts;

“**Adoption Agency**” means an “adoption agency” as defined in the *Adoption Act*;

“**Agreed-Upon Programs and Services**” means those programs and services agreed to by the Parties to be made available by Yale First Nation, towards which Canada or British Columbia agrees to contribute funding, and set out in a Fiscal Financing Agreement;

“**Agreement**” means this agreement among Yale First Nation, Canada and British Columbia;

“**Appendix**” means an appendix to this Agreement and, where applicable, includes the authoritative version of a map or plan as set out in the Atlas;

“**Appendix B**” means Appendices B-1 through B-3;

“**Appendix N**” means Appendices N-1 through N-6;

“**Aquatic Plants**” includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all marine and freshwater flowering plants, ferns and mosses, growing in water or in soils that are saturated during most of the growing season;

“**Associated Burial Object**” means an object that, by its attributes or location, can be demonstrated to have been placed in direct association with the burial of a human being of Yale First Nation ancestry as part of a burial practice or ritual;

“**Assurance Fund**” means the assurance fund established under Part 19.1 of the *Land Title Act*;

“**Atlas**” means the Yale First Nation Final Agreement Atlas as signed by the Parties and as amended from time to time in accordance with this Agreement, which consists of the authoritative version of the maps and plans shown at reduced scale for ease of reference in Appendices A, B, C, D, E, F, G, H, I, K and M of this Agreement;

“**Available Flow**” means the volume of flow of water, determined by British Columbia, to be above that required:

- a. to ensure conservation of Fish and Stream habitats;
- b. to continue navigability; and
- c. under Water Licences issued before July 30, 2008 and Water Licences issued under applications made before July 30, 2008,

and taking into account any applicable requirements under Federal and Provincial Law;

“**Band**” means a “band” as defined in the *Indian Act*;

“**BC Hydro**” means the British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, or its successor;

“**British Columbia**” means, unless the context otherwise requires, Her Majesty the Queen in right of the Province of British Columbia;

“**British Columbia Building Code**” means the building code established for British Columbia in accordance with the *Local Government Act*;

“**Canada**” means, unless the context otherwise requires, Her Majesty the Queen in right of Canada;

“**Capital Transfer**” means an amount paid by Canada or British Columbia to Yale First Nation under 19.1.1 and Part 1 of Schedule 19-A of Chapter 19 Capital Transfer and Negotiation Loan Repayment;

“**Capital Transfer Payment Plan**” means the timetable for the payment of the Capital Transfer, described in Part 1 of Schedule 19-A of Chapter 19 Capital Transfer and Negotiation Loan Repayment;

“**Chapter**” means a chapter of this Agreement;

“**Child**” means an individual under the age of majority under Provincial Law;



**“Child Care”** means:

- a. the care, supervision, social or educational training, including pre-school education; or
- b. physical or mental rehabilitative therapy,

of children under the age of 13 years, with or without charge, by caregivers other than the child’s parent or a person with whom the child resides and who stands in the place of the child’s mother or father, but does not include an educational program provided under the *School Act* or the *Independent School Act* or Yale First Nation Law under 3.22;

**“Child in Care”** means a Child who is in the custody, care or guardianship of a Director or an individual designated with comparable authority under Yale First Nation Law;

**“Child in Need of Protection”** means a Child in need of protection under the *Child, Family and Community Services Act*;

**“Child Protection Service”** means a service that provides for:

- a. the protection of Children from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention;
- b. the custody, care and guardianship responsibilities for Children in Care;
- c. the support of families and caregivers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect or harm; and
- d. the support of kinship ties and a Child’s attachment to the extended family;

**“Community Correctional Services”** means:

- a. community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody centre;
- b. preparation of reports for courts, correctional centres, youth custody centres, Crown counsel and parole boards;
- c. supervision of diverted offenders and development and operation of Diversion programs;
- d. community-based programs and interventions for offenders, including alternatives to custody programs;

- e. identification of and referral to appropriate community resources;
- f. programs to meet the needs of youth in conflict with the law; and
- g. other community correctional and community youth justice services as may be delivered by British Columbia or Canada from time to time;

“**Conflict**” means actual conflict in operation or operational incompatibility;

“**Consult**” and “**Consultation**” mean provision to a Party of:

- a. notice of a matter to be decided;
- b. sufficient information in respect of the matter to permit the Party to prepare its views on the matter;
- c. a reasonable period of time to permit the Party to prepare its views on the matter;
- d. an opportunity for the Party to present its views on the matter; and
- e. a full and fair consideration of any views on the matter so presented by the Party;

“**Contamination**” means “contamination” as defined in the *Environmental Management Act*;

“**Crown**” means Her Majesty the Queen in right of Canada or Her Majesty the Queen in right of British Columbia, as the case may be;

“**Crown Corridor**” means any of those lands, including the Subsurface Resources, identified as a “Crown Corridor” in Appendix D-1;

“**Cultural Property**” means:

- a. ceremonial regalia and similar personal property associated with Yale First Nation; and
- b. other personal property that has cultural significance to Yale First Nation;

“**Designated Migratory Bird Population**” means a population of a species of Migratory Birds that has been designated by the Minister under 11.9;

“**Direct**” has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*;

“**Director**” means a person designated as director by the Minister of Children and Family Development under the *Child, Family and Community Service Act* or the *Adoption Act*;

“**Disagreement**” means any matter to which Chapter 24 Dispute Resolution applies;

“**Diversions**” means the use of options other than court proceedings to deal with a person alleged to have committed an offence;

“**Domestic Fishing Area**” means the area described as the “Domestic Fishing Area” in Appendix I, Part 1;

“**Domestic Purposes**” means food, social and ceremonial purposes, and does not include sale;

“**Domestic Salmon Fishing Area**” means:

- a. the waters of that part of the Fraser River bounded on the south by a line between the easterly and westerly waters' edge of the Fraser River at 10N 5476552 m (Lat. N 49° 25' 51.7""); approximately the most southerly waters' edge of the unnamed island locally referred to as 'American Rock') and bounded on the north by a line between the easterly and westerly waters' edge of the Fraser River at 10N 5496679 m (Lat. N 49° 36' 42.3""); approximately the southern confluence of Sawmill Creek), as shown on the map in Appendix I, Part 2, Map 1; the waters of the tributaries flowing into that part of the Fraser River are included, and
- b. the waters of that part of the Fraser River bounded on the south by a line from the northwesterly waters' edge at 10N 5460996 (Lat. N 49° 17' 39.1") southeasterly to the waters' edge at 10N 5460425 m (Lat. N 49° 17' 20.1"), and on the north by a line from the northwesterly waters' edge at 10E 603324 m (Long. W 121° 34' 37.3") southeasterly to the waters' edge at 10E 603519 m (Long. W 121° 34' 27.9""); near Hunter Creek) as shown on the map in Appendix I, Part 2, Map 2; the waters of the tributaries flowing into that part of the Fraser River are included,

Coordinate datum: NAD83 (CSRS);

Coordinates referred to in a. and b. to be ground truthed prior to the Effective Date and this note will be deleted from this definition;

“**Economic Development Fund**” means an amount paid by Canada to Yale First Nation under 19.2.1 and Part 2 of Schedule 19-A of Chapter 19 Capital Transfer and Negotiation Loan Repayment;

**“Economic Development Fund Payment Plan”** means the timetable for the payment of the Economic Development Fund, described in Part 2 of Schedule 19-A of Chapter 19 Capital Transfer and Negotiation Loan Repayment;

**“Effective Date”** means the date upon which this Agreement takes effect;

**“Eligible Voter”** means an individual:

- a. who is eligible to vote in accordance with 26.4.1; or
- b. whose name is added to the List of Eligible Voters in accordance with 26.4.3;

**“Eligibility Criteria”** means the criteria listed in 25.1;

**“Enhancement Initiative”** means an initiative that is intended to result in an increase in the abundance or variety of a stock or species of Fish through:

- a. the creation of, or improvement to, Fish habitat; or
- b. the application of Fish culture technology;

**“Enrolment Appeal Board”** means the board established under 25.6;

**“Enrolment Committee”** means the committee established under 25.5;

**“Enrolment Register”** means the list of individuals who are enrolled under Chapter 25 Eligibility and Enrolment;

**“Environment”** means the components of the earth and includes:

- a. land, water and air, including all layers of the atmosphere;
- b. all organic and inorganic matter and living organisms; and
- c. the interacting natural systems that include components referred to in a. and b.;

**“Environmental Assessment”** means an assessment of the environmental effects of a project;

**“Environmental Emergency”** means an uncontrolled, unplanned or accidental release, or release in contravention of laws or regulations, of a substance into the Environment, or the reasonable likelihood of such a release into the Environment, that:

- a. has or may have an immediate or long-term harmful effect on the Environment;
- b. constitutes or may constitute a danger to the Environment on which human life depends; or
- c. constitutes or may constitute a danger in Canada to human life or health;

**“Federal and Provincial Law”** means Federal Law and Provincial Law;

**“Federal Crown Land”** means land owned, leased, licensed or in use by, or expropriated or otherwise acquired by Canada from time to time;

**“Federal Expropriating Authority”** means the Government of Canada or any other entity authorized under federal legislation to expropriate land or an interest in land;

**“Federal Law”** includes federal statutes, regulations, ordinances, orders-in-council and the common law;

**“Federal or Provincial Law”** means Federal Law or Provincial Law;

**“Federal Project”** means a “project”, as defined in the *Canadian Environmental Assessment Act*, that is subject to an Environmental Assessment under that Act;

**“Federal Settlement Legislation”** means the Act of Parliament that gives effect to this Agreement;

**“First Nation Government in British Columbia”** means:

- a. the Nisga’a Government; and
- b. the government of a First Nation in British Columbia that has a treaty or a land claims agreement in effect with Canada and British Columbia under the process established by the British Columbia Treaty Commission;

**“Fiscal Financing Agreement”** means an agreement negotiated among the Parties in accordance with Chapter 20 Fiscal Relations;

**“Fish”** means:

- a. fish, shellfish, crustaceans and marine animals, excluding cetaceans;

- b. the parts of fish, shellfish, crustaceans, and marine animals, excluding cetaceans; and
- c. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals, excluding cetaceans;

**“Forest Practices”** means:

- a. Timber harvesting;
- b. road construction, road maintenance, road use, road deactivation;
- c. silviculture treatments, including grazing for the purposes of brushing;
- d. botanical forest products collecting; and
- e. fire use,

but does not include Timber marks, Timber marking, Timber scaling, manufacture of Timber, or export of Timber;

**“Forest Resources”** means all Non-timber Resources and Timber, including all biota, but does not include Wildlife, Migratory Birds, water, Groundwater, Fish, or Aquatic Plants;

**“Former Indian Reserves”** means the lands described in Appendix B-2, Part 1 and identified for illustrative purposes in Appendix B-2, Part 2;

**“Former Provincial Crown Land”** means the lands identified in Appendix B-3;

**“Fossils”** means remains, traces or imprints of animals or plants that have been preserved in rocks including bones, shells, casts and tracks;

**“Fraser Valley Regional District”** means the Fraser Valley Regional District incorporated or continued under the *Local Government Act*, and its successors;

**“Fraser Valley Regional Hospital District”** means the Fraser Valley Regional Hospital District incorporated or continued under the *Hospital District Act* and its successors;

**“Frozen Lakes Land”** means the Yale First Nation Land described as “Yale First Nation Land – Former Provincial Crown Land” in Map 3 of Appendix B-3;

**“Gathering Area”** means provincial Crown land within the area described as the “Gathering Area” in Appendix I, Part 3, including Provincial Protected Areas other than the Yale Garry Oak Ecological Reserve;

“**Gathering Plan**” means a plan approved by the Minister for the gathering of Plants for Domestic Purposes, prepared by Yale First Nation in accordance with 7.7.10;

“**Geothermal Resources**” means the natural heat of the earth and all substances that derive an added value from it, including steam, water, and water vapour heated by the natural heat of the earth and all substances dissolved in the steam, water or water vapour, but not including:

- a. water that has a temperature less than 80°C at the point where it reaches the surface; or
- b. hydrocarbons;

“**Groundwater**” means water below the surface of the ground;

“**Harvest Agreement**” means an agreement entered into by the Parties in accordance with 8.2.1;

“**Heritage Site**” means a site of archaeological, historical, or cultural significance including graves and burial sites;

“**Implementation Plan**” means the implementation plan described in 23.2.1;

“**Independent Regulatory Agency**” means a federal statutory body, including the National Energy Board and the Canadian Nuclear Safety Commission, which, in the exercise of regulatory or licensing powers, is not subject to specific control or direction by the federal government notwithstanding that it may be subject to general direction whether by guidelines, regulations or directives, or that its decisions may be subject to approval, variance or rescission by the federal government;

“**Indian**” means “Indian” as defined in the *Indian Act*;

“**Indian Reserve**” means “reserve” as defined in the *Indian Act*;

“**Initial Enrolment Period**” means the period from February 13, 2009 until the Effective Date;

“**Intellectual Property**” includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including any right relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights;

“**International Legal Obligation**” means an international obligation binding on Canada under international law, including those that are in force before, on, or after the Effective Date;

“**International Treaty**” means an agreement governed by international law and concluded in written form:

- a. between states; or
- b. between one or more states and one or more international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

“**International Tribunal**” means any international court, committee, treaty body, tribunal, arbitral tribunal, or other international mechanism or procedure that has jurisdiction to consider the performance of Canada with regard to the International Legal Obligation in question;

“**Joint Fisheries Committee**” means the committee established under 8.11.1;

“**Kuthlalth Indian Reserve #3**” means Kuthlalth Indian Reserve No. 3 in the Province of British Columbia, in Yale Division of Yale District, as shown on Plan 66624 CLSR, except the Canadian National Railway right of way shown on Plan RR1086A CLSR;

“**Land Surveyor**” means a “practising land surveyor” as defined in the *Land Surveyors Act*;

“**Land Title Office**” means the Land Title Office as established and described in the *Land Title Act*;

“**List of Eligible Voters**” means the list of Eligible Voters maintained by the Ratification Committee under 26.5.2;

“**Local Government**” means “local government” as defined in the *Local Government Act*;

“**Logs**” means logs of all species of wood which are controlled under Canada’s Export Control List, Group 5, Item number 5101, pursuant to paragraph 3(1)(e) of the *Export and Import Permits Act*;

“**Migratory Birds**” means migratory birds as defined under Federal Law that is enacted further to international conventions that are binding on British Columbia, including the eggs of those birds;

“**Migratory Birds Harvest Area**” means the area described as the “Migratory Birds Harvest Area” in Appendix I, Part 5, including Provincial Protected Areas other than the Yale Garry Oak Ecological Reserve, but not including Federal Crown Land;



“**Mineral**” means an ore of metal, including all base and precious metals, or natural substance that can be mined, including rock and other materials from mine tailings, dumps and previously mined deposits of minerals;

“**Minister**” means the federal or provincial Minister having responsibility, from time to time, for the exercise of powers in relation to the matter in question and includes any person with authority to act in respect of the matter in question;

“**National Park**” means land and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law including a national park reserve;

“**Natural Gas**” means all fluid hydrocarbons that are not defined as Petroleum including coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well;

“**Negotiation Loan Repayment Plan**” means the timetable for the repayment of negotiation loan funding by Yale First Nation described in Schedule 19-B of Chapter 19 Capital Transfer and Negotiation Loan Repayment;

“**Neutral**” means an individual appointed to assist the Parties to resolve a Disagreement and, except in 24.5.5 and Appendix N-4, includes an arbitrator;

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

“**New Westminster Water District**” means the “New Westminster Water District” as established under the *Water Act*;

“**Non-Member**” means an individual who has reached the age of majority under Provincial Law, is ordinarily resident on Yale First Nation Land and is not a Yale First Nation Member;

“**Non-timber Resources**” means all Forest Resources other than Timber, including medicinal plants, fungi, branches, bark, cones, bushes, roots, moss, mushrooms, ferns, floral greens, herbs, berries, spices, seeds and plants associated with grazing;

“**Participating Party**” means a Party that:

- a. is required or agrees to participate in; or
- b. initiates,

a process described in Chapter 24 Dispute Resolution to resolve a Disagreement;

“**Parties**” means Yale First Nation, Canada and British Columbia, and “**Party**” means any one of these;

“**Periodic Review Date**” means the 15<sup>th</sup> anniversary of the Effective Date or a date that occurs every 15 years after that date;

“**Permit**” means a permit issued by Yale First Nation to an individual under 14.8.1, which may include reasons for, timing and modes of access and terms on which the Permit may terminate;

“**Person**” for the purposes of Chapter 21 Taxation, includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

“**Petroleum**” means crude petroleum and all other hydrocarbons, regardless of specific gravity, that are or can be recovered in liquid form from a pool or that are or can be removed from oil sand or oil shale;

“**Placer Mineral**” means ore of metal, including all base and precious metals, and every natural substance that can be mined and that is either loose, or found in fragmentary or broken rock that is not talus rock and occurs in loose earth, gravel and sand, including rock or other material from placer mine tailings, dumps and previously mined deposits of placer minerals;

“**Plants**” means all flora and fungi but does not include Aquatic Plants or Timber, except for bark, boughs, burls, branches and roots of Timber;

“**Private Land**” means land that is not Crown land;

“**Provincial Agricultural Land Commission**” means the “Provincial Agricultural Land Commission” established under the *Agricultural Land Commission Act*;

“**Provincial Court of British Columbia**” means “court” as defined in the *Provincial Court Act*;

“**Provincial Expropriating Authority**” means a provincial ministry or agency or any person who has the authority to expropriate land under provincial legislation;

“**Provincial Law**” includes provincial statutes, regulations, ordinances, orders-in-council, bylaws, and the common law;

“**Provincial Project**” means a “reviewable project”, as defined in the provincial *Environmental Assessment Act*, that is subject to an Environmental Assessment under that Act;

“**Provincial Protected Area**” means provincial Crown land established or designated as a provincial park, ecological reserve, conservancy or protected area under Provincial Law;

“**Provincial Road**” means a road under the administration and control of British Columbia;

“**Provincial Settlement Legislation**” means the Act of the Legislature of British Columbia that gives effect to this Agreement;

“**Public Planning Process**” means a public planning process established by British Columbia to develop:

- a. regional land or resource use management plans or guidelines, including land and resource management plans, landscape unit plans and integrated watershed plans; and
- b. public plans or guidelines for specific sectors such as commercial recreation and aquaculture, but not operational plans that give specific direction to government staff;

“**Public Utility**” means a person, or the person’s lessee, trustee, receiver or liquidator, that owns or operates in British Columbia equipment or facilities for the:

- a. production, gathering, generating, processing, storage, transmission, sale, supply, distribution or delivery of petroleum (including petroleum products or by-products), gas (including natural gas, natural gas liquids, propane and coalbed gas), electricity, steam, water, sewage, or any other agent for the production of light, heat, cold or power; or
- b. emission, conveyance, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation,

and for the purposes of this definition, person includes a partnership or agent of the Crown and, for greater certainty, a corporation, including a Crown corporation;

“**Railway**” means a company, established under Federal or Provincial Law, authorized to construct and operate a railway. For greater certainty, railway, as used in this definition, includes:

- a. all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels or other structures connected with the railway; and

- b. communications or signalling systems and related facilities and equipment used for railway purposes;

“**Railway Corridor**” means any of those lands identified as a “Railway Corridor” in Appendix E;

“**Range Practices**” means:

- a. grazing of livestock;
- b. cutting of hay;
- c. activities related to grazing of livestock or cutting of hay; or
- d. activities related to constructing, modifying, or maintaining a structure, an excavation, a livestock trail, or an improvement to forage quality or quantity for purposes of range development;

“**Ratification Committee**” means the committee established under 26.5;

“**Reasonable Access**” means temporary site access for personal recreational and non-commercial purposes on reasonable conditions specified by Yale First Nation Law;

“**Recreation Site**” means a “recreation site” as defined in the *Forest and Range Practices Act*;

“**Regional Hospital District**” means “regional hospital district” as defined in the *Hospital District Act*;

“**Registrar**” means “registrar” as defined in the *Land Title Act*;

“**Registrar of Regulations**” means the “registrar” as defined in the provincial *Regulations Act*;

“**Responsible Person**” means “responsible person” as defined in the *Environmental Management Act*;

“**Review Period**” means a time period beginning on a Periodic Review Date, and ending on a date six months later, or such other date as the Parties may agree;

“**Safety and Well-Being of Children**” includes those guiding principles under Section 2 of the *Child, Family and Community Service Act*;

“**Salmon**” means sockeye, pink, chum, coho, and chinook salmon;

“**Sawmill Creek One Main Line**” means the land identified for illustrative purposes as “Sawmill Creek One Main Line” and legally described in Appendix D- 2;

“**Schedule**” means a schedule to a Chapter;

“**Section 35 Rights of Yale First Nation**” means the rights, anywhere in Canada, of Yale First Nation, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“**Settlement Legislation**” means the Federal Settlement Legislation and the Provincial Settlement Legislation;

“**Site Profile**” means “site profile” as defined in the *Environmental Management Act*;

“**Specific Claim Settlement**” means any sum payable by Canada to Yale First Nation, which sum represents the amount negotiated by Canada and Yale First Nation, pursuant to the terms and conditions of the Specific Claims Policy, as compensation for the claim;

“**Specific Claims Policy**” means the policy described in Canada’s “Specific Claims Policy and Process Guide (2009)”;

“**State of Title Certificate**” means a certificate issued under the *Land Title Act* as evidence of a Yale First Nation Fee Simple Interest in Yale First Nation Land substantially in the applicable form set out in Appendix H-6, Document 1;

“**Stewardship Activity**” means an activity conducted for the assessment, monitoring, protection and management of Fish and Fish habitat;

“**Stream**” means a natural watercourse or source of water supply, whether usually containing water or not, a lake, river, creek, spring, ravine, swamp and gulch, but does not include Groundwater;

“**Submerged Lands**” means land below the “natural boundary” as defined in the *Land Act*;

“**Subsurface Resources**” means:

- a. earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash and rock;
- c. Minerals, including Placer Minerals;
- d. coal, Petroleum, and Natural Gas;
- e. Fossils; and

f. Geothermal Resources;

“**Subsurface Tenures**” means those subsurface tenures:

- a. listed in Appendix H-1, Part 1 and identified for illustrative purposes in Part 2;  
or
- b. that exist on any lands added to Yale First Nation Land immediately before the parcel of land becomes Yale First Nation Land;

“**Surrendered Lands**” means “surrendered lands” as defined in the *Indian Act*;

“**Survey Instructions**” means instructions issued in accordance with section 77.1 of the *Land Act*;

“**Surveyor General**” means “Surveyor General” as defined in the provincial *Interpretation Act*;

“**Telus**” means TELUS Communications Inc., a corporation incorporated under Federal Law, or its successor;

“**Tenured Subsurface Resources**” means those Subsurface Resources administered by British Columbia that are subject to Subsurface Tenures;

“**Timber**” means trees, whether living, standing, dead, fallen, limbed, bucked, or peeled;

“**Total Allowable Migratory Bird Harvest**” means the maximum number of a Designated Migratory Bird Population that may be harvested by all harvesters in a specific period of time;

“**Total Allowable Wildlife Harvest**” means the maximum number of a Wildlife species that may be harvested by all harvesters in the Wildlife Harvest Area each year;

“**Trade and Barter**” does not include sale;

“**Transaction Tax**” includes a tax imposed under:

- a. the *Carbon Tax Act*;
- b. the *Consumption Tax Rebate and Transition Act*;
- c. the *Motor Fuel Tax Act*;
- d. the *Social Service Tax Act* (except those sections pertaining to alcohol);

- e. the *Tobacco Tax Act*;
- f. the *Property Transfer Tax Act*;
- g. the *Hotel Room Tax Act*;
- h. section 4 of the *Insurance Premium Tax Act*; and
- i. Part IX of the *Excise Tax Act*;

“**Treaty First Nation**” means “treaty first nation” as defined in the provincial *Interpretation Act*;

“**Treaty First Nation Director**” means “treaty first nation director” as defined in the *Local Government Act*;

“**Water Licence**” means a licence, approval or other authorization under Provincial Law for the storage, diversion, extraction or use of water and for the construction, maintenance and operation of works;

“**Wildfire Suppression Agreement**” means an agreement entered into by British Columbia, Canada and Yale First Nation under 16.6;

“**Wildlife**” means:

- a. all vertebrate and invertebrate animals, including mammals, birds, reptiles, and amphibians; and
- b. the eggs, juvenile stages, and adult stages of all vertebrate and invertebrate animals,

but does not include Fish or Migratory Birds;

“**Wildlife Harvest Area**” means the area described as the “Wildlife Harvest Area” in Appendix I, Part 4, including Provincial Protected Areas other than the Yale Garry Oak Ecological Reserve, but not including Federal Crown Land;

“**Yale Band**” means Yale First Nation which was, immediately before the Effective Date, a Band;

“**Yale First Nation**” means the collectivity of all Yale First Nation Individuals;

“**Yale First Nation Allocation**” means:

- a. in respect of the Yale First Nation Right to Harvest Fish:

- i. a defined harvest amount or quota;
  - ii. a harvest amount determined by the use of a formula; or
  - iii. a harvest amount determined by the use of a formula with respect to a defined harvest area, within the Domestic Fishing Area; and
- b. in respect of the Yale First Nation Right to Harvest Wildlife or the Yale First Nation Right to Harvest Migratory Birds:
- i. a defined harvest quantity or quota; or
  - ii. a formula defining a harvest quantity or quota,
- of a Wildlife species or a Designated Migratory Bird Population for Yale First Nation;

**“Yale First Nation Archaeological Human Remains”** means human remains that are not the subject of a police or coroner investigation, and are determined, based on the evidence, to be of Yale First Nation ancestry;

**“Yale First Nation Area”** means the area described as “Yale First Nation Area” in Appendix A;

**“Yale First Nation Artifact”** means any object created by, traded to, commissioned by, or given as a gift to a Yale First Nation Member or Yale First Nation, or a Yale First Nation Public Institution, or that originated from Yale First Nation, past or present, and that has past and ongoing importance to Yale First Nation culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to any other person or another aboriginal group;

**“Yale First Nation Capital”** means all land, cash and other assets transferred to, or recognized as owned by, Yale First Nation under this Agreement;

**“Yale First Nation Certificate”** means a certificate of Yale First Nation under 13.3.2b;

**“Yale First Nation Child”** means a Child who is a Yale First Nation Member;

**“Yale First Nation Community Watershed Land”** means:

- a. the lands described as “Yale First Nation Community Watershed Land” in Appendix G; and



- b. any lands described as “Potential Additions to Yale First Nation Land” in Appendix C that are added to Yale First Nation Land under this Agreement and which are located within an area designated under Provincial Law as a community watershed immediately prior to being added to Yale First Nation Land;

**“Yale First Nation Constitution”** means the constitution of Yale First Nation provided for and ratified in accordance with this Agreement;

**“Yale First Nation Corporation”** means a corporation that is incorporated under Federal or Provincial Law, all of the shares of which are owned legally and beneficially by Yale First Nation, a Yale First Nation settlement trust, a Yale First Nation Corporation Intermediary, or any combination of those entities;

**“Yale First Nation Corporation Intermediary”** means a corporation that is incorporated under Federal or Provincial Law, all of the shares of which are owned legally and beneficially by Yale First Nation, a Yale First Nation settlement trust, another Yale First Nation Corporation Intermediary, or any combination of those entities;

**“Yale First Nation Director”** means:

- a. in respect of the Fraser Valley Regional District, an elected member of the Yale First Nation Government who is qualified under Provincial Law to be appointed to the board of the Fraser Valley Regional District; and
- b. in respect of the Fraser Valley Regional Hospital District, an elected member of the Yale First Nation Government who is qualified under Provincial Law to be appointed to the board of the Fraser Valley Regional Hospital District;

**“Yale First Nation Family”** means one or both parents or guardians living together with one or more Children where:

- a. at least one of the parents or guardians is a Yale First Nation Member; or
- b. at least one of the Children is a Yale First Nation Child;

**“Yale First Nation Fee Simple Interest”** means a fee simple interest that is subject to any condition, proviso, restriction, exception, or reservation that may be set out in Yale First Nation Law;

**“Yale First Nation Fisheries Operational Guidelines”** means the guidelines described in 8.5.1;

**“Yale First Nation Fishing Plan”** means a plan described in 8.14.1 and 8.14.2;

“**Yale First Nation Government**” means the government of Yale First Nation as referred to in 3.1.2;

“**Yale First Nation Harvest Document**” means a licence, permit, document, or amendment thereto, issued by the Minister under Federal or Provincial Law in respect of the Yale First Nation Right to Harvest Fish;

“**Yale First Nation Individual**” means an individual who is eligible to be enrolled under this Agreement in accordance with Chapter 25 Eligibility and Enrolment;

“**Yale First Nation Institution**” means the Yale First Nation Government or a Yale First Nation Public Institution;

“**Yale First Nation Land**” means the lands described and identified for illustrative purposes in Appendix B;

“**Yale First Nation Law**” means:

- a. a law made by the Yale First Nation Government under any law-making authority set out in this Agreement; and
- b. the Yale First Nation Constitution;

“**Yale First Nation Member**” means a Yale First Nation Individual who is enrolled under this Agreement in accordance with Chapter 25 Eligibility and Enrolment;

“**Yale First Nation Project**” means a project on Yale First Nation Land but does not include a Provincial Project;

“**Yale First Nation Public Institution**” means a Yale First Nation body, board, commission or any other similar entity established under 3.3.1i including a school board or health board;

“**Yale First Nation Public Officer**” means:

- a. a member, commissioner, director, or trustee of a Yale First Nation Public Institution;
- b. a director, officer or employee of a Yale First Nation Corporation whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or municipal governments, rather than to engage in commercial activities;
- c. an officer or employee of Yale First Nation or a Yale First Nation Institution;
- d. an election official within the meaning of a Yale First Nation Law; or

- e. a volunteer who participates in the delivery of programs or services by Yale First Nation, a Yale First Nation Institution, or a body referred to in b. under the supervision of an officer or employee of Yale First Nation, a Yale First Nation Institution, or a body referred to in b.;

**“Yale First Nation Right to Gather Plants”** means the right of Yale First Nation to gather Plants described in 7.7.1;

**“Yale First Nation Right to Harvest Fish”** means the right of Yale First Nation to harvest Fish and Aquatic Plants for Domestic Purposes described in 8.1.1;

**“Yale First Nation Right to Harvest Migratory Birds”** means the right of Yale First Nation to harvest Migratory Birds described in 11.1.1;

**“Yale First Nation Right to Harvest Wildlife”** means the right of Yale First Nation to harvest Wildlife described in 10.1.1;

**“Yale First Nation Road”** means any road, including a road allowance, that forms part of Yale First Nation Land;

**“Yale First Nation Water Reservation”** means the water reservation described in 9.3; and

**“Yale Garry Oak Ecological Reserve”** means the “Yale Garry Oak Ecological Reserve” established or continued under the *Ecological Reserve Act*.



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## CHAPTER 2 GENERAL PROVISIONS

### 2.1 NATURE OF THIS AGREEMENT

- 2.1.1 This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 2.1.2 This Agreement is binding on and can be relied on by the Parties.
- 2.1.3 This Agreement is binding on and can be relied on by all persons.
- 2.1.4 Ratification of this Agreement by the Parties in accordance with Chapter 26 Ratification is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement is of no force or effect.
- 2.1.5 Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that Settlement Legislation provide that this Agreement is approved, given effect, declared valid, and has the force of law.

### 2.2 REPRESENTATION AND WARRANTY

- 2.2.1 Yale First Nation represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, Yale First Nation has the authority to enter, and it enters, into this Agreement on behalf of all Yale First Nation Individuals who, through Yale First Nation, have or may exercise any aboriginal rights, including aboriginal title, in Canada, or who may make any claim in respect of those rights.
- 2.2.2 Canada and British Columbia represent and warrant to Yale First 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.

### 2.3 CONSTITUTION OF CANADA

- 2.3.1 This Agreement does not alter the Constitution of Canada, including:
- a. the distribution of powers between Canada and British Columbia;
  - b. the identity of Yale First Nation as aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.

- 2.3.2 The *Canadian Charter of Rights and Freedoms* applies to Yale First Nation Government in respect of all matters within its authority.
- 2.3.3 There are no “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for Yale First Nation, and there are no Indian Reserves for the use and benefit of Yale First Nation and, for greater certainty, Yale First Nation Land is not “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867*, and is not an Indian Reserve.

## 2.4 CERTAINTY

### **Full and Final Settlement**

- 2.4.1 This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of Yale First Nation.

### **Section 35 Rights of Yale First Nation**

- 2.4.2 This Agreement exhaustively sets out the Section 35 Rights of Yale First Nation, their attributes, 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, modified as a result of this Agreement, in Canada, of Yale First Nation in and to Yale First Nation Land and other lands and resources in Canada;
  - b. the jurisdictions, authorities and rights of Yale First Nation Government; and
  - c. the other Section 35 Rights of Yale First Nation.

### **Modification**

- 2.4.3 Notwithstanding the common law, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of Yale First 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.
- 2.4.4 For greater certainty, the aboriginal title of Yale First Nation anywhere that it existed in Canada before the Effective Date, including its attributes and geographic extent, is modified and continues as the estates in fee simple to those areas identified in this Agreement as Yale First Nation Land.

**Purpose of Modification**

- 2.4.5 The purpose of the modification referred to in 2.4.3 is to ensure that as of the Effective Date:
- a. Yale First Nation has, and can exercise, the Section 35 Rights of Yale First Nation set out in this Agreement, including their attributes, geographic extent, and the limitations of those rights, to which the Parties have agreed;
  - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner that is consistent with this Agreement; and
  - c. Canada, British Columbia and all other persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, of Yale First Nation to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, the Section 35 Rights of Yale First Nation set out in this Agreement.

**Release of Past Claims**

- 2.4.6 Yale First Nation releases Canada, British Columbia and all other persons from all suits, actions, claims, proceedings or demands of whatever kind, whether known or unknown, that Yale First 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, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Yale First Nation.

**Indemnities**

- 2.4.7 Yale First Nation will indemnify and forever save harmless Canada or British Columbia, as the case may be, from any and all damages, costs excluding fees and disbursements of solicitors and other professional advisors, losses or liabilities, that Canada or British Columbia, respectively, may suffer or incur in connection with or as result of any suit, action, claim, proceeding or demand initiated or made before or after the Effective Date relating to or arising from:
- a. the existence in Canada of an aboriginal right, including aboriginal title, of Yale First Nation, that is determined to be other than, or different in attributes or geographical extent from, the Section 35 Rights of Yale First Nation set out in this Agreement; or

- b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Yale First Nation.
- 2.4.8 A Party who is the subject of a suit, action, claim, proceeding or demand 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 suit, action, claim, proceeding or demand; and
  - b. will not settle or compromise the suit, action, claim, proceeding or demand except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

### **Specific Claims**

- 2.4.9 Notwithstanding any other provision of this Agreement, nothing in this Agreement precludes Yale First Nation from pursuing claims in accordance with Canada's Specific Claims Policy.
- 2.4.10 For greater certainty, claims referred to in 2.4.9 will not result in any land being declared to be, or being set aside as, "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for Yale First Nation, or an Indian Reserve for the use and benefit of Yale First Nation.

## **2.5 APPLICATION OF FEDERAL AND PROVINCIAL LAW**

- 2.5.1 Federal and Provincial Law apply to Yale First Nation, Yale First Nation Members, Yale First Nation Land, Yale First Nation Government, Yale First Nation Public Institutions and Yale First Nation Corporations.
- 2.5.2 Canada will recommend to Parliament that Federal Settlement Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to Yale First Nation, Yale First Nation Members, Yale First Nation Land, Yale First Nation Government, Yale First Nation Public Institutions or Yale First Nation Corporations, that Provincial Law will, subject to the Federal Settlement Legislation and any other Act of Parliament, apply in accordance with this Agreement to Yale First Nation, Yale First Nation Members, Yale First Nation Land, Yale First Nation Government, Yale First Nation Public Institutions, and Yale First Nation Corporations, as the case may be.



**2.6 RELATIONSHIP OF FEDERAL LAW, PROVINCIAL LAW AND YALE FIRST NATION LAW**

- 2.6.1 Except as otherwise provided in this Agreement, Yale First Nation Law does not apply to Canada or British Columbia.
- 2.6.2 Notwithstanding any other rule of priority in this Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance, prevails to the extent of a Conflict with Yale First Nation Law.
- 2.6.3 For greater certainty, the law-making authority of Yale First Nation Government does not include criminal law, criminal procedure, official languages of Canada, Intellectual Property, aeronautics, navigation and shipping, or labour relations and working conditions.
- 2.6.4 Notwithstanding any other rule of priority in this Agreement, Federal or Provincial Law prevails to the extent of a Conflict with a Yale First Nation Law that has an incidental impact on a subject matter for which Yale First Nation:
- a. has no authority to make laws as set out in this Agreement; or
  - b. has authority to make laws but in respect of which Federal or Provincial Law prevails in the event of a Conflict.
- 2.6.5 Notwithstanding any other rule of priority in this Agreement, Federal or Provincial Law prevails to the extent of a Conflict with a Yale First Nation Law that has a double aspect with a subject matter for which Yale First Nation:
- a. has no authority to make laws as set out in this Agreement; or
  - b. has authority to make laws but in respect of which Federal or Provincial Law prevails in the event of a Conflict.

**2.7 RELATIONSHIP OF THIS AGREEMENT AND FEDERAL LAW, PROVINCIAL LAW AND YALE FIRST NATION LAW**

- 2.7.1 Any Yale First Nation Law that is inconsistent with this Agreement is of no force or effect to the extent of the inconsistency.
- 2.7.2 This Agreement prevails to the extent of an inconsistency with Federal or Provincial Law.

2.7.3 Federal Settlement Legislation prevails over other Federal Law to the extent of a Conflict, and Provincial Settlement Legislation prevails over other Provincial Law to the extent of a Conflict.

2.7.4 Any licence, permit or other authorization 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 will not be part of this Agreement, and this Agreement prevails to the extent of an inconsistency with the licence, permit or other authorization.

## **2.8 INTERNATIONAL LEGAL OBLIGATIONS**

2.8.1 After the Effective Date, before consenting to be bound by a new International Treaty which would give rise to a new International Legal Obligation that may adversely affect a right of Yale First Nation under this Agreement, Canada will Consult with Yale First Nation with respect to the International Treaty, either separately or through a forum that Canada determines is appropriate.

2.8.2 Where Canada informs Yale First Nation that it considers that a Yale First Nation Law or other exercise of power of Yale First Nation Government causes Canada to be unable to perform an International Legal Obligation, Yale First Nation and Canada will discuss remedial measures to enable Canada to perform the International Legal Obligation.

2.8.3 Subject to 2.8.4, Yale First Nation will remedy the Yale First Nation Law or other exercise of power of Yale First Nation Government to the extent necessary to enable Canada to perform the International Legal Obligation.

2.8.4 Subject to 2.8.6, where Canada and Yale First Nation disagree over whether a Yale First Nation Law or other exercise of power of Yale First Nation Government causes Canada to be unable to perform an International Legal Obligation, the dispute will be resolved pursuant to Chapter 24 Dispute Resolution, and will be finally determined by arbitration, and:

- a. if the arbitrator, having taken into account all relevant considerations, including any reservations and exceptions taken by Canada, determines that the Yale First Nation Law or other exercise of power of Yale First Nation Government does not cause Canada to be unable to perform the International Legal Obligation, or that the remedial measures are sufficient to enable Canada to perform the International Legal Obligation, Canada will not take any further action for this reason aimed at changing the Yale First Nation Law or other exercise of power of Yale First Nation Government; or
- b. if the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines

that the Yale First Nation Law or other exercise of power of Yale First Nation Government causes Canada to be unable to perform the International Legal Obligation, or that the remedial measures are insufficient to enable Canada to perform the International Legal Obligation, Yale First Nation will remedy the Yale First Nation Law or other exercise of power to the extent necessary to enable Canada to perform the International Legal Obligation.

- 2.8.5 Canada will Consult with Yale First Nation with respect to the development of positions taken by Canada before an International Tribunal where a Yale First Nation Law, or other exercise of power of Yale First Nation Government has given rise to an issue concerning the performance of an International Legal Obligation of Canada, and Canada's positions before the International Tribunal will take into account the commitment of the Parties to the integrity of this Agreement.
- 2.8.6 If there is a finding of an International Tribunal of non-performance of an International Legal Obligation of Canada, attributable to a Yale First Nation Law or other exercise of power of Yale First Nation Government, Yale First Nation will, at the request of Canada, remedy the Yale First Nation Law or other exercise of power of Yale First Nation Government to enable Canada to perform the International Legal Obligation consistent with the compliance of Canada, including British Columbia, as applicable, with respect to that International Legal Obligation.

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

- 2.9.1 Yale First Nation Members 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.
- 2.9.2 Subject to 2.9.3, nothing in this Agreement affects the ability of Yale First Nation, Yale First Nation Members, Yale First Nation Government, Yale First Nation Public Institutions, or Yale First Nation Corporations to participate in, or benefit from, programs established by Canada or British Columbia for aboriginal people, registered Indians or other Indians, in accordance with criteria established for those programs from time to time.
- 2.9.3 Yale First Nation Members are eligible to participate in programs established by Canada or British Columbia, and to receive services from Canada or British Columbia, in accordance with criteria established for those programs or services from time to time, to the extent that Yale First Nation has not assumed responsibility for those programs or services under a Fiscal Financing Agreement or other funding agreement.

**2.10 APPLICATION OF THE *INDIAN ACT***

2.10.1 Subject to Chapter 22 *Indian Act* Transition and 21.5, the *Indian Act* has no application to Yale First Nation, Yale First Nation Members, Yale First Nation Government, Yale First Nation Public Institutions, or Yale First Nation Corporations, except for the purpose of determining whether an individual is an “Indian”.

**2.11 JUDICIAL DETERMINATION IN RESPECT OF VALIDITY**

2.11.1 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.

2.11.2 No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.

2.11.3 A breach of this Agreement by a Party will not relieve any Party from its obligations under this Agreement.

**2.12 OTHER ABORIGINAL PEOPLE**

2.12.1 Nothing in this Agreement affects, recognizes or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than Yale First Nation.

2.12.2 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 Yale First Nation, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of this Agreement:

- a. that provision will operate and have effect to the extent it does not adversely affect that right; and
- b. if the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend this Agreement to remedy or replace that provision.

2.12.3 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 any other aboriginal people and that treaty or land claims agreement adversely affects the Section 35 Rights of Yale First Nation as set out in this Agreement:

- a. Canada or British Columbia, or both, as the case may be, will provide Yale First Nation with additional or replacement rights, or other appropriate remedies; and
- b. at the request of Yale First Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights, or other appropriate remedies.

## **2.13 CONSULTATION**

2.13.1 In respect of a Section 35 Right of Yale First Nation, the following is an exhaustive list of the consultation obligations of Canada and British Columbia:

- a. as provided in this Agreement;
- b. as may be provided in federal or provincial legislation;
- c. as may be provided in an agreement with Yale First Nation other than this Agreement; and
- d. as may be required under the common law in relation to an infringement of that right.

2.13.2 For greater certainty, the exercise of a power or authority, or an action taken, by Canada or British Columbia that is consistent with or in accordance with this Agreement is not an infringement of the Section 35 Rights of Yale First Nation and will not be subject to any obligation to consult except as set out in 2.13.1a, 2.13.1b or 2.13.1c.

## **2.14 INFORMATION AND PRIVACY**

2.14.1 For the purposes of federal and provincial access to information and privacy legislation, information that Yale First Nation provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.

2.14.2 If Yale First Nation 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 Yale First Nation information that is only available to a particular province or particular provinces or that is not available to any provinces.
- 2.14.3 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 in accordance with any applicable legislation, including federal and provincial access to information and privacy legislation.
- 2.14.4 Canada or British Columbia may provide information to Yale First Nation in confidence, if Yale First Nation Government has made a law or Yale First Nation 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.
- 2.14.5 Notwithstanding any other provision of this Agreement:
- a. Canada and British Columbia are not required to disclose any information that they are required or authorized to withhold under any Federal or Provincial Law, including sections 37 to 39 of the *Canada Evidence Act*;
  - b. if Federal or Provincial Law 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 at law, including a privilege at law.

## **2.15 OBLIGATION TO NEGOTIATE**

- 2.15.1 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.
- 2.15.2 Where this Agreement provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in Chapter 24 Dispute Resolution, and, for greater certainty, none of the Parties are obliged to proceed to arbitration under 24.8 unless they are required to do so under 24.8.1.

## **2.16 OTHER AGREEMENTS**

- 2.16.1 No agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by this Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by this Agreement, is:

- a. part of this Agreement; or
- b. a treaty or land claims agreement, or creates, recognizes or affirms aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

## **2.17 ENTIRE AGREEMENT**

- 2.17.1 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.
- 2.17.2 The Schedules and Appendices form part of this Agreement.

## **2.18 INTERPRETATION**

- 2.18.1 The provisions in this Chapter prevail over the provisions in the other Chapters to the extent of any inconsistency.
- 2.18.2 There is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.
- 2.18.3 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 invalid,the reference to British Columbia will be deemed a reference to Canada.
- 2.18.4 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 invalid,the reference to Canada will be deemed a reference to British Columbia.

- 2.18.5 Unless the context requires otherwise, in this Agreement:
- a. “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. “including” means “including, but not limited to”;
  - c. the use of the singular includes the plural, and the use of the plural includes the singular;
  - d. “provincial” refers to the province of British Columbia; and
  - e. “harvest” includes an attempt to harvest and “gather” includes an attempt to gather.
- 2.18.6 In this Agreement:
- a. 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;
  - b. a reference to a statute or a regulation includes every amendment to it, any laws enacted in substitution of it or in replacement of it and every regulation made under that statute; and
  - c. where a word is defined in this Agreement or described in 2.18.5, other parts of speech and grammatical forms of the same word have corresponding meanings.
- 2.18.7 Notwithstanding 2.1.3, this Agreement is not intended to bind provinces, other than British Columbia, or territories, on matters within their jurisdiction without their consent.

## **2.19 OFFICIAL LANGUAGES**

- 2.19.1 For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to this Agreement, including the execution of this Agreement.

## **2.20 NO IMPLIED WAIVER**

- 2.20.1 A provision of this Agreement, the performance by a Party of an obligation under this Agreement, or a default 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.

- 2.20.2 No written waiver of a provision of this Agreement, or performance by a Party of an obligation under this Agreement or of default by a Party of an obligation under this Agreement is a waiver of any other provision, obligation or subsequent default.

## **2.21 ASSIGNMENT**

- 2.21.1 Unless the Parties otherwise agree, this Agreement may not be assigned, either in whole or in part, by any Party.

## **2.22 ENUREMENT**

- 2.22.1 This Agreement will enure to the benefit of and be binding on the Parties and respective permitted assigns.

## **2.23 DEPOSIT OF AGREEMENT**

- 2.23.1 The Parties will deposit a copy of this Agreement and any amendments to this Agreement, including any instruments giving effect to an amendment, in the following locations:

- a. by Canada in:
  - i. the Library of Parliament; and
  - ii. the library of the Department of Aboriginal Affairs and Northern Development in the National Capital Region;
- b. by British Columbia in:
  - i. the Legislative Library of British Columbia; and
  - ii. the applicable offices of the Registrar;
- c. by Yale First Nation in its main office; and
- d. any other locations agreed to by the Parties.

## **2.24 NOTICE**

- 2.24.1 In 2.24.2 to 2.24.6, “Communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.

- 2.24.2 Except as otherwise provided in this Agreement, a Communication must be in writing and be:
- a. delivered personally or by courier;
  - b. transmitted by fax or email; or
  - c. delivered by any method for which confirmation of delivery is provided.
- 2.24.3 A Communication is 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 or email 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 delivered by any method for which confirmation of delivery is provided, 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.
- 2.24.4 In addition to 2.24.2 and 2.24.3, the Parties may agree to give, make, or deliver a Communication by means other than those provided in 2.24.2.
- 2.24.5 The Parties will provide to each other addresses for delivery of Communications under this Agreement, and will deliver a Communication to the address provided by each Party.
- 2.24.6 If no other address for delivery of a particular Communication has been provided by a Party, a Communication will be delivered to the address, or transmitted to the fax number, of the intended recipient as set out below:

For: Canada  
Attention: Minister of Aboriginal 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 Relations and Reconciliation  
Room 310, Parliament Buildings  
PO Box 9051 Stn Prov Govt  
Victoria, British Columbia  
V8W 9E2  
Fax Number: (250) 953-4856

For: Yale First Nation  
Attention: Chief and Council  
PO Box 1869, 31300A Yates Street  
Hope, British Columbia  
VOX 1L0  
Fax Number: (604) 863-2467



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## CHAPTER 3 GOVERNANCE

### 3.1 YALE FIRST NATION SELF-GOVERNMENT

- 3.1.1 The Parties acknowledge that self-government and governance for Yale First Nation will be achieved through the exercise of the Section 35 Rights of Yale First Nation set out in this Agreement.
- 3.1.2 Yale First Nation Government, as provided for under the Yale First Nation Constitution and this Agreement, is the government of Yale First Nation.
- 3.1.3 The rights, powers, privileges and authorities of Yale First Nation will be exercised in accordance with:
- a. this Agreement; and
  - b. Yale First Nation Law, including the Yale First Nation Constitution.
- 3.1.4 Yale First Nation will act through Yale First Nation Government in exercising its rights, powers, privileges and authorities, and in carrying out its duties, functions and obligations.

### 3.2 LEGAL STATUS AND CAPACITY

- 3.2.1 Yale First Nation is a legal entity with the capacity, rights, powers, and privileges of a natural person, including the ability to:
- a. enter into contracts and agreements;
  - b. acquire and hold property or an interest in property, and sell or otherwise dispose of that property or interest;
  - c. raise, spend, invest, and borrow money;
  - d. sue and be sued; and
  - e. do other things ancillary to the exercise of its rights, powers, and privileges.

### 3.3 YALE FIRST NATION CONSTITUTION

- 3.3.1 Yale First Nation will have a Yale First Nation Constitution, consistent with this Agreement, which will provide:

- 
- a. for a democratic Yale First Nation Government, including its duties, composition, and membership;
  - b. that all members of Yale First Nation Government will be elected;
  - c. that Yale First Nation Government is democratically accountable with elections at least every five years;
  - d. for a system of financial administration with standards comparable to those generally accepted for governments in Canada, through which Yale First Nation Government will be financially accountable to Yale First Nation Members;
  - e. for conflict of interest rules comparable to those generally accepted for governments in Canada;
  - f. for recognition and protection of rights and freedoms of Yale First Nation Members;
  - g. for processes for the enactment of laws by Yale First Nation Government;
  - h. that a Yale First Nation Law that is inconsistent with the Yale First Nation Constitution is, to the extent of the inconsistency, of no force and effect;
  - i. for the establishment of Yale First Nation Public Institutions;
  - j. for conditions under which Yale First Nation may dispose of land or interests in lands;
  - k. for a transitional Yale First Nation Government from the Effective Date until the first elected Yale First Nation Government takes office;
  - l. for amendment of the Yale First Nation Constitution;
  - m. for a process for the removal of elected members; and
  - n. for other provisions.

### **3.4 YALE FIRST NATION GOVERNMENT STRUCTURE**

- 3.4.1 Yale First Nation Government consists of elected members as set out in the Yale First Nation Constitution.

### **3.5 APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS**

- 3.5.1 Yale First Nation will establish processes for appeal or review of administrative decisions made by Yale First Nation Institutions and if those processes provide for a right of appeal to a court, the Supreme Court of British Columbia has jurisdiction to hear those appeals.
- 3.5.2 The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by Yale First Nation Institutions under Yale First Nation Law, but no application for judicial review of those decisions made may be brought until all procedures for appeal or review provided by Yale First Nation and applicable to that decision have been exhausted.
- 3.5.3 The *Judicial Review Procedure Act* applies to an application for judicial review under 3.5.2 as if the Yale First Nation Law were an “enactment” within the meaning of that Act.

### **3.6 REGISTRY OF LAWS**

- 3.6.1 Yale First Nation will:
- a. maintain a public registry of Yale First Nation Laws in the English language and, at the discretion of Yale First Nation, in the Puchil dialect of the Nlaka’pamux (Thompson) language, the English version of which is authoritative;
  - b. provide Canada and British Columbia with copies of Yale First Nation Laws as soon as practicable after they are enacted; and
  - c. establish procedures for the coming into force and the publication of Yale First Nation Laws.

### **3.7 PARTICIPATION OF NON-MEMBERS**

- 3.7.1 Yale First Nation Institutions will consult with Non-Members in respect of Yale First Nation Institution decisions that directly and significantly affect those Non -Members.
- 3.7.2 For the purposes of 3.7.1, a Yale First Nation Institution must provide:
- a. notice of the matter to be decided;
  - b. sufficient information with respect to the matter to permit the Non-Members to prepare their views on the matter;

- 
- c. a reasonable period of time to permit the Non-Members to prepare their views on the matter;
  - d. an opportunity for the Non-Members to present their views on the matter; and
  - e. a full and fair consideration of any views on the matter so presented by the Non-Members.
- 3.7.3 In addition to the requirement to consult under 3.7.1, where the number of Non-Members exceeds ten percent of the total number of individuals ordinarily resident on Yale First Nation Land, Yale First Nation will provide Non-Members with the opportunity to participate in the decision-making processes of a Yale First Nation Public Institution if the activities of that Yale First Nation Public Institution directly and significantly affect Non-Members.
- 3.7.4 The means of participation under 3.7.3 will include:
- a. an opportunity to vote for and stand for election as a member of the Yale First Nation Public Institution with the ability to participate in discussions and vote on matters that directly and significantly affect Non-Members;
  - b. the appointment of at least one individual, selected by Non-Members, as a member of the Yale First Nation Public Institution with the ability to participate in discussions and vote on matters that directly and significantly affect Non-Members; or
  - c. other comparable measures.
- 3.7.5 Notwithstanding 3.7.4, Yale First Nation may provide that a majority of the members of the Yale First Nation Public Institution must be Yale First Nation Members.
- 3.7.6 Yale First Nation will establish the means of participation under 3.7.3 by Yale First Nation Law at the same time that it establishes a Yale First Nation Public Institution whose activities may directly and significantly affect Non-Members.
- 3.7.7 Yale First Nation will provide Non-Members with access to the appeal and review procedures established under 3.5.1 in respect of administrative decisions that directly and significantly affect Non-Members.



### **3.8 TRANSITIONAL PROVISIONS**

#### **Yale First Nation Government**

- 3.8.1 The Chief Councillor and Councillors of the Yale Band on the day immediately before the Effective Date are the elected members of Yale First Nation Government from the Effective Date until the members elected under 3.8.2 take office.
- 3.8.2 The first election for the members of the Yale First Nation Government will be initiated no later than six months after the Effective Date and the members elected in that election will take office no later than one year after the Effective Date.

#### **Yale First Nation Law**

- 3.8.3 Before Yale First Nation Government brings into effect a Yale First Nation Law in respect of:
- a. adoption;
  - b. Child Protection Services;
  - c. health services;
  - d. family and social services;
  - e. Child Care; or
  - f. kindergarten to grade 12 education,

Yale First Nation Government will give at least six months notice to Canada and British Columbia of its intention to exercise the law making authority.

- 3.8.4 Notwithstanding 3.8.3, after giving the notice required under 3.8.3, Yale First Nation Government may bring the Yale First Nation Law into effect before the expiration of the six month notice period required under 3.8.3 if Canada and British Columbia agree.
- 3.8.5 At the written request of any Party made within three months of receiving notice under 3.8.3, the relevant Parties will discuss:
- a. options to address the interests of Yale First Nation through methods other than the exercise of law-making authority;

- b. immunity of individuals providing services or exercising authority under Yale First Nation Law;
  - c. any transfer of cases and related documentation from federal or provincial institutions to Yale First Nation Institutions, including any confidentiality and privacy considerations;
  - d. any transfer of assets from federal or provincial institutions to Yale First Nation Institutions;
  - e. any appropriate amendments to Federal or Provincial Law, including amendments to address duplicate licensing requirements; and
  - f. other matters agreed to by the Parties.
- 3.8.6 The Parties may enter into agreements regarding any of the matters set out in 3.8.5 but an agreement under this paragraph is not a condition precedent to the exercise of law-making authority by Yale First Nation Government, and such authority may be exercised immediately following the six-month notice period required under 3.8.3.

### **3.9 AMENDMENTS TO PROVINCIAL LEGISLATION**

- 3.9.1 Subject to 3.9.7, or an agreement under 3.9.4, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council, British Columbia will notify Yale First Nation if:
- a. this Agreement provides for Yale First Nation Government law-making authority in respect of the subject matter of the legislation or regulation;
  - b. the legislation or regulation may affect the protections, immunities, limitations in respect of liability, remedies over, or rights referred to in 3.38.1 and 3.38.2; or
  - c. the legislation or regulation may affect:
    - i. the rights, powers, obligations; or
    - ii. the protections, immunities or limitations in respect of liability, referred to in 3.26.1,except where this cannot be done for reasons of emergency or confidentiality.

- 3.9.2 If British Columbia does not notify Yale First Nation under 3.9.1 for reasons of emergency or confidentiality, British Columbia will notify Yale First Nation that the legislation has been introduced in the Legislative Assembly, or that the regulation has been deposited with the Registrar of Regulations.
- 3.9.3 Notifications under 3.9.1 and 3.9.2 will include:
- a. the nature and purpose of the proposed legislation or regulation; and
  - b. the date the proposed legislation or regulation is anticipated to take effect, if it has not already done so.
- 3.9.4 Yale First Nation and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under 3.9.1 through 3.9.3 and 3.9.5.
- 3.9.5 Subject to 3.9.6 and 3.9.7, or an agreement under 3.9.4, if, within 30 days after notice is given under 3.9.1 or 3.9.2 or by agreement under 3.9.4, Yale First Nation makes a written request to British Columbia, then British Columbia and Yale First Nation will discuss the effect of the legislation or regulation, if any, on:
- a. a Yale First Nation Law; or
  - b. a matter referred to in 3.9.1b or 3.9.1c.
- 3.9.6 If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in 3.9.5:
- a. Yale First Nation will participate in that process; and
  - b. the process is deemed to satisfy British Columbia's obligation for discussion in respect of a particular matter under 3.9.5.
- 3.9.7 If Yale First Nation is a member of a representative body and, with the consent of Yale First Nation, British Columbia and that body enter into an agreement providing for consultation in respect of matters under 3.9.1, 3.9.2, or 3.9.5, then consultations with that body in respect of a particular matter are deemed to satisfy British Columbia's obligations for notification under 3.9.1 and 3.9.2 and discussion under 3.9.5.
- 3.9.8 Unless British Columbia agrees otherwise, Yale First Nation will retain the information provided under 3.9.1 through 3.9.7 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative

Assembly or a regulation is deposited with the Registrar of Regulations, as applicable.

3.9.9 The Parties acknowledge that nothing in 3.9.1 through 3.9.7 is intended to interfere with British Columbia's legislative process.

3.9.10 Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in 3.9.1 affects the validity of a Yale First Nation Law, that Yale First Nation Law is deemed to be valid for a period of six months after the coming into force of the provincial legislation or regulation.

### **3.10 DELEGATION**

3.10.1 Any law-making authority of Yale First Nation Government under this Agreement may be delegated by a Yale First Nation Law to:

- a. a Yale First Nation Public Institution;
- b. another First Nation Government in British Columbia;
- c. a public institution established by a First Nation Government in British Columbia;
- d. British Columbia;
- e. Canada;
- f. a Local Government; or
- g. a legal entity as agreed to by the Parties,

if the delegation and the exercise of any law-making authority is in accordance with this Agreement and the Yale First Nation Constitution.

3.10.2 Any authority of Yale First Nation under this Agreement other than a law-making authority may be delegated by a Yale First Nation Law to:

- a. any body set out in 3.10.1; or
- b. a legal entity in Canada,

if the delegation and the exercise of any delegated authority is in accordance with this Agreement and the Yale First Nation Constitution.

- 3.10.3 Any delegation under 3.10.1 or 3.10.2 requires the written consent of the delegate.
- 3.10.4 Yale First Nation may enter into agreements to receive authorities, including law-making authority, by delegation.

### **YALE FIRST NATION LAW-MAKING AUTHORITIES**

## **3.11 YALE FIRST NATION GOVERNMENT**

- 3.11.1 Yale First Nation Government may make laws in respect of the election, administration, management and operation of Yale First Nation Government including:
- a. the establishment of Yale First Nation Public Institutions, including their respective powers, duties, composition, and membership, but any incorporation of a Yale First Nation Public Institution must be under Federal or Provincial Law;
  - b. the powers, duties, responsibilities, remuneration, and indemnification of members, officials, and appointees of Yale First Nation Institutions;
  - c. the establishment of Yale First Nation Corporations, but the registration or incorporation of Yale First Nation Corporations must be under Federal or Provincial Law;
  - d. financial administration of Yale First Nation and Yale First Nation Institutions; and
  - e. elections, by-elections, and referenda.
- 3.11.2 Yale First Nation Government will make laws that provide for reasonable access to information in the custody or control of a Yale First Nation Institution by:
- a. Yale First Nation Members;
  - b. Non-Members; and
  - c. persons who receive services and programs from a Yale First Nation Institution.
- 3.11.3 Yale First Nation Law under 3.11.1 or 3.11.2 prevails to the extent of a Conflict with Federal or Provincial Law, except Federal or Provincial Law in relation to the protection of personal information prevails to the extent of a Conflict with Yale First Nation Law under 3.11.1 or 3.11.2.

**3.12 YALE FIRST NATION MEMBERSHIP**

- 3.12.1 Yale First Nation Government may make laws in respect of Yale First Nation membership.
- 3.12.2 Yale First Nation Law under 3.12.1 prevails to the extent of a Conflict with Federal or Provincial Law.

**3.13 YALE FIRST NATION ASSETS**

- 3.13.1 Yale First Nation Government may make laws in respect of the use, possession and management of:
- a. assets located off Yale First Nation Land; and
  - b. assets located on Yale First Nation Land,
- of Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution.
- 3.13.2 For greater certainty, the law-making authority under 3.13.1 does not include the authority to make laws in respect of creditor's rights and remedies.
- 3.13.3 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.13.1a.
- 3.13.4 Yale First Nation Law under 3.13.1b prevails to the extent of a Conflict with Federal or Provincial Law.

**3.14 ADOPTION**

- 3.14.1 For the purposes of this Chapter, all relevant factors must be considered in determining a Child's best interest, including those factors that must be considered under the *Adoption Act*.
- 3.14.2 Yale First Nation Government may make laws in respect of adoptions in British Columbia for:
- a. Yale First Nation Children; and
  - b. Children who reside on Yale First Nation Land to be adopted by Yale First Nation Members.
- 3.14.3 Yale First Nation Law under 3.14.2 will:

- 
- a. expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place; and
  - b. require the consent of individuals whose consent to a Child's adoption is required under Provincial Law, subject to the power of the court to dispense with such consent under Provincial Law.
- 3.14.4 If Yale First Nation Government makes a law under 3.14.2, Yale First Nation will:
- a. develop operational and practice standards that promote the best interests of the Child; and
  - b. provide British Columbia and Canada with a record of all adoptions occurring under Yale First Nation Law.
- 3.14.5 The Parties will negotiate and attempt to reach agreement on the information that will be included in the record under 3.14.4b.
- 3.14.6 Yale First Nation Law under 3.14.2 applies to the adoption of a Yale First Nation Child residing off Yale First Nation Land, or a Child residing on Yale First Land who is not a Yale First Nation Child, if:
- a. the Child has not been placed for adoption under the *Adoption Act*, and all of the following consent to the application of Yale First Nation Law to the adoption:
    - i. the parents;
    - ii. the Child, if the Child has reached the age where the Child's consent to adoption is required under the *Adoption Act*; and
    - iii. the guardian of the Child, if the Child is not under the guardianship of a Director;
  - b. a Director designated under the *Child, Family and Community Service Act* is guardian of the Child, and the Director consents; or
  - c. a court dispenses with the requirement for the consent referred to in 3.14.6a, in accordance with the criteria that would be used by that court in an application to dispense with the requirement for a parent or guardian's consent to an adoption under Provincial Law.
- 3.14.7 If a Director designated under the *Child, Family and Community Service Act* becomes the guardian of a Yale First Nation Child, the Director will:

- 
- a. provide notice to Yale First Nation that the Director is the guardian of the Child;
  - b. provide notice to Yale First Nation when the Director applies for a continuing custody order;
  - c. provide Yale First Nation with a copy of the continuing custody order once the order is made and make reasonable efforts to involve Yale First Nation in planning for the Child;
  - d. if requested by Yale First Nation, consent to the application of Yale First Nation Law to the adoption of that Child, provided that it is in the best interests of the Child; and
  - e. in determining the best interests of the Child under 3.14.7d, the Director will consider, if not set out in the *Adoption Act*, the importance of preserving the Child's cultural identity.
- 3.14.8 Yale First Nation Law under 3.14.2 prevails to the extent of a Conflict with Federal or Provincial Law.
- 3.14.9 Before placing a Yale First Nation Child for adoption, an Adoption Agency must make reasonable efforts to obtain information about the Child's cultural identity and discuss the Child's placement with a designated representative of Yale First Nation.
- 3.14.10 3.14.9 does not apply if:
- a. the Child has reached the age where the Child's consent to adoption is required under the *Adoption Act* and the Child objects to the discussion taking place; or
  - b. the birth parent or other guardian of the Child who requested that the Child be placed for adoption objects to the discussion taking place.
- 3.15 CHILD CUSTODY**
- 3.15.1 Yale First Nation has standing in any judicial proceedings in British Columbia in which custody of a Yale First Nation Child is in dispute and the court will take judicial notice of Yale First Nation Law and consider any evidence or representations in respect of Yale First Nation Law or customs in addition to any other matters it is required by law to consider.



3.15.2 The participation of Yale First Nation in proceedings referred to in 3.15.1 will be in accordance with the applicable rules of court and will not affect the ability of the court to control its process.

### **3.16 CHILD PROTECTION SERVICES**

3.16.1 Yale First Nation Government may make laws in respect of Child Protection Services for Yale First Nation Families resident on Yale First Nation Land.

3.16.2 Yale First Nation Laws under 3.16.1 will:

- a. expressly provide that those laws will be interpreted and administered such that the Safety and Well-Being of Children are the paramount considerations; and
- b. not preclude the reporting under Provincial Law of a Child in Need of Protection.

3.16.3 If Yale First Nation Government makes laws under 3.16.1, Yale First Nation will:

- a. develop operational and practice standards intended to ensure the Safety and Well-Being of Children and families;
- b. participate in British Columbia's information management systems, or establish an information management system that is compatible with British Columbia's information systems, concerning Children in Need of Protection and Children in Care;
- c. allow for mutual sharing of information concerning Children in Need of Protection and Children in Care with British Columbia; and
- d. establish and maintain a system for the management, storage and disposal of Child Protection Services records and the safeguarding of personal Child Protection Services information.

3.16.4 Notwithstanding any laws made under 3.16.1, if there is an emergency in which a Child of a Yale First Nation Family resident on Yale First Nation Land is in need of protection, and Yale First Nation has not responded or is unable to respond in a timely manner, British Columbia may act to protect the Child and, in those circumstances, unless British Columbia and Yale First Nation otherwise agree in writing, British Columbia, as appropriate, will refer the matter to Yale First Nation after the emergency.

3.16.5 Yale First Nation Law under 3.16.1 prevails to the extent of a Conflict with Federal or Provincial Law.

- 3.16.6 At the request of Yale First Nation or British Columbia, Yale First Nation and British Columbia will negotiate and attempt to reach agreement in respect of Child Protection Services for:
- a. Yale First Nation Children who reside in British Columbia on or off Yale First Nation Land; or
  - b. Children who reside on Yale First Nation Land who are not Yale First Nation Children.

- 3.16.7 Where the Director becomes the guardian of a Yale First Nation Child, the Director will make reasonable efforts to include Yale First Nation in planning for that Child, including adoption planning.

### **3.17 ABORIGINAL HEALERS**

- 3.17.1 Yale First Nation Government may make laws in respect of the authorization of individuals to practice as aboriginal healers on Yale First Nation Land.

- 3.17.2 The authority to make laws under 3.17.1 does not include the authority to regulate:

- a. medical or health practices that, or practitioners who, require licensing or certification under Federal or Provincial Law; or
- b. products or substances that are regulated under Federal or Provincial Law.

- 3.17.3 Yale First Nation Law under 3.17.1 will establish standards:

- a. in respect of competence, ethics, and quality of practice that are reasonably required to protect the public; and
- b. that are reasonably required to safeguard personal client information.

- 3.17.4 Yale First Nation Law under 3.17.1 prevails to the extent of a Conflict with Federal or Provincial Law.

### **3.18 HEALTH**

- 3.18.1 Yale First Nation Government may make laws in respect of health services, including public health services, provided by a Yale First Nation Institution on Yale First Nation Land.

- 3.18.2 Yale First Nation Law under 3.18.1 will take into account the protection, improvement, and promotion of public and individual health and safety.
- 3.18.3 At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration of federal and provincial health services and programs by a Yale First Nation Institution for individuals residing on Yale First Nation Land.
- 3.18.4 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.18.1.
- 3.18.5 Notwithstanding 3.18.4, Yale First Nation Law under 3.18.1 in respect of the organization and structure of Yale First Nation Institutions used to deliver health services on Yale First Nation Land prevails to the extent of a Conflict with Federal or Provincial Law.

### **3.19 FAMILY AND SOCIAL SERVICES**

- 3.19.1 Yale First Nation Government may make laws in respect of family and social services, including income assistance and housing, provided by a Yale First Nation Institution.
- 3.19.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.19.1.
- 3.19.3 Yale First Nation Law under 3.19.1 may require individuals collecting income assistance from Yale First Nation to participate in back-to-work programs or other similar programs.
- 3.19.4 Yale First Nation Government law-making authority under 3.19.1 does not include the authority to make laws in respect of the licensing and regulation of facility-based services off Yale First Nation Land.
- 3.19.5 If Yale First Nation Government makes laws under 3.19.1, at the request of any Party, the Parties will negotiate and attempt to reach agreement in respect of the exchange of information with respect to avoidance of double payments, and related matters.
- 3.19.6 At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration of federal or provincial social services and programs by a Yale First Nation Institution for individuals residing on Yale First Nation Land.

**3.20 LIQUOR CONTROL**

- 3.20.1 Yale First Nation Government may make laws in respect of the prohibition of, or the terms and conditions for the sale, exchange, possession, manufacture or consumption of, liquor on Yale First Nation Land.
- 3.20.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.20.1.
- 3.20.3 British Columbia will not issue a licence, permit, or other authority to sell liquor on Yale First Nation Land without the consent of Yale First Nation.
- 3.20.4 British Columbia will, in accordance with Provincial Law, authorize individuals designated by Yale First Nation to approve or deny applications for special occasion licences to sell liquor on Yale First Nation Land.

**3.21 SOLEMNIZATION OF MARRIAGES**

- 3.21.1 Yale First Nation Government may make laws in relation to:
- a. the marriage rites and ceremonies of the Yale First Nation culture; and
  - b. the designation of Yale First Nation Members to solemnize marriages.
- 3.21.2 Nothing in the *Marriage Act* will be construed as in any way preventing Yale First Nation from solemnizing, according to the rites and ceremonies of the Yale First Nation culture, a marriage between any two individuals:
- a. neither of whom is under any legal disqualification to contract marriage under Federal or Provincial Law; and
  - b. either or both of whom are Yale First Nation Members.
- 3.21.3 A marriage may not be solemnized under Yale First Nation Law unless the individuals intending to marry possess a valid marriage licence.
- 3.21.4 For the purposes of 3.21.3, marriage licences may only be issued by Yale First Nation where:
- a. Yale First Nation has been appointed as an issuer of marriage licences under Provincial Law; and
  - b. the issuance of the marriage licence complies with the *Marriage Act*.

- 3.21.5 Immediately after the solemnization of the marriage, a representative designated under 3.21.1b must register the marriage:
- a. by entering a record of it in a marriage register book issued by the Vital Statistics Agency and kept by Yale First Nation for that purpose; and
  - b. by providing the original registration to the chief executive officer under the *Vital Statistics Act*.
- 3.21.6 The chief executive officer, or a person authorized by the chief executive officer, under the *Vital Statistics Act* may, during normal business hours and as often as the chief executive officer considers necessary, inspect the marriage register book kept by Yale First Nation and compare it with the registrations returned by Yale First Nation under 3.21.5b.
- 3.21.7 The record under 3.21.5a must be signed:
- a. by each of the parties to the marriage;
  - b. by two witnesses; and
  - c. by a representative designated under 3.21.1b.
- 3.21.8 A representative designated under 3.21.1b by whom a marriage is solemnized must observe and perform the duties imposed on him or her under the *Vital Statistics Act* respecting the records of marriage.
- 3.21.9 Subject to 3.21.2 through 3.21.8, a Yale First Nation Law under 3.21.1 prevails to the extent of a Conflict with Federal or Provincial Law.

## **3.22 CHILD CARE**

- 3.22.1 Yale First Nation Government may make laws in respect of Child Care services on Yale First Nation Land.
- 3.22.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.22.1.

## **3.23 DEVOLUTION OF CULTURAL PROPERTY**

- 3.23.1 Yale First Nation Government may make laws in respect of the devolution of Cultural Property of a Yale First Nation Member who dies intestate.
- 3.23.2 Yale First Nation Law under 3.23.1 prevails to the extent of a Conflict with Federal or Provincial Law.

- 3.23.3 Yale First Nation has standing in any judicial proceeding in which:
- a. the validity of the will of a Yale First Nation Member; or
  - b. the devolution of the Cultural Property of a Yale First Nation Member,
- is at issue, including any proceedings to vary a will.
- 3.23.4 Yale First Nation may commence, and has standing to intervene in, an action under provincial legislation in relation to wills variation in respect of the will of a Yale First Nation Member that provides for the devolution of Cultural Property.
- 3.23.5 In a proceeding to which 3.23.3 or 3.23.4 applies, the court will consider any evidence or representations in respect of Yale First Nation Law or customs dealing with the devolution of Cultural Property in addition to any other matters it is required by law to consider.
- 3.23.6 The participation of Yale First Nation in proceedings referred to in 3.23.3 or 3.23.4 will be in accordance with the applicable rules of court and will not affect the ability of the court to control its process.

### **3.24 LANGUAGE AND CULTURE EDUCATION**

- 3.24.1 Yale First Nation Government may make laws in respect of language and culture education on Yale First Nation Land for:
- a. the certification of teachers of Yale First Nation culture and the Puchil dialect of the Nlaka'pamux (Thompson) language; and
  - b. the development and teaching of curriculum with respect to Yale First Nation culture and the Puchil dialect of the Nlaka'pamux (Thompson) language.
- 3.24.2 Yale First Nation Law under 3.24.1 does not apply to schools under the *School Act*.
- 3.24.3 Yale First Nation Law under 3.24.1 prevails to the extent of a Conflict with Federal or Provincial Law.

### **3.25 KINDERGARTEN TO GRADE 12 EDUCATION**

- 3.25.1 Yale First Nation Government may make laws in respect of kindergarten to grade 12 education provided by a Yale First Nation Institution on Yale First Nation Land.

- 3.25.2 Yale First Nation Law under 3.25.1 will:
- a. establish curriculum, examination, and other standards that permit transfers of students between school systems in British Columbia at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
  - b. provide for the certification of teachers, other than those referred to in 3.24.1a, by a Yale First Nation Public Institution, or a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
- 3.25.3 Yale First Nation Government may make laws in respect of home education of Yale First Nation Members on Yale First Nation Land.
- 3.25.4 Yale First Nation Law under 3.25.1 or 3.25.3 prevails to the extent of a Conflict with Federal or Provincial Law.
- 3.25.5 At the request of Yale First Nation or British Columbia, Yale First Nation and British Columbia will negotiate and attempt to reach agreement for the provision of kindergarten to grade 12 education by a Yale First Nation Institution to:
- a. Non-Members; or
  - b. Yale First Nation Members residing off Yale First Nation Land in British Columbia.

### **3.26 EMERGENCY PREPAREDNESS**

- 3.26.1 Yale First Nation has:
- a. the rights, powers, duties, and obligations; and
  - b. protections, immunities and limitations in respect of liability,
- of a local authority under Federal and Provincial Law in respect of emergency preparedness and emergency measures on Yale First Nation Land.
- 3.26.2 Yale First Nation Government may make laws in respect of Yale First Nation's rights, powers, duties, and obligations under 3.26.1.
- 3.26.3 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.26.2.

3.26.4 For greater certainty, Yale First Nation Government may declare a state of local emergency, and exercise the powers of a local authority in respect of local emergencies in accordance with Federal and Provincial Law in respect of emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia set out in Federal and Provincial Law.

3.26.5 Nothing in this Agreement affects the authority of:

- a. Canada to declare a national emergency; or
- b. British Columbia to declare a provincial emergency,

in accordance with Federal and Provincial Law.

### **3.27 REGULATION OF BUSINESS**

3.27.1 Yale First Nation Government may make laws in respect of the regulation, licensing, and prohibition of business on Yale First Nation Land, including the imposition of licence fees or other fees.

3.27.2 Yale First Nation Government law-making authority under 3.27.1 does not include the authority to make laws in respect of accreditation, certification, or professional conduct of professions and trades.

3.27.3 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.27.1.

### **3.28 PUBLIC ORDER, PEACE AND SAFETY**

3.28.1 Yale First Nation Government may make laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Yale First Nation Land that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety.

3.28.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.28.1.

### **3.29 BUILDINGS AND STRUCTURES**

3.29.1 Yale First Nation Government may make laws in respect of buildings and structures on Yale First Nation Land.

3.29.2 The British Columbia Building Code applies on Yale First Nation Land.



- 3.29.3 Notwithstanding 3.29.2, the *Canada Labour Code* applies to federal undertakings on Yale First Nation Land.
- 3.29.4 Subject to 3.29.5, Yale First Nation Laws under 3.29.1 must not establish standards for buildings or structures to which the British Columbia Building Code applies that are additional to or different from the standards established by the British Columbia Building Code.
- 3.29.5 At the request of Yale First Nation, British Columbia and Yale First Nation will negotiate and attempt to reach agreement to enable Yale First Nation Government to establish standards for buildings and structures that are additional to or different from the standards established by the British Columbia Building Code.
- 3.29.6 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.29.1.

### **3.30 PUBLIC WORKS**

- 3.30.1 Yale First Nation Government may make laws in respect of public works and related services on Yale First Nation Land.
- 3.30.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.30.1.

### **3.31 TRAFFIC, PARKING, TRANSPORTATION AND HIGHWAYS**

- 3.31.1 Yale First Nation Government may make laws in respect of traffic, parking, transportation and highways on Yale First Nation Land to the same extent as municipal governments have authority to make laws in respect of traffic, parking, transportation and highways in municipalities in British Columbia.
- 3.31.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.31.1.

### **ADMINISTRATION OF JUSTICE**

#### **3.32 PENALTIES**

- 3.32.1 Yale First Nation Law may provide for the imposition of sanctions, including fines, Administrative Penalties, community service, restitution and imprisonment, for the violation of Yale First Nation Laws.
- 3.32.2 Subject to 3.32.5, Yale First Nation Law may provide for:

- a. a maximum fine that is not greater than that which may be imposed for comparable regulatory offences punishable by way of summary conviction under Federal or Provincial Law; and
  - b. a maximum Administrative Penalty that is not greater than that which may be imposed for a breach of a comparable regulatory requirement under Federal or Provincial Law.
- 3.32.3 Where there is no comparable regulatory offence or regulatory requirement under Federal or Provincial Law, the maximum fine or Administrative Penalty shall not be greater than the general limit for offences under the *Offence Act*.
- 3.32.4 Subject to 3.32.5, Yale First Nation Law may provide for a maximum term of imprisonment that is not greater than the general limit for offences under the *Offence Act*.
- 3.32.5 Yale First Nation Law with respect to taxation may provide for:
- a. a fine that is greater than the limits set out in 3.32.2; or
  - b. a term of imprisonment that is greater than the limit set out in 3.32.4,
- where there is an agreement to that effect as contemplated in 21.2.1.

### **3.33 ENFORCEMENT OF YALE FIRST NATION LAW**

- 3.33.1 Yale First Nation is responsible for the enforcement of Yale First Nation Law.
- 3.33.2 At the request of Yale First Nation, the Parties will, to the extent of their respective authorities, negotiate and attempt to reach agreement for the enforcement of Yale First Nation Law by a police force or federal or provincial enforcement officials.
- 3.33.3 Yale First Nation Government may make laws for the enforcement of Yale First Nation Laws, including:
- a. the appointment of officers to enforce Yale First Nation Law; and
  - b. powers of enforcement, provided such powers will not exceed those provided by Federal or Provincial Law for enforcing similar laws in British Columbia.
- 3.33.4 Yale First Nation Government law-making authority in 3.33.3 does not include the authority to:
- a. establish a police force; or

- b. authorize the carriage or use of a firearm by Yale First Nation enforcement officials,

but nothing in this Agreement prevents Yale First Nation from establishing a police force under Provincial Law.

3.33.5 If Yale First Nation appoints officials to enforce Yale First Nation Laws, Yale First Nation will:

- a. ensure that any Yale First Nation enforcement officials are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in British Columbia; and
- b. establish and implement procedures for responding to complaints against Yale First Nation enforcement officials.

3.33.6 Yale First Nation Law made under Chapter 8 Fisheries, Chapter 10 Wildlife or Chapter 11 Migratory Birds may be enforced by individuals authorized to enforce Federal or Provincial Law or Yale First Nation Law in respect of Fish and Aquatic Plants, Wildlife and Migratory Birds in British Columbia.

3.33.7 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 3.33.3.

3.33.8 Yale First Nation may, by a proceeding brought in the Supreme Court of British Columbia, enforce, or prevent or restrain the contravention of, Yale First Nation Law.

### **3.34 ADJUDICATION OF YALE FIRST NATION LAW**

3.34.1 The Provincial Court of British Columbia has jurisdiction to hear prosecutions of offences under Yale First Nation Law.

3.34.2 The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under Yale First Nation Law.

3.34.3 The Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, has jurisdiction to hear legal disputes arising between individuals under Yale First Nation Law.

3.34.4 Yale First Nation is responsible for the prosecution of all matters arising from Yale First Nation Law, including appeals, and may carry out this responsibility by:

- a. appointing or retaining individuals to conduct prosecutions and appeals, in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia;
  - b. entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals; or
  - c. both subparagraphs 3.34.4a and 3.34.4b.
- 3.34.5 Unless the Parties otherwise agree, British Columbia will pay any fines collected in respect of a penalty imposed on a person by the Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, for an offence under Yale First Nation Law, to Yale First Nation on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia in respect of an offence under Federal Law.
- 3.34.6 Yale First Nation Government law-making authority does not include the authority to establish a court.
- 3.34.7 The Supreme Court of British Columbia has jurisdiction to hear applications challenging the validity of Yale First Nation Laws.

### **3.35 COMMUNITY CORRECTIONAL SERVICES**

- 3.35.1 Yale First Nation may provide Community Correctional Services for individuals charged with, or found guilty of, an offence under Yale First Nation Law and may carry out such other responsibilities as may be set out in an agreement under 3.35.2 or 3.35.3.
- 3.35.2 At the request of Yale First Nation, Yale First Nation and British Columbia may enter into agreements to provide Community Correctional Services on Yale First Nation Land in respect of individuals who fall under the jurisdiction of British Columbia and who are charged with, or found guilty of, an offence under Federal or Provincial Law.
- 3.35.3 Yale First Nation and British Columbia may enter into agreements to enable Yale First Nation to provide rehabilitative community-based programs and interventions off Yale First Nation Land for Yale First Nation Members charged with, or found guilty of, an offence under Federal or Provincial Law.
- 3.35.4 Nothing in this Agreement authorizes Yale First Nation to establish or maintain places of confinement, except for police jails or lock-ups operated by a police

service established under Provincial Law or as provided for under an agreement referred to in 3.35.3.

## **YALE FIRST NATION GOVERNMENT LIABILITY**

### **3.36 MEMBERS OF YALE FIRST NATION GOVERNMENT**

3.36.1 No action for damages lies or may be instituted against a member or former member of Yale First Nation Government for:

- a. anything said or done, or omitted to be said or done, by or on behalf of Yale First Nation or Yale First Nation Government by somebody other than that member or former member while he or she is, or was, a member;
- b. any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of Yale First Nation or Yale First Nation Government while that individual is, or was, a member;
- c. anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of the individual's duty or the exercise of the individual's power; or
- d. any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.

3.36.2 3.36.1c and 3.36.1d do not provide a defence if:

- a. the individual has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
- b. the cause of action is libel or slander.

3.36.3 3.36.1c and 3.36.1d do not absolve Yale First Nation from vicarious liability arising out of a tort committed by a member or former member of Yale First Nation Government for which Yale First Nation would have been liable had 3.36.1 not been in effect.

### **3.37 YALE FIRST NATION PUBLIC OFFICERS**

3.37.1 No action for damages lies or may be instituted against a Yale First Nation Public Officer or former Yale First Nation Public Officer:

- a. for anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of the individual's duty or the exercise of the individual's power; or
  - b. for any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.
- 3.37.2 3.37.1 does not provide a defence if:
- a. the Yale First Nation Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - b. the cause of action is libel or slander.
- 3.37.3 3.37.1 does not absolve any of the corporations or bodies referred to in the definition of Yale First Nation Public Officer from vicarious liability arising out of a tort committed by a Yale First Nation Public Officer for which the corporation or body would have been liable had 3.37.1 not been in effect.
- 3.37.4 Notwithstanding 3.37.1, except as may be otherwise provided under Federal or Provincial Law, a Yale First Nation Public Officer does not have protections, immunities or limitations in respect of liability, in respect of the provision of a service by that public officer, if no individual delivering reasonably similar programs or services under Federal or Provincial Law has protections, immunities, or limitations in respect of liability and rights under Federal or Provincial Law.
- 3.38 YALE FIRST NATION AND YALE FIRST NATION GOVERNMENT**
- 3.38.1 Yale First Nation and Yale First Nation Government have the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a municipality and its municipal council under Part 7 of the *Local Government Act*.
- 3.38.2 Subject to 14.7.6, Yale First Nation has the protections, immunities, limitations in respect of liability, remedies over and rights provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities, limitations in respect of liability, remedies over, and rights, in respect of a road on Yale First Nation Land used by the public, or by industrial or resource users, if Yale First Nation is the occupier of that road.

**3.39 WRIT OF EXECUTION AGAINST YALE FIRST NATION**

- 3.39.1 Notwithstanding 3.38.1, a writ of execution against Yale First Nation must not be issued without leave of the Supreme Court of British Columbia, which may:
- a. permit its issue at a time and on conditions the court considers proper; or
  - b. refuse to permit it to be issued or suspend action under it on terms and conditions the court thinks proper or expedient.
- 3.39.2 In determining how it will proceed under 3.39.1, the court must have regard to:
- a. any reputed insolvency of Yale First Nation;
  - b. any security afforded to the person entitled to the judgment by the registration of the judgment;
  - c. the delivery of programs or services by Yale First Nation that are not provided by municipalities in British Columbia, and the funding of those programs or services; and
  - d. the immunities from seizure of assets of Yale First Nation as set out in this Agreement.

**3.40 OTHER MATTERS**

- 3.40.1 Yale First Nation Government may adopt Federal or Provincial Law in respect of matters within Yale First Nation Government law-making authority set out in this Agreement.
- 3.40.2 For greater certainty, the authority of Yale First Nation Government to make laws in respect of a subject matter as set out in this Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.





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## CHAPTER 4 LOCAL GOVERNMENT RELATIONS

### 4.1 GENERAL

- 4.1.1 Yale First Nation Land does not form part of any municipality or electoral area and does not form part of any regional district unless Yale First Nation becomes a member of the Fraser Valley Regional District under 4.2.1.
- 4.1.2 On the Effective Date, Yale First Nation has the authority to manage its intergovernmental relations with Local Government.
- 4.1.3 Nothing in this Agreement limits the ability of British Columbia to restructure regional districts or to amend or divide the boundaries of a municipality, regional district or electoral area in accordance with Provincial Law.
- 4.1.4 British Columbia will Consult with Yale First Nation in respect of any changes to the boundaries of a municipality or regional district that would directly and significantly affect Yale First Nation.

### 4.2 REGIONAL DISTRICT MEMBERSHIP

- 4.2.1 Yale First Nation may become a member of the Fraser Valley Regional District in accordance with Provincial Law.
- 4.2.2 If Yale First Nation becomes a member of the Fraser Valley Regional District under 4.2.1:
- a. it will be a Treaty First Nation member of the Fraser Valley Regional District in accordance with Provincial Law;
  - b. it will appoint a Yale First Nation Director to the board of the Fraser Valley Regional District who will have the powers, duties and functions of a Treaty First Nation Director in accordance with Provincial Law; and
  - c. Yale First Nation Land will form part of the Fraser Valley Regional District.
- 4.2.3 If Yale First Nation is a member of the Fraser Valley Regional District, Yale First Nation may be required to use a Local Government dispute resolution process described in Provincial Law.

### **4.3 INTERGOVERNMENTAL AGREEMENTS**

- 4.3.1 Yale First Nation may enter into agreements with a municipality or a regional district, including a comprehensive agreement with the Fraser Valley Regional District that sets out principles, procedures and guidelines in respect of their intergovernmental relationship, including:
- a. delivery and payment for programs or services on Yale First Nation Land or to residents on Yale First Nation Land;
  - b. harmonization of land use and taxation; and
  - c. a process for dispute resolution.
- 4.3.2 On the Effective Date, any contractual service agreement between the Fraser Valley Regional District and Yale Band in effect immediately before the Effective Date will remain in effect until it is renegotiated or terminated.

### **4.4 REGIONAL HOSPITAL DISTRICT MEMBERSHIP**

- 4.4.1 On the Effective Date, Yale First Nation Land forms part of the Fraser Valley Regional Hospital District.
- 4.4.2 On the Effective Date:
- a. Yale First Nation is a member of the Fraser Valley Regional Hospital District in respect of Yale First Nation Land; and
  - b. Yale First Nation will appoint a Yale First Nation Director to the board of the Fraser Valley Regional Hospital District.
- 4.4.3 Notwithstanding 4.4.2b., if Yale First Nation becomes a member of the Fraser Valley Regional District under 4.2.1, Yale First Nation will participate in the Fraser Valley Regional Hospital District in accordance with Provincial Law.

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## CHAPTER 5 CULTURE

### 5.1 GENERAL

- 5.1.1 Yale First Nation has the right to practice the Yale First Nation culture and to use the Puchil dialect of the Nlaka'pamux (Thompson) language in a manner consistent with this Agreement.
- 5.1.2 For greater certainty, nothing in 5.1.1 creates or implies any financial obligations or service delivery responsibilities on the part of any of the Parties.

### 5.2 YALE FIRST NATION LAWS

- 5.2.1 Yale First Nation Government may make laws applicable on Yale First Nation Land in respect of:
- a. the conservation, protection, designation and management of Heritage Sites;
  - b. public access to Heritage Sites;
  - c. the conservation, protection, designation and management of Yale First Nation Artifacts owned by Yale First Nation;
  - d. preservation, promotion and development of the Yale First Nation culture and the Puchil dialect of the Nlaka'pamux (Thompson) language; and
  - e. the cremation or interment of Yale First Nation Archaeological Human Remains that are found on Yale First Nation Land or are transferred to Yale First Nation by Canada, British Columbia, or any other person.
- 5.2.2 For the purposes of 5.2.1d, Yale First Nation culture includes matters relating to Yale First Nation history, feasts, ceremonies, traditional naming of individuals, symbols, songs, dances and stories.
- 5.2.3 Yale First Nation Law under 5.2.1a will:
- a. establish standards and permitting processes for the conservation and protection of Heritage Sites; and
  - b. ensure that the Minister is provided with information related to:
    - i. the location of Heritage Sites; and
    - ii. any materials recovered from Heritage Sites.

- 5.2.4 For greater certainty, and in accordance with 2.6.3, Yale First Nation Government does not have the authority to make laws with respect to Intellectual Property or the official languages of Canada.
- 5.2.5 Yale First Nation Law under 5.2.1 prevails to the extent of a Conflict with Federal or Provincial Law.

## **CHAPTER 6 ARTIFACTS, HERITAGE SITES, HUMAN REMAINS AND PLACE NAMES**

### **6.1 ARTIFACTS**

- 6.1.1 The Parties recognize the integral role of the Yale First Nation Artifacts in the continuation of Yale First Nation's culture, values, and traditions, whether those artifacts are held by:
- a. Yale First Nation;
  - b. a Yale First Nation Corporation;
  - c. a Yale First Nation Public Institution;
  - d. a Yale First Nation Member;
  - e. the Parks Canada Agency;
  - f. the Canadian Museum of Civilization; or
  - g. the Royal British Columbia Museum.
- 6.1.2 Yale First Nation owns Yale First Nation Artifacts discovered, after the Effective Date, on Yale First Nation Land in an archaeological context unless another person establishes ownership of those artifacts.
- 6.1.3 Nothing in this Agreement affects the ability of Yale First Nation to participate in future negotiations or discussions with Canada or British Columbia with respect to Yale First Nation Artifacts.

### **6.2 CANADIAN MUSEUM OF CIVILIZATION**

- 6.2.1 Appendix L-1 sets out all artifacts in the permanent collection of the Canadian Museum of Civilization on the Effective Date that have been identified as Yale First Nation Artifacts.

#### **Custodial Agreements**

- 6.2.2 From time to time, at the request of Yale First Nation or the Canadian Museum of Civilization, Yale First Nation and the Canadian Museum of Civilization will negotiate and attempt to reach custodial agreements in respect of the Yale First Nation Artifacts listed in Appendix L-1.

- 6.2.3 Custodial agreements under 6.2.2 will:
- a. respect Yale First Nation Laws and practices relating to Yale First Nation Artifacts; and
  - b. comply with Federal and Provincial Law and the statutory mandate of the Canadian Museum of Civilization.
- 6.2.4 Custodial agreements under 6.2.2 may set out:
- a. the Yale First Nation Artifacts to be in the possession of Yale First Nation and those to be in the possession of the Canadian Museum of Civilization;
  - b. conditions of maintenance, storage, and handling of the Yale First Nation Artifacts;
  - c. conditions of access to and use, including study, display, and reproduction, of the Yale First Nation Artifacts and associated records by the public, researchers, and scholars;
  - d. provisions for incorporating new information into catalogue records and displays of the Yale First Nation Artifacts; and
  - e. provisions for enhancing public knowledge about Yale First Nation through the participation of Yale First Nation Members in public programs and activities at the Canadian Museum of Civilization.
- 6.2.5 If the Canadian Museum of Civilization proposes to transfer its legal interest in a Yale First Nation Artifact set out in Appendix L-1, it will consult with Yale First Nation and Yale First Nation may exercise a right of first refusal to acquire the Yale First Nation Artifact on the proposed terms of the transfer.
- 6.2.6 If Yale First Nation or Canada considers that there may be an error in the determination of whether an artifact:
- a. set out in Appendix L-1; or
  - b. in the permanent collection of the Canadian Museum of Civilization,
- is a Yale First Nation Artifact, Canada and Yale First Nation will endeavour to determine whether the artifact is a Yale First Nation Artifact.
- 6.2.7 A disagreement in respect of a determination under 6.2.6 of whether an artifact is a Yale First Nation Artifact is a Disagreement.

- 6.2.8 If, after the Effective Date:
- a. a Yale First Nation Artifact is permanently acquired by the Canadian Museum of Civilization; or
  - b. it is determined under 6.2.6 or 6.2.7 that another artifact in the collection of the Canadian Museum of Civilization is a Yale First Nation Artifact,
- the Parties will amend Appendix L-1 in accordance with 27.1.9 to include the artifact.

### **6.3 THE PARKS CANADA AGENCY**

- 6.3.1 If Yale First Nation or the Parks Canada Agency considers that there may be an error in the determination of whether an artifact in the permanent collection of the Parks Canada Agency is a Yale First Nation Artifact, Yale First Nation and the Parks Canada Agency will make reasonable efforts to determine whether the artifact is a Yale First Nation Artifact.

- 6.3.2 A disagreement in respect of a determination under 6.3.1 of whether an artifact is a Yale First Nation Artifact is a Disagreement.

- 6.3.3 If, after the Effective Date:
- a. a Yale First Nation Artifact comes into the permanent possession, or under the control, of the Parks Canada Agency; or
  - b. it is determined under 6.3.1 or 6.3.2 that an artifact in the permanent collection of the Parks Canada Agency is a Yale First Nation Artifact,
- the Parks Canada Agency may enter into an agreement to transfer or loan that artifact to Yale First Nation.

### **6.4 ROYAL BRITISH COLUMBIA MUSEUM**

- 6.4.1 The Royal British Columbia Museum will transfer to Yale First Nation without condition all its legal interests in, and possession of, the Yale First Nation Artifacts set out in Appendix L-2:
- a. following a request by Yale First Nation;
  - b. if there is no request from Yale First Nation, five years after the Effective Date; or
  - c. by any other date agreed to by British Columbia and Yale First Nation.

- 6.4.2 Notwithstanding the five year time period contemplated by 6.4.1b, if the transfer of the Yale First Nation Artifacts has not occurred within four years after the Effective Date, at the request of Yale First Nation or the Royal British Columbia Museum, Yale First Nation and the Royal British Columbia Museum will negotiate and attempt to reach an agreement on:
- a. the extension of that time period for up to an additional five years; and
  - b. the payment by Yale First Nation of the costs of the Royal British Columbia Museum associated with holding the Yale First Nation Artifacts during any such extended time period, including costs related to storage, insurance, access, inspection and shipping of those Yale First Nation Artifacts.
- 6.4.3 The transfer of legal interests in, and possession of, Yale First Nation Artifacts under 6.4.1 is deemed to occur when those artifacts arrive at a location for delivery in British Columbia, as designated in a notice given by Yale First Nation.
- 6.4.4 If Yale First Nation does not designate a location for delivery, the Royal British Columbia Museum will deliver those artifacts to the address of Yale First Nation identified in 2.24.6.
- 6.4.5 The Royal British Columbia Museum will:
- a. continue to hold the Yale First Nation Artifacts set out in Appendix L-2 under the same terms and conditions as they are held on the Effective Date, until they are transported to Yale First Nation;
  - b. not be liable for any loss or damage to those artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. determine the transportation arrangements for, and will transport, those artifacts in accordance with the prevailing practices of the Royal British Columbia Museum for transportation of artifacts to museums.
- 6.4.6 At the request of Yale First Nation, the Royal British Columbia Museum will provide Yale First Nation with a list of all of the artifacts in its permanent collection that are identified as Yale First Nation Artifacts.
- 6.4.7 At the request of Yale First Nation or British Columbia, Yale First Nation and the Royal British Columbia Museum may enter into an agreement regarding custodial arrangements with respect to the Yale First Nation Artifacts held by the Royal British Columbia Museum.



- 6.4.8 An agreement under 6.4.7 will respect Yale First Nation cultural traditions relating to Yale First Nation Artifacts and will comply with Federal and Provincial Law, including the statutory mandate of the Royal British Columbia Museum.
- 6.4.9 British Columbia is not liable for any loss or damage to Yale First Nation Artifacts held by the Royal British Columbia Museum unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.

## **6.5 ACCESS TO OTHER COLLECTIONS**

- 6.5.1 From time to time, at the request of Yale First Nation, Canada will make reasonable efforts to facilitate Yale First Nation's access to Yale First Nation Artifacts and Yale First Nation Archaeological Human Remains in other public collections in Canada.

## **6.6 YALE FIRST NATION ARCHAEOLOGICAL HUMAN REMAINS**

- 6.6.1 At the request of Yale First Nation, Canada will transfer any Yale First Nation Archaeological Human Remains or Associated Burial Objects, held by Canada at the Effective Date, to Yale First Nation, in accordance with Federal and Provincial Law and federal policy.
- 6.6.2 If, after the Effective Date, any Yale First Nation Archaeological Human Remains or Associated Burial Objects come into the possession or under the control of Canada, Canada will, at the request of Yale First Nation, transfer the Yale First Nation Archaeological Human Remains or Associated Burial Objects to Yale First Nation, in accordance with Federal and Provincial Law and federal policy.
- 6.6.3 In the event of a competing claim with another aboriginal group as to whether human remains or associated burial objects are Yale First Nation Archaeological Human Remains or Associated Burial Objects, the parties to the dispute will resolve the competing claim between themselves and provide Canada with written confirmation of the settlement of the dispute before further negotiation of any transfer under 6.6.2.
- 6.6.4 At the request of Yale First Nation, British Columbia will transfer any Yale First Nation Archaeological Human Remains or Associated Burial Objects, held by British Columbia, to Yale First Nation, in accordance with Provincial Law and provincial policy.

6.6.5 Yale First Nation may, with the consent of British Columbia, inter any Yale First Nation Archaeological Human Remains or Associated Burial Objects delivered by British Columbia under 6.6.4 to any site in accordance with Provincial Law and provincial policy.

6.6.6 In the event of a competing claim with another aboriginal group as to whether human remains or associated burial objects are Yale First Nation Archaeological Human Remains or Associated Burial Objects, the parties to the dispute will resolve the competing claim between themselves and provide British Columbia with written confirmation of the settlement of such dispute before further negotiation of any transfer under 6.6.4.

## **6.7 HERITAGE SITES**

6.7.1 Yale First Nation may propose that British Columbia protect sites of cultural and historic significance within the Yale First Nation Area through provincial heritage site designation or through other measures agreed to by British Columbia and Yale First Nation.

6.7.2 British Columbia will consider proposals under 6.7.1 in accordance with Provincial Law, and provincial policy and procedures.

## **6.8 PLACE NAMES**

6.8.1 On the Effective Date, British Columbia will add the place names set out in Appendix K, Part 1 to the provincial geographical names database.

6.8.2 Yale First Nation may propose that British Columbia name, rename or add a place name to a geographic feature in accordance with Provincial Law, and provincial policy and procedures.

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## **CHAPTER 7 YALE FIRST NATION ROLE OFF YALE FIRST NATION LAND**

### **7.1 GENERAL**

7.1.1 Yale First Nation's role in respect of economic activities, governance activities and cultural activities within the Yale First Nation Area is set out in this Agreement, including the specific provisions identified in 7.2 through 7.6.

### **7.2 ECONOMIC ACTIVITIES**

7.2.1 Nothing in this Agreement precludes Yale First Nation from participating in or benefiting from provincial benefits-sharing programs in accordance with the general criteria established for those programs from time to time.

7.2.2 Nothing in this Agreement precludes Yale First Nation from entering into arrangements for economic opportunities with third parties, provided those arrangements are consistent with this Agreement.

7.2.3 Commercial fishing opportunities are provided to Yale First Nation through licences issued to Yale First Nation in accordance with the Harvest Agreement negotiated in accordance with 8.2.

7.2.4 The opportunity to add land to Yale First Nation Land is provided to Yale First Nation in accordance with 12.10.

7.2.5 The opportunity to investigate the suitability of specific Streams for hydro power purposes is provided to Yale First Nation in accordance with 9.6.

7.2.6 The opportunity to apply for a guided adventure tourism tenure on provincial Crown land is provided to Yale First Nation in accordance with 7.11.

### **7.3 GOVERNANCE ACTIVITIES**

7.3.1 Nothing in this Agreement precludes Yale First Nation from participating in provincial processes or institutions, including processes or institutions that may address matters of shared decision-making and revenue and benefit sharing, or benefiting from future provincial programs, policies or initiatives of general application to First Nations, as British Columbia develops a new relationship with First Nations, including the enactment of legislation to support these initiatives.

7.3.2 The opportunity to become a member of the Fraser Valley Regional District is provided to Yale First Nation in accordance with 4.2.

- 7.3.3 The ability to make laws in respect of the adoption in British Columbia of Yale First Nation Children is provided to Yale First Nation Government in accordance with 3.14.2.
- 7.3.4 The opportunity to negotiate an agreement with British Columbia regarding Child Protection Services for Yale First Nation Children who reside in British Columbia is provided to Yale First Nation in accordance with 3.16.6a.
- 7.3.5 The opportunity to negotiate an agreement with British Columbia regarding the provision of kindergarten to grade 12 education for Yale First Nation Members who reside in British Columbia is provided to Yale First Nation in accordance with 3.25.5b.

#### **7.4 RESOURCE MANAGEMENT**

- 7.4.1 The opportunity to participate in the cooperative fisheries planning activities through the Joint Fisheries Committee is provided to Yale First Nation in accordance with 8.11.
- 7.4.2 The opportunity to participate in a public fisheries advisory process that principally encompasses the Domestic Fishing Area is provided to Yale First Nation in accordance with 8.13.1.
- 7.4.3 The opportunity to participate in a public fisheries advisory process is provided to Yale First Nation in accordance with 8.13.2.
- 7.4.4 The opportunity to participate in any regional management advisory process for aboriginal fisheries is provided to Yale First Nation in accordance with 8.12.
- 7.4.5 The opportunity to participate in Wildlife advisory management processes is provided to Yale First Nation in accordance with 10.6.1.
- 7.4.6 The opportunity to negotiate an agreement with British Columbia on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to harvest Wildlife is provided to Yale First Nation in accordance with 10.1.6.
- 7.4.7 The opportunity to negotiate an agreement with British Columbia on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to harvest Migratory Birds is provided to Yale First Nation in accordance with 11.1.6.
- 7.4.8 The opportunity to negotiate an agreement with British Columbia on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land

on Yale First Nation's reasonable opportunity to harvest Fish and Aquatic Plants is provided to Yale First Nation in accordance with 8.1.12.

- 7.4.9 The opportunity to negotiate an agreement with British Columbia on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to gather Plants is provided to Yale First Nation in accordance with 7.7.6.
- 7.4.10 The opportunity to be Consulted by Canada and to negotiate an agreement regarding certain matters relating to the establishment of any National Park wholly or partially within the Yale First Nation Area is provided to Yale First Nation in accordance with 7.10.
- 7.4.11 The opportunity to enter into agreements regarding Yale First Nation participation in the planning and management of Provincial Protected Areas wholly or partially within the Yale First Nation Area is provided to Yale First Nation in accordance with 7.9.4.
- 7.4.12 The opportunity to be involved in Environmental Assessments in respect of Federal Projects or Provincial Projects is provided to Yale First Nation in accordance with 17.3.1 and 17.4.1, respectively.
- 7.4.13 The opportunity to enter into conservation agreements in relation to common concern over Migratory Birds is provided to Yale First Nation in accordance with 11.7.1.
- 7.4.14 The ability to exercise its right to participate in a Migratory Bird advisory committee is provided to Yale First Nation in accordance with 11.8.1.
- 7.4.15 The opportunity to propose the establishment of a Recreation Site and to negotiate a role in its administration is provided to Yale First Nation in accordance with 7.12.

## **7.5 CULTURAL ACTIVITIES**

- 7.5.1 The ability to exercise the right to practice Yale First Nation culture and to use the Puchil dialect of the Nlaka'pamux (Thompson) language is provided to Yale First Nation in accordance with 5.1.1
- 7.5.2 The opportunity to participate in the provincial process for naming geographic features in the Yale First Nation Area is provided to Yale First Nation in accordance with 6.8.
- 7.5.3 The ability to exercise the Yale First Nation Right to Gather Plants within the Gathering Area is provided to Yale First Nation in accordance with 7.7.1.

- 7.5.4 The ability to exercise the right to Trade and Barter Plants gathered under the Yale First Nation Right to Gather Plants is provided to Yale First Nation in accordance with 7.7.14.
- 7.5.5 The ability to exercise the Yale First Nation Right to Harvest Fish in the Domestic Fishing Area is provided to Yale First Nation in accordance with 8.1.1.
- 7.5.6 The ability to exercise the right to Trade and Barter Fish and Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish is provided to Yale First Nation in accordance with 8.4.1.
- 7.5.7 The ability to exercise the Yale First Nation Right to Harvest Wildlife in the Wildlife Harvest Area is provided to Yale First Nation in accordance with 10.1.1.
- 7.5.8 The ability to exercise the right to Trade and Barter Wildlife harvested under its Yale First Nation Right to Harvest Wildlife is provided to Yale First Nation in accordance with 10.7.1.
- 7.5.9 The ability to exercise the Yale First Nation Right to Harvest Migratory Birds in the Migratory Birds Harvest Area is provided to Yale First Nation in accordance with 11.1.1.
- 7.5.10 The ability to exercise the right to Trade and Barter Migratory Birds under the Yale First Nation Right to Harvest Migratory Birds is provided to Yale First Nation in accordance with 11.3.1.

## **7.6 WATER**

- 7.6.1 A water reservation is established by British Columbia in favour of Yale First Nation in accordance with 9.3.
- 7.6.2 The opportunity to participate in provincial water planning processes is provided to Yale First Nation in accordance with 9.5.

## **7.7 GATHERING**

- 7.7.1 Yale First Nation has the right to gather Plants for Domestic Purposes in the Gathering Area in accordance with this Agreement.
- 7.7.2 The Yale First Nation Right to Gather Plants is limited by measures necessary for conservation, public health or public safety.
- 7.7.3 Yale First Nation may not dispose of the Yale First Nation Right to Gather Plants.

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- 7.7.4 All Yale First Nation Members may exercise the Yale First Nation Right to Gather Plants, except as otherwise provided under Yale First Nation Law.
- 7.7.5 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of gathering of Plants under this Agreement, provided that British Columbia ensures that those authorized uses and dispositions do not deny Yale First Nation the reasonable opportunity to gather Plants under the Yale First Nation Right to Gather Plants.
- 7.7.6 For the purposes of 7.7.5, British Columbia and Yale First Nation will enter into an agreement, that will come into effect on the Effective Date, on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to gather Plants.
- 7.7.7 Yale First Nation will exercise the Yale First Nation Right to Gather Plants in a manner that does not interfere with other authorized uses and dispositions of provincial Crown land existing as of the Effective Date, or authorized in accordance with 7.7.5.
- 7.7.8 In the Gathering Area, the use of resources on provincial Crown land for purposes reasonably incidental to the exercise of the Yale First Nation Right to Gather Plants is subject to Federal and Provincial Law.
- 7.7.9 The Minister may, for conservation, public health or public safety reasons, require Yale First Nation to prepare a Gathering Plan.
- 7.7.10 If the Minister requires a Gathering Plan under 7.7.9, that Gathering Plan will include:
- a. gathering locations;
  - b. times of gathering; and
  - c. the Plants intended to be gathered.
- 7.7.11 A Gathering Plan, or any proposed amendments to an approved Gathering Plan, will be submitted by Yale First Nation to the Minister for approval.
- 7.7.12 Yale First Nation will exercise the Yale First Nation Right to Gather Plants in accordance with any approved Gathering Plan or Provincial Protected Area management plan.

7.7.13 Yale First Nation Members are not required to have federal or provincial licences or pay fees or royalties to Canada or British Columbia relating to the exercise of the Yale First Nation Right to Gather Plants.

#### **Trade and Barter**

7.7.14 Yale First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Plants gathered under the Yale First Nation Right to Gather Plants.

7.7.15 Yale First Nation Members may exercise the right to Trade and Barter under 7.7.14, except as otherwise provided under Yale First Nation Law under 7.7.16c.

#### **Law Making**

7.7.16 Yale First Nation Government may make laws in respect of the:

- a. designation of Yale First Nation Members to gather under the Yale First Nation Right to Gather Plants;
- b. distribution among Yale First Nation Members of the Plants gathered under the Yale First Nation Right to Gather Plants; and
- c. Trade and Barter of Plants under 7.7.14.

7.7.17 Yale First Nation Law under 7.7.16 prevails to the extent of a Conflict with Federal or Provincial Law.

7.7.18 Yale First Nation Government may make laws in respect of the establishment of documentation to identify Yale First Nation Members who have been designated under 7.7.16a.

7.7.19 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 7.7.18.

#### **Documentation**

7.7.20 Yale First Nation will issue documentation to Yale First Nation Members who exercise the Yale First Nation Right to Gather Plants.

7.7.21 All Yale First Nation Members who exercise the Yale First Nation Right to Gather Plants are required to carry documentation issued by Yale First Nation and to produce that documentation on request by an authorized individual.

7.7.22 Documentation issued by Yale First Nation under 7.7.20 will:



- a. be in the English language, which version is authoritative, and at the discretion of Yale First Nation, in the Puchil dialect of the Nlaka'pumux (Thompson) language;
- b. include the name and address of the individual; and
- c. meet any other requirements set out in Yale First Nation Law under 7.7.18 and any approved Gathering Plan.

## **7.8 PROVINCIAL PUBLIC PLANNING PROCESSES**

- 7.8.1 British Columbia will notify Yale First Nation when British Columbia establishes a Public Planning Process in the Yale First Nation Area.
- 7.8.2 Yale First Nation has the right to participate in any Public Planning Process in respect of the Yale First Nation Area, in accordance with procedures established by British Columbia for that Public Planning Process.
- 7.8.3 In participating in any Public Planning Process, Yale First Nation may bring forward any matters it considers relevant, including any rights or interests set out in this Agreement.
- 7.8.4 British Columbia may proceed with any Public Planning Process even if Yale First Nation does not participate in that process.
- 7.8.5 Yale First Nation may make proposals to British Columbia to establish a Public Planning Process in the Yale First Nation Area.
- 7.8.6 Nothing in this Agreement obligates British Columbia to undertake a Public Planning Process.
- 7.8.7 British Columbia will provide Yale First Nation with the draft plan resulting from any Public Planning Process in the Yale First Nation Area and Yale First Nation may provide written recommendations to the Minister that may be made public by British Columbia.
- 7.8.8 After considering any written recommendations provided under 7.8.7 and any matters the Minister considers appropriate, the Minister will provide written reasons for any Yale First Nation recommendations that are not accepted.

## **7.9 PROVINCIAL PROTECTED AREAS**

- 7.9.1 Yale First Nation may make proposals to British Columbia from time to time to establish, amend or cancel a Provincial Protected Area.

7.9.2 Nothing in this Agreement obligates British Columbia to establish or maintain the designation of any Provincial Protected Area.

7.9.3 British Columbia will Consult with Yale First Nation regarding the establishment, amendment or cancellation of any Provincial Protected Area wholly or partially within the Yale First Nation Area.

7.9.4 British Columbia and Yale First Nation may enter into agreements regarding Yale First Nation participation in the planning and management of Provincial Protected Areas wholly or partially within the Yale First Nation Area.

## **7.10 NATIONAL PARKS**

7.10.1 Canada will Consult with Yale First Nation with respect to the establishment of any National Park wholly or partially within the Yale First Nation Area.

7.10.2 If, after the Effective Date, any National Park is established wholly or partially within the Yale First Nation Area, Yale First Nation and Canada will negotiate and attempt to reach agreement in respect of the exercise of Yale First Nation harvesting rights by Yale First Nation Members in that National Park.

7.10.3 If, after the Effective Date, any National Park is established wholly or partially within the Yale First Nation Area, Yale First Nation and Canada will negotiate and attempt to reach agreement regarding Yale First Nation's participation in a planning and management process to provide advice to the Minister for that National Park.

## **7.11 GUIDED ADVENTURE TOURISM TENURE**

7.11.1 The Minister will, on or before the Effective Date, designate up to 12 hectares of provincial Crown land within the Yale First Nation Area for Yale First Nation under section 17(1) of the *Land Act*, for a term of at least 15 years from the date of such designation, for the purpose of providing Yale First Nation an opportunity to apply for a guided adventure tourism tenure in accordance with Provincial Law.

7.11.2 Notwithstanding section 17(3) of the *Land Act*, the Minister will not amend or cancel a designation referred to in 7.11.1 without the consent of Yale First Nation unless the designated lands are required by British Columbia for regional infrastructure and British Columbia has made reasonable attempts to secure other provincial Crown lands that would not impact the designated lands.

7.11.3 Subject to 7.11.2, British Columbia will continue to manage and use provincial Crown lands designated under 7.11.1.

7.11.4 Yale First Nation may apply to British Columbia for a guided adventure tourism tenure in respect of lands that are designated for Yale First Nation under 7.11.1.

**7.12 FORESHORE RECREATION AREA**

7.12.1 Yale First Nation may propose that British Columbia establish a Recreation Site for the area described as “Foreshire Recreation Area” in Appendix M.

7.12.2 British Columbia will consider a proposal under 7.12.1 in accordance with Provincial Law, and provincial policy and procedures.

7.12.3 If British Columbia establishes a Recreation Site for the area described in Appendix M, British Columbia and Yale First Nation will negotiate and attempt to reach agreement on a role for Yale First Nation in the administration of the Recreation Site.



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## CHAPTER 8 FISHERIES

### 8.1 GENERAL

- 8.1.1 Yale First Nation has the right to harvest Fish and Aquatic Plants for Domestic Purposes in the Domestic Fishing Area in accordance with this Agreement.
- 8.1.2 Yale First Nation may not dispose of the Yale First Nation Right to Harvest Fish.
- 8.1.3 The Yale First Nation Right to Harvest Fish is limited by measures necessary for conservation, public health or public safety.
- 8.1.4 The Yale First Nation Right to Harvest Fish will be exercised in respect of:
- a. Salmon, within the Domestic Salmon Fishing Area; and
  - b. all species of Fish and Aquatic Plants other than Salmon, within the Domestic Fishing Area.
- 8.1.5 The harvest of Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish will be carried out in accordance with Yale First Nation Harvest Documents.
- 8.1.6 Canada will not charge any fee for a Yale First Nation Harvest Document or any management fee or landing fee in respect of fisheries authorized by a Yale First Nation Harvest document.
- 8.1.7 British Columbia will not charge any fee for a Yale First Nation Harvest Document.
- 8.1.8 Yale First Nation will provide, to the Minister, biological samples, catch data and other information related to Fish and Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish as required by a Yale First Nation Harvest Document or Federal or Provincial Law.
- 8.1.9 The Parties will describe, in the Yale First Nation Fisheries Operational Guidelines, procedures with respect to the exchange of information related to biological samples, catch data and other information provided in accordance with 8.1.8.

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- 8.1.10 The Parties will provide each other with:
- a. such publicly available information with respect to fisheries that significantly affect harvesting under the Yale First Nation Right to Harvest Fish as may reasonably be relevant to the exercise of the Yale First Nation Right to Harvest Fish; and
  - b. such publicly available information as may reasonably be necessary to enable the Joint Fisheries Committee to carry out its functions.
- 8.1.11 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Fish and Aquatic Plants under this Agreement, provided that British Columbia ensures that those authorized uses or dispositions do not deny Yale First Nation the reasonable opportunity to harvest Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish.
- 8.1.12 For the purposes of 8.1.11, British Columbia and Yale First Nation will enter into an agreement, that will come into effect on the Effective Date, on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to harvest Fish and Aquatic Plants.
- 8.1.13 Yale First Nation will exercise the Yale First Nation Right to Harvest Fish in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing on the Effective Date, or authorized in accordance with 8.1.11.
- 8.1.14 In the Domestic Fishing Area, the use of resources on provincial Crown land for purposes reasonably incidental to the exercise of the Yale First Nation Right to Harvest Fish is subject to Federal and Provincial Law.
- 8.1.15 Nothing in this Agreement precludes:
- a. Yale First Nation Members from harvesting Fish and Aquatic Plants under a licence, permit, or other document issued under Federal or Provincial Law;
  - b. Yale First Nation from concluding agreements that are in accordance with Federal and Provincial Law with other aboriginal groups with respect to designations to harvest Fish and Aquatic Plants; and
  - c. Yale First Nation Members from being designated by another aboriginal group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that aboriginal group.

- 8.1.16 The Minister retains authority for managing and conserving Fish, Aquatic Plants, and Fish habitat.
- 8.1.17 Fish and Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish may not be sold.
- 8.1.18 Nothing in this Agreement alters Federal or Provincial Law in respect of property in Fish or Aquatic Plants.

## **8.2 COMMERCIAL OPPORTUNITIES**

- 8.2.1 On the Effective Date, the Parties will enter into a Harvest Agreement.
- 8.2.2 For greater certainty, as provided for in 2.16.1, the Harvest Agreement:
- a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement, and does not create, recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 8.2.3 A Party may terminate the Harvest Agreement as provided for by its terms.

## **8.3 YALE FIRST NATION LAWS**

- 8.3.1 Yale First Nation Government may make laws in respect of:
- a. the distribution among Yale First Nation Members of Fish and Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish; and
  - b. the designation of individuals and vessels who may harvest Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish.
- 8.3.2 Yale First Nation Law under 8.3.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 8.3.3 Yale First Nation Government may make laws in respect of:
- a. the documentation of individuals and vessels who are designated to harvest Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish; and
  - b. the Trade and Barter of Fish and Aquatic Plants harvested by Yale First Nation Members under the Yale First Nation Right to Harvest Fish.

8.3.4 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 8.3.3.

#### **8.4 TRADE AND BARTER**

8.4.1 Yale First Nation has the right to Trade and Barter, among themselves or with other aboriginal people of Canada, any Fish or Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish.

8.4.2 All Yale First Nation Members may exercise the right to Trade and Barter under 8.4.1, except as otherwise provided under Yale First Nation Law under 8.3.3b.

#### **8.5 YALE FIRST NATION FISHERIES OPERATIONAL GUIDELINES**

8.5.1 Before the Effective Date, the Parties will jointly develop guidelines called the Yale First Nation Fisheries Operational Guidelines, to assist the Parties in implementing the provisions of this Chapter. The Yale First Nation Fisheries Operational Guidelines may include operational principles and procedures.

8.5.2 The Parties will update and maintain the Yale First Nation Fisheries Operational Guidelines, as the Parties may agree.

8.5.3 The Yale First Nation Fisheries Operational Guidelines do not create legal obligations.

#### **8.6 DESIGNATION AND DOCUMENTATION**

8.6.1 The Yale First Nation Right to Harvest Fish may be exercised by those individuals who are designated by Yale First Nation to harvest Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish.

8.6.2 Where a Yale First Nation Allocation for a species of Fish or Aquatic Plant has been established under this Agreement, Yale First Nation may designate Yale First Nation Members and other individuals and vessels to harvest that species under the Yale First Nation Right to Harvest Fish.

8.6.3 Where a Yale First Nation Allocation for a species of Fish or Aquatic Plant has not been established under this Agreement, Yale First Nation may designate Yale First Nation Members and vessels to harvest that species under the Yale First Nation Right to Harvest Fish.

8.6.4 Where a vessel is used to harvest Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish, it will be a vessel that has been designated by Yale First Nation. This provision does not alter the application of



Federal or Provincial Law in respect of foreign fishing vessels in Canadian waters.

8.6.5 Where Yale First Nation designates an individual or a vessel, Yale First Nation will issue documentation to that individual or vessel to evidence the designation.

8.6.6 Where Yale First Nation issues documentation to an individual to evidence a designation, Yale First Nation may set out, in the documentation, methods, timing, and location of harvesting and individual allocations consistent with the applicable Yale First Nation Harvest Document.

8.6.7 Documentation issued by Yale First Nation under 8.6.5 will:

- a. be in the English language, which version is the authoritative version, and, at the discretion of Yale First Nation, the Puchil dialect of the Nlaka'pamux (Thompson) language;
- b. in the case of an individual, include the name and address of the individual;
- c. in the case of a vessel, include the name and address of the operator; and
- d. meet any other requirements set out in any applicable Yale First Nation Harvest Document and the Yale First Nation Fisheries Operational Guidelines.

8.6.8 Where an individual is designated by Yale First Nation to harvest Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish, Canada and British Columbia will not require that individual to have a federal or provincial fishing licence to harvest Fish or Aquatic Plants under the Yale First Nation Right to Harvest Fish.

## **8.7 YALE FIRST NATION DOMESTIC ALLOCATIONS**

8.7.1 The Yale First Nation Allocations for Fish and Aquatic Plants are described in Schedule 8-A.

8.7.2 In any year where the Minister determines that the quantity of a stock or species of Fish or Aquatic Plant that is available to harvest is not sufficient to meet all anticipated allocations from that stock or species to Yale First Nation and other aboriginal groups for Domestic Purposes, the Minister may reduce any one or more of those allocations for that year.

8.7.3 If, under 8.7.2, the Minister wishes to reduce a Yale First Nation Allocation, the Minister will inform the Joint Fisheries Committee of the proposed reduction and, if time permits, will take into account any written recommendations on the

- proposed reduction received from the Joint Fisheries Committee in a timely manner before implementing the reduction.
- 8.7.4 If, under 8.7.2, the Minister reduces a Yale First Nation Allocation, the Minister will give reasons in writing to Yale First Nation and the Joint Fisheries Committee for this reduction.
- 8.8 ADJUSTMENTS FOR OVERAGES AND UNDERAGES OF SALMON**
- 8.8.1 The Parties will describe, in the Yale First Nation Fisheries Operational Guidelines, the circumstances when and how adjustments will be made in respect of harvests of a species of Salmon that exceed or fail to meet the Yale First Nation Allocation for that species.
- 8.8.2 The Minister and Yale First Nation will endeavour to minimize any overages and underages for Yale First Nation Allocations for a species of Salmon in each year and to minimize the accumulation of overages and underages in successive years.
- 8.8.3 The Joint Fisheries Committee may discuss and make recommendations to the Minister and Yale First Nation regarding:
- a. the reasons why, in a year, Yale First Nation did not harvest all of or harvested more than a Yale First Nation Allocation for a species of Salmon and what portion of any shortfall is attributable to each reason; and
  - b. whether there should be an adjustment for an underage or overage and, if so, what the size of that adjustment should be.
- 8.8.4 Each year, the Minister and Yale First Nation will adjust for overages and underages as described in the Yale First Nation Fisheries Operational Guidelines.
- 8.8.5 Where the Minister and Yale First Nation agree on whether there should be an adjustment for an underage or overage for a Yale First Nation Allocation for a year and, if so, what the size of that adjustment should be, the Minister and Yale First Nation will use that amount in the multi-year accounting process described in the Yale First Nation Fisheries Operational Guidelines for the Yale First Nation Allocation.
- 8.8.6 Where the Minister and Yale First Nation have not agreed on whether there should be an adjustment for an underage or overage for a Yale First Nation Allocation for a year or what the size of an adjustment should be by March 31 of the following year, or such other date as the Minister and Yale First Nation may agree, the Minister will determine whether there should be an adjustment for an underage or overage for the Yale First Nation Allocation for the year and, if so, what the size of that adjustment should be and the Minister and Yale First Nation

will use that amount in the multi-year accounting process described in the Yale First Nation Fisheries Operational Guidelines for the Yale First Nation Allocation.

## **8.9 NON-ALLOCATED SPECIES**

- 8.9.1 A species of Fish or Aquatic Plant for which there is no Yale First Nation Allocation established under this Agreement may be harvested for Domestic Purposes under the Yale First Nation Right to Harvest Fish in accordance with a Yale First Nation Harvest Document.
- 8.9.2 8.9.3 through 8.9.7 apply with respect to species of Fish and Aquatic Plants, other than Salmon.
- 8.9.3 The Minister or Yale First Nation may propose that a Yale First Nation Allocation be established for a species or stock of Fish or Aquatic Plant.
- 8.9.4 Where the Minister or Yale First Nation proposes the establishment of a Yale First Nation Allocation under 8.9.3, the Minister and Yale First Nation will negotiate and attempt to reach agreement on the Yale First Nation Allocation.
- 8.9.5 Where the Minister and Yale First Nation negotiate and attempt to reach agreement on a Yale First Nation Allocation under 8.9.4 the Minister and Yale First Nation will take into account:
- a. measures necessary for conservation; and
  - b. other matters that the Minister and Yale First Nation agree are relevant.
- 8.9.6 Where the Minister and Yale First Nation are unable to reach agreement on a Yale First Nation Allocation, the matter will be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution without having to proceed through Stages One and Two.
- 8.9.7 Where the Minister and Yale First Nation agree on a Yale First Nation Allocation under 8.9.4 or a Yale First Nation Allocation is established under 8.9.6, the Parties will amend this Agreement in accordance with 27.1.9 to document the Yale First Nation Allocation.

## **8.10 HARVEST OPPORTUNITIES FOR SURPLUS SALMON**

- 8.10.1 In any year, the Minister may determine whether there is a surplus of a species of Salmon that return to spawn in the Domestic Salmon Fishing Area, the size of the surplus and who may harvest that surplus.

- 8.10.2 The Joint Fisheries Committee may:
- a. recommend to the Minister procedures for the identification of a surplus of Salmon and terms and conditions for the harvest of the surplus; and
  - b. provide recommendations to the Minister on the size and disposition of a surplus of Salmon.
- 8.10.3 The Minister may authorize Yale First Nation to harvest some or all of a surplus of Salmon that return to spawn in the Domestic Salmon Fishing Area on reaching agreement with Yale First Nation in respect of:
- a. the terms and conditions of the harvest; and
  - b. whether all or part of the harvest will be included in the determination of underages.
- 8.11 MANAGEMENT OF THE YALE FIRST NATION DOMESTIC FISHERY**
- 8.11.1 On the Effective Date, the Parties will establish a Joint Fisheries Committee for the co-operative planning of:
- a. the exercise of the Yale First Nation Right to Harvest Fish;
  - b. activities of the Yale First Nation related to fisheries monitoring and enforcement; and
  - c. other matters as agreed to by the Parties.
- 8.11.2 Each Party will appoint one representative to the Joint Fisheries Committee.
- 8.11.3 Canada may choose not to attend Joint Fisheries Committee meetings on fisheries matters managed by British Columbia.
- 8.11.4 British Columbia may choose not to attend Joint Fisheries Committee meetings on fisheries matters managed by Canada.
- 8.11.5 Each representative will be notified of and may participate in all meetings of the Joint Fisheries Committee.
- 8.11.6 The Joint Fisheries Committee will seek to operate on a consensus basis.
- 8.11.7 Where all the representatives on the Joint Fisheries Committee do not agree on a Joint Fisheries Committee recommendation contemplated in this Chapter, each Party may submit their own written recommendations to the Minister and, when

doing so, will provide a copy of those recommendations to the other Parties. A reference in this Chapter to a Joint Fisheries Committee recommendation will be read as including a recommendation made under this paragraph.

- 8.11.8 Before and during the development of a Yale First Nation Fishing Plan, the Joint Fisheries Committee may discuss:
- a. relevant fisheries-related data;
  - b. conservation, public health and public safety considerations that could affect harvesting under the Yale First Nation Right to Harvest Fish;
  - c. other fisheries that could significantly affect harvesting under the Yale First Nation Right to Harvest Fish;
  - d. how harvesting under the Yale First Nation Right to Harvest Fish will be coordinated with other fisheries;
  - e. measures for the monitoring and enforcement of Yale First Nation harvesting under the Yale First Nation Right to Harvest Fish;
  - f. how planning activities of the Joint Fisheries Committee will be coordinated with planning activities of other advisory processes; and
  - g. any other matters as agreed to by the Parties.
- 8.11.9 The Joint Fisheries Committee will conduct a post-season review of the harvesting under the Yale First Nation Right to Harvest Fish and other matters as agreed to by the Parties, and may make recommendations to the Parties.
- 8.11.10 The Joint Fisheries Committee will, as appropriate, discuss and make recommendations to the Parties concerning:
- a. the management of fisheries in the Domestic Fishing Area;
  - b. management objectives and biological considerations for Fish and Aquatic Plant harvesting under the Yale First Nation Right to Harvest Fish;
  - c. the protection of Fish, Fish habitat and Aquatic Plants in the Domestic Fishing Area; and
  - d. other matters that could significantly affect harvesting under the Yale First Nation Right to Harvest Fish.

- 8.11.11 The Joint Fisheries Committee may recommend a Yale First Nation Allocation to the Minister for a species of Fish or Aquatic Plant for which a Yale First Nation Allocation has not yet been established.
- 8.11.12 To facilitate cooperative fisheries resource planning of Yale First Nation activities related to stock assessment, Enhancement Initiatives or Fish habitat, the Joint Fisheries Committee will:
- a. discuss relevant information;
  - b. review Yale First Nation proposals for Yale First Nation activities related to stock assessment, Enhancement Initiatives or Fish habitat and may provide recommendations to Yale First Nation on the proposals; and
  - c. carry out such other functions as agreed to by the Parties.

## **8.12 REGIONAL MANAGEMENT ADVISORY PROCESS FOR ABORIGINAL FISHERIES**

- 8.12.1 Yale First Nation will participate in any regional management advisory process for aboriginal fisheries established by the Minister for the purpose of exchanging information between the Minister and aboriginal groups relevant to the management of Fish and Aquatic Plants within an area that includes all or part of the Domestic Fishing Area.
- 8.12.2 On the request of a Party, the Joint Fisheries Committee will discuss what functions of the Joint Fisheries Committee may be carried out at a regional management advisory process for aboriginal fisheries and the mechanisms for the participation of the Parties in that process.
- 8.12.3 Where a regional management advisory process for aboriginal fisheries has functions similar to those of the Joint Fisheries Committee, any Party may request that, for the efficient coordination of fisheries, a function of the Joint Fisheries Committee be carried out by that process.
- 8.12.4 No Party will unreasonably withhold consent to a request made under 8.12.3.
- 8.12.5 Where the Parties agree that a function of the Joint Fisheries Committee will be carried out by a regional management advisory process for aboriginal fisheries:
- a. the Parties will update the Yale First Nation Fisheries Operational Guidelines to reflect the agreement; and
  - b. a reference in this Agreement to the Joint Fisheries Committee will be read as a reference to that process for that function.

- 8.12.6 Where a regional management advisory process for aboriginal fisheries carries out a function of the Joint Fisheries Committee and, in carrying out the function, makes a recommendation to the Minister, a Party may submit its own written recommendations to the Minister if it does not agree with the recommendation of the process and when doing so will provide a copy of those recommendations to the other Parties.
- 8.12.7 The Parties will, from time to time, discuss the effectiveness of the Joint Fisheries Committee and any regional management advisory process for aboriginal fisheries that carries out a function of the Joint Fisheries Committee.
- 8.12.8 Where a regional management advisory process for aboriginal fisheries carries out a function of the Joint Fisheries Committee, any Party may request that the function be carried out by the Joint Fisheries Committee.
- 8.12.9 No Party will unreasonably withhold consent to a request made under 8.12.8.
- 8.12.10 Where the Parties agree that a function carried out by a regional management advisory process for aboriginal fisheries will be carried out by the Joint Fisheries Committee:
- a. the Parties will update the Yale First Nation Fisheries Operational Guidelines to reflect the agreement; and
  - b. a reference in this Agreement to the Joint Fisheries Committee will no longer be read as a reference to the process for that function.
- 8.12.11 For greater certainty, a regional management advisory process for aboriginal fisheries does not include an international advisory process.

### **8.13 PUBLIC FISHERIES ADVISORY PROCESSES**

- 8.13.1 Where Canada or British Columbia establishes a public fisheries advisory process that principally encompasses the Domestic Fishing Area, Canada or British Columbia will, if appropriate, make provisions for Yale First Nation participation in that process on the same basis as other First Nations.
- 8.13.2 Where a public fisheries advisory process exists, or may be established by Canada or British Columbia, that involves a geographic area in British Columbia including but significantly larger than the Domestic Fishing Area, Canada or British Columbia will provide for Yale First Nation representation in that process on the same basis as other First Nations.

- 8.13.3 A public fisheries advisory process referred to in 8.13.1 and 8.13.2 does not include international fisheries management advisory bodies.
- 8.13.4 The design, establishment or termination of public fisheries advisory processes will be at the discretion of the Minister.

#### **8.14 YALE FIRST NATION FISHING PLANS**

- 8.14.1 With respect to fisheries managed from time to time by Canada, every year Yale First Nation will develop a Yale First Nation Fishing Plan for the harvest of allocated and unallocated species of Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish and will provide the Yale First Nation Fishing Plan to the Joint Fisheries Committee.
- 8.14.2 With respect to fisheries managed from time to time by British Columbia, unless otherwise agreed to by Yale First Nation and British Columbia, every year Yale First Nation will develop a Yale First Nation Fishing Plan for the harvest of allocated and unallocated species of Fish and Aquatic Plants under the Yale First Nation Right to Harvest Fish and will provide the Yale First Nation Fishing Plan to the Joint Fisheries Committee.
- 8.14.3 Yale First Nation Fishing Plans will set out the preferences of Yale First Nation with respect to:
- a. the description of what species or stocks of Fish and Aquatic Plants that would be harvested and in what amounts;
  - b. the location and timing of the harvests, including any Yale First Nation preferences with respect to exclusivity;
  - c. the size, type, identification, marking and quantity of the fishing gear to be used, the manner in which the fishing gear will be used and other matters concerning the method of harvest;
  - d. the provision of catch data and other information related to Fish and Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish;
  - e. notification, catch monitoring, identification, reporting and other aspects of monitoring of the harvest;
  - f. the transportation of Fish and Aquatic Plants harvested under the Yale First Nation Right to Harvest Fish;
  - g. Yale First Nation enforcement activities; and



h. other matters as may be required for a Yale First Nation Harvest Document.

8.14.4 On receipt of a Yale First Nation Fishing Plan, the Joint Fisheries Committee will:

- a. review the Yale First Nation Fishing Plan and make recommendations to the Minister and Yale First Nation with respect to provisions that the Minister should put in a Yale First Nation Harvest Document; and
- b. discuss how harvesting under the Yale First Nation Right to Harvest Fish will be coordinated with other fisheries.

8.14.5 The Joint Fisheries Committee may provide recommendations to the Parties regarding in-season amendments to a Yale First Nation Harvest Document.

## **8.15 HARVEST DOCUMENT**

8.15.1 The Minister will issue Yale First Nation Harvest Documents to Yale First Nation to provide for the Yale First Nation Right to Harvest Fish. The Yale First Nation Harvest Documents will be consistent with this Agreement.

8.15.2 Where the Minister is not satisfied that the information that the Minister has on the status of a Salmon stock in any part of the Domestic Salmon Fishing Area is sufficient to enable the Minister to determine whether harvesting on the stock should take place, the Minister is not obligated to consider the issuance of Yale First Nation Harvest Documents for the harvest of Salmon in that part of the Domestic Salmon Fishing Area.

8.15.3 Yale First Nation will inform those individuals who are designated by Yale First Nation to harvest Fish and Aquatic Plants of the provisions of the Yale First Nation Harvest Documents.

8.15.4 Where the Minister issues a Yale First Nation Harvest Document, the Minister will take into account:

- a. conservation measures and the availability of fisheries resources;
- b. the recommendations on the provisions of Yale First Nation Harvest documents that the Minister has received in a timely way from the Joint Fisheries Committee;
- c. utilization of the fisheries resources for the benefit of all Canadians;
- d. efficient and effective harvesting of fisheries resources;
- e. requirements for integration and efficient management of all fisheries;

- f. accepted scientific procedures for management of fisheries resources; and
  - g. any other matters that the Minister considers relevant.
- 8.15.5 The Minister will provide written reasons to Yale First Nation and the Joint Fisheries Committee if a Yale First Nation Harvest Document has significant differences from the provisions recommended by the Joint Fisheries Committee.
- 8.15.6 Where the Minister amends a Yale First Nation Harvest Document, the Minister will give notice and written reasons and, where practical, discuss the amendment with Yale First Nation and the Joint Fisheries Committee in advance.
- 8.15.7 Where special circumstances make it impractical to discuss an amendment with Yale First Nation and the Joint Fisheries Committee under 8.15.6, the Minister:
- a. may amend the Yale First Nation Harvest Document; and
  - b. will notify Yale First Nation and the Joint Fisheries Committee as soon as practical of the amendment and the reasons for the amendment.

## **8.16 STEWARDSHIP AND ENHANCEMENT**

- 8.16.1 Yale First Nation may conduct, with the approval of the Minister, and in accordance with Federal and Provincial Law, Enhancement Initiatives and Stewardship Activities within the Domestic Fishing Area.
- 8.16.2 Canada and Yale First Nation may enter into agreements concerning Yale First Nation activities related to Enhancement Initiatives and Stewardship Activities.

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## SCHEDULE 8-A - YALE FIRST NATION ALLOCATIONS FOR FISH AND AQUATIC PLANTS

### Definitions

1. In this Schedule:

“**Canadian Total Allowable Catch**” means, in respect of a stock or species of Fish, the amount, determined by the Minister, of the stock or species that is available for harvest or is harvested, in Canadian waters in aboriginal, commercial and recreational fisheries;

“**Fraser River Chinook Salmon**” means chinook salmon whose natal waters converge with the Fraser River upstream of the bridge across the Fraser River at Agassiz;

“**Fraser River Chum Salmon**” means chum salmon whose natal waters are in the Fraser River watershed;

“**Fraser River Coho Salmon**” means coho salmon whose natal waters converge with the Fraser River upstream of the bridge across the Fraser River at Agassiz;

“**Fraser River Pink Salmon**” means pink salmon whose natal waters are in the Fraser River watershed;

“**Fraser River Sockeye Salmon**” means sockeye salmon whose natal waters converge with the Fraser River upstream of the bridge across the Fraser River at Agassiz;

“**Pacific Management Area**” means a management area as defined in the *Pacific Fishery Management Area Regulations, 2007*; and

“**Terminal Surplus**”, in respect of Fraser River Chum Salmon, means the amount, determined by the Minister, of Fraser River Chum Salmon that is available for harvest or is harvested in Pacific Management Area 29 and within the Fraser River by aboriginal, recreational and commercial fisheries.

### Sockeye Salmon

2. In any year, the Yale First Nation Allocation for sockeye salmon is 0.9097 per cent of the Canadian Total Allowable Catch for Fraser River Sockeye Salmon for the year up to a maximum of 7,278 Fraser River Sockeye Salmon.

**Pink Salmon**

3. In any year, the Yale First Nation Allocation for pink salmon is 0.037 per cent of the Canadian Total Allowable Catch for Fraser River Pink Salmon for the year up to a maximum of 3,710 Fraser River Pink Salmon.

**Chum Salmon**

4. In any year, the Yale First Nation Allocation for chum salmon is 0.655 per cent of the Terminal Surplus of Fraser River Chum Salmon for the year up to a maximum of 327 Fraser River Chum Salmon.

**Chinook Salmon and Coho Salmon**

5. In any year, the Yale First Nation Allocation for chinook salmon will be an amount of Fraser River Chinook Salmon determined by an abundance-based formula based on the Canadian Total Allowable Catch for Fraser River Chinook Salmon for the year. The formula will be a formula that:
  - a. provides for a maximum amount that the Yale First Nation Allocation for chinook salmon will not exceed; and
  - b. would have produced an average annual allocation of 1,500 Fraser River Chinook Salmon for the years 1992 to 2003 if it had been used for those years.
6. In any year, the Yale First Nation Allocation for coho salmon will be an amount of Fraser River Coho Salmon determined by an abundance-based formula based on the Canadian Total Allowable Catch for Fraser River Coho Salmon for those years. The formula will be a formula that:
  - a. provides for a maximum amount that the Yale First Nation Allocation for coho salmon will not exceed; and
  - b. would have produced an average annual allocation of 300 Fraser River Coho Salmon for the years 1992 to 2003 if it had been used for those years.
7. The abundance-based formulas referred to in 5 and 6 will be established in accordance with the process described in 10 to 16. Until the formulas are established, Yale First Nation may, as provided in 8.14.3, set out, in a Yale First Nation Fishing Plan for a year, its preferences with respect to what amount of Fraser River Chinook Salmon and Fraser River Coho Salmon would be harvested that year.
8. As provided in 8.11.7, Yale First Nation may submit its own written recommendations to the Minister where all the representatives on the Joint Fisheries Committee do not agree on a Joint Fisheries Committee recommendation with respect

- to the provisions in Yale First Nation Harvest Documents on chinook salmon or coho salmon harvesting.
9. As provided in 8.15.5, the Minister will provide written reasons to Yale First Nation if a Yale First Nation Harvest Document has significant differences from the provisions recommended by the Yale First Nation in accordance with 8.11.7.
  10. Canada or Yale First Nation may propose the establishment of an abundance-based formula for the Yale First Nation Allocation for coho salmon or chinook salmon by providing a copy of the proposal, in writing, to the Parties.
  11. Neither Canada nor Yale First Nation will propose a formula or maximum amount until Canada is satisfied that there is sufficient information to establish the abundance-based formula. Canada or Yale First Nation may ask the Joint Fisheries Committee to make recommendations with respect to whether there is sufficient information to establish an abundance-based formula. Where Canada does not follow a recommendation of the Joint Fisheries Committee with respect to whether there is sufficient information to establish an abundance-based formula, Canada will provide written reasons to Yale First Nation.
  12. Where Canada or Yale First Nation proposes the establishment of an abundance-based formula, Canada and Yale First Nation will negotiate and attempt to reach agreement on the formula.
  13. Canada and Yale First Nation may ask the Joint Fisheries Committee to make recommendations with respect to an abundance-based formula.
  14. Where the representatives of Canada and Yale First Nation on the Joint Fisheries Committee agree on a Joint Fisheries Committee recommendation for a formula, the Joint Fisheries Committee will notify Canada and Yale First Nation of the recommendation.
  15. Where Canada and Yale First Nation negotiate and attempt to reach agreement on a formula, Canada and Yale First Nation will provide each other with recommendations and other material that Canada or Yale First Nation considers relevant. Where Canada and Yale First Nation do not agree in writing to a formula for the Yale First Nation Allocation for coho salmon or for chinook salmon, within one year of a proposal, Canada will take into account the recommendations and other material that Canada and Yale First Nation provided each other and will determine the formula. Canada will provide written reasons to Yale First Nation if the formula has significant differences from the recommendations of Yale First Nation.
  16. Where Canada and Yale First Nation agree in writing to a formula or a formula is determined under 15, this Schedule is deemed amended to incorporate the formula.



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## CHAPTER 9 WATER

### 9.1 GENERAL

- 9.1.1 Nothing in this Agreement alters Federal or Provincial Law in respect of property in water.
- 9.1.2 Storage, diversion, extraction and use of water and Groundwater will be in accordance with Federal and Provincial Law.
- 9.1.3 Notwithstanding 9.1.2, the *Water Utility Act* does not apply to Yale First Nation, a Yale First Nation Public Institution or a Yale First Nation Corporation, for the provision of services on Yale First Nation Land.

### 9.2 YALE FIRST NATION LAWS

- 9.2.1 Yale First Nation Government may make laws in respect of:
- a. the consent of Yale First Nation under 9.3.4a to applications for Water Licences to be applied against the Yale First Nation Water Reservation; and
  - b. the supply and the use of water from a Water Licence issued to Yale First Nation in accordance with 9.3.4.
- 9.2.2 Yale First Nation Law under 9.2.1a prevails to the extent of a Conflict with Federal or Provincial Law.
- 9.2.3 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 9.2.1b.

### 9.3 YALE FIRST NATION WATER RESERVATION

- 9.3.1 On the Effective Date, British Columbia will establish a water reservation under the *Water Act*, in favour of Yale First Nation, for all purposes including domestic, industrial, and agricultural purposes, but excluding hydro power purposes, of 9,832 cubic decametres of water per year from those Streams as set out in Schedule 9-A.
- 9.3.2 The Yale First Nation Water Reservation will have priority over all Water Licences on those Streams set out in Schedule 9-A other than:
- a. Water Licences issued before July 30, 2008;

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- b. Water Licences issued pursuant to an application made before July 30, 2008; and
  - c. Water Licences issued pursuant to water reservations established before July 30, 2008.
- 9.3.3 A person may apply to British Columbia for a Water Licence to be applied against the Yale First Nation Water Reservation.
- 9.3.4 If a person applies to British Columbia for a Water Licence under 9.3.3 and:
- a. Yale First Nation has consented in writing to the application;
  - b. the application conforms to provincial regulatory requirements, including safety standards;
  - c. there is sufficient unrecorded volume of flow in the Yale First Nation Water Reservation;
  - d. where required, the application includes provisions for storage where the monthly percentage of Available Flow during periods of low flow is insufficient to meet proposed demand; and
  - e. the application is for a volume of flow from a Stream that, together with the total volume of flow licensed for that Stream under this Agreement, does not exceed the monthly percentage of Available Flow for that Stream as set out in this Agreement,
- British Columbia will approve the application and issue the Water Licence.
- 9.3.5 The volume of flow approved by British Columbia in a Water Licence issued under 9.3.4 will be deducted from the unrecorded volume of flow in the Yale First Nation Water Reservation.
- 9.3.6 The total volume of flow under the Water Licences to be applied against the Yale First Nation Water Reservation may not exceed the monthly percentage of Available Flow of each Stream as set out in Schedule 9-A.
- 9.3.7 If a Water Licence issued under 9.3.4 is cancelled, expires or is otherwise terminated, the volume of flow in that Water Licence will be added back to the unrecorded volume of flow for that Stream in the Yale First Nation Water Reservation.



- 9.3.8 British Columbia will Consult with Yale First Nation in respect of applications for Water Licences where the applicant may reasonably require access across, or, an interest in, Yale First Nation Land.
- 9.3.9 If a person other than Yale First Nation or a Yale First Nation Member has a Water Licence and requires access across, or an interest in, Yale First Nation Land for the construction, maintenance, improvement or operation of works authorized under that licence, Yale First Nation may not unreasonably withhold consent, and will take reasonable steps to ensure that access or the granting of that interest, if the Water Licence holder offers fair compensation to the owner of the interest affected.
- 9.3.10 British Columbia or Yale First Nation may refer a dispute arising under 9.3.9 to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution.
- 9.3.11 If Yale First Nation or a Yale First Nation Member has a Water Licence issued under 9.3.4 and reasonably requires access across, or an interest in, provincial Crown land for the construction, maintenance, improvement or operation of works authorized under that licence, British Columbia will grant the access or interest on reasonable terms in accordance with Provincial Law.
- 9.3.12 A Water Licence issued under 9.3.4 for use on Yale First Nation Land is not subject to any rentals, fees, or other charges, except taxes, by British Columbia.
- 9.3.13 Nothing in this Agreement precludes Yale First Nation or Yale First Nation Members from applying under Provincial Law for a Water Licence unrelated to the Yale First Nation Water Reservation.
- 9.3.14 Sections 27, 28, 29 and 30 of the *Water Act* in respect of a licensee's right to expropriate land do not apply on Yale First Nation Land.

## **9.4 SALE OF WATER**

- 9.4.1 If Federal and Provincial Law permit the sale of water, Yale First Nation may sell water in accordance with Federal and Provincial Law.

## **9.5 WATER MANAGEMENT**

- 9.5.1 Yale First Nation may participate in provincial water planning processes in the Yale First Nation Area.
- 9.5.2 Yale First Nation and Canada or British Columbia may enter into agreements in respect of the management of water within the Yale First Nation Area to:

- a. define respective roles and responsibilities and coordinate activities related to:
    - i. flood response and public safety;
    - ii. protection of water quality;
    - iii. Groundwater management and regulation;
    - iv. resource inventory;
    - v. monitoring of water quality and quantity;
    - vi. management of, and access to, information;
    - vii. water conservation;
    - viii. water management objectives and planning;
    - ix. any other matters as agreed to by the Parties; and
  - b. identify watersheds that require water management planning.
- 9.5.3 Where a watershed includes both Yale First Nation Land and provincial Crown land, and if Yale First Nation or British Columbia considers that the watershed is an important source of drinking water, British Columbia and Yale First Nation may enter into agreements on the protection of drinking water in that watershed.

## **9.6 POWER RESERVATION**

- 9.6.1 In addition to the Yale First Nation Water Reservation, on the Effective Date British Columbia will establish water reservations under the *Water Act* of the unrecorded water of Gordon Creek and Nine Mile Creek, in favour of Yale First Nation, for five years after the Effective Date to enable Yale First Nation to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.
- 9.6.2 If Yale First Nation applies for a Water Licence for hydro power purposes and any related storage purposes in relation to a water reservation established under 9.6.1, British Columbia will grant the Water Licence if the proposed hydro power project conforms to Federal and Provincial Law and there is sufficient Available Flow in the Stream subject to that water reservation.
- 9.6.3 If British Columbia issues a Water Licence under 9.6.2 for a Stream, the water reservation established under 9.6.1 will terminate in respect of that Stream.

- 9.6.4 Subject to 9.6.6, British Columbia will establish water reservations under the *Water Act* of:
- a. the unrecorded waters of Emory Creek and tributaries upstream of Everet's Creek, in the New Westminster Water District, for a period of three years commencing from:
    - i. the Effective Date; or
    - ii. the date of the final decision on the current application for power purpose on Emory Creek (application file 2002654) or from the abandonment of that application,whichever is later;
  - b. the unrecorded waters of Ruby Creek and tributaries, in the New Westminster Water District, for a period of three years commencing from:
    - i. the Effective Date; or
    - ii. the date of the final decision the current application for power purpose on Ruby Creek (application file 2002618) or from the abandonment of that application,whichever is later; and
  - c. the unrecorded waters of Siwash Creek and tributaries in the New Westminster Water District, for a period of three years commencing from:
    - i. the Effective Date; or
    - ii. the date of the final decision on the current application for power purpose on Siwash Creek (application file 2002574) or from the abandonment of that application,whichever is later,
- to enable Yale First Nation to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.

9.6.5 For the purpose of any of the water reservations to be established in accordance with 9.6.4, "final decision" refers to the final outcome of the application after all decisions on the application have been made, including:

- a. any appeal under the *Water Act* from the decision; and

- b. any other legal proceeding filed in respect of the application, the decision or any appeal from the decision.
- 9.6.6 Notwithstanding 9.6.4, if a Water Licence is issued to the applicant in respect of any of the current applications on Emory Creek and tributaries (application file 2002654), on Ruby Creek and tributaries (application file 2002618), or on Siwash Creek and tributaries (application file 2002574), British Columbia will not be required to establish a water reservation for hydro power purposes under the *Water Act* for Yale First Nation on any of the Streams in respect of which that Water Licence has been issued.
- 9.6.7 If Yale First Nation applies for a Water Licence for hydro power purposes and any related storage purposes in relation to a water reservation established for Yale First Nation under 9.6.4, British Columbia will grant the Water Licence if the proposed hydro power project conforms to Federal and Provincial Law and there is sufficient Available Flow in the Stream subject to that water reservation.
- 9.6.8 If British Columbia issues a Water Licence under 9.6.7 for a Stream, the water reservation established under 9.6.4 will terminate in respect of that Stream.

## **9.7 GROUNDWATER**

- 9.7.1 If British Columbia brings into force Provincial Law regulating the volume of Groundwater under Yale First Nation Land which may be extracted and used and if Groundwater is reasonably available, British Columbia and Yale First Nation will negotiate and attempt to reach agreement on the volume of Groundwater that may be extracted and used for domestic, agricultural and industrial purposes by Yale First Nation on Yale First Nation Land for as long as that Provincial Law is in effect.
- 9.7.2 For the purposes of 9.7.1, the British Columbia and Yale First Nation will determine:
- a. the volume of flow of Groundwater that can reasonably be withdrawn from the Groundwater aquifer under consideration while maintaining the sustainability and quality of the Groundwater from the aquifer; and
  - b. the existing and reasonable future needs for Groundwater of Yale First Nation on Yale First Nation Land, as well as the existing and future needs of other users in the area,
- and take into account any applicable requirement under Federal and Provincial Law.

- 9.7.3 If British Columbia and Yale First Nation are unable to reach agreement under 9.7.1 and 9.7.2 on the volume of Groundwater that may be extracted and used by Yale First Nation, British Columbia or Yale First Nation may refer the matter to be finally determined by arbitration.
- 9.7.4 Access to extract Groundwater on Yale First Nation Land requires the consent of Yale First Nation.

### SCHEDULE 9-A - YALE FIRST NATION WATER VOLUMES

Streams partially within Yale First Nation Land for which a monthly percentage of Available Flow has been specified:

<b>Stream Name</b>	<b>Monthly Percentage of Available Flow</b>	<b>National Topographic System - Series Map References</b>
Albert Flat Brook	0.15%	92H/011
Dave's Creek	28.00%	92H/06
Emory Creek	9.26%	92H/05 & 92H/11
Hills Bar Creek	40.51%	92H/11
Keikum Creek	37.14%	92H/06
Mary Ann Creek	16.27%	92H/11
Norvik/Hayward Creek	2.71%	92H/11
Qualark Creek	1.73%	92H/11
Ruby Creek	0.48%	92H/05
Sawmill Creek	0.93%	92H/11 & 92H/12
Siwash Creek	0.22%	92H/11
Stulkawhits Creek	3.99%	92H/05 & 92H/06
Suka Creek	20.23%	92H/06 & 92H/11
Yale Creek	1.89%	92H/11 & 92H/12

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## CHAPTER 10 WILDLIFE

### 10.1 GENERAL

- 10.1.1 Yale First Nation has the right to harvest Wildlife for Domestic Purposes in the Wildlife Harvest Area in accordance with this Agreement.
- 10.1.2 The Yale First Nation Right to Harvest Wildlife is limited by measures necessary for conservation, public health or public safety.
- 10.1.3 Yale First Nation may not dispose of the Yale First Nation Right to Harvest Wildlife.
- 10.1.4 All Yale First Nation Members may exercise the Yale First Nation Right to Harvest Wildlife, except as otherwise provided under Yale First Nation Law.
- 10.1.5 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Wildlife under this Agreement, provided that British Columbia ensures that those authorized uses or dispositions do not deny Yale First Nation the reasonable opportunity to harvest Wildlife under the Yale First Nation Right to Harvest Wildlife.
- 10.1.6 For the purposes of 10.1.5, British Columbia and Yale First Nation will enter into an agreement, that will come into effect on the Effective Date, on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to harvest Wildlife.
- 10.1.7 Yale First Nation will exercise the Yale First Nation Right to Harvest Wildlife in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date, or authorized in accordance with 10.1.5.
- 10.1.8 Yale First Nation may exercise the Yale First Nation Right to Harvest Wildlife on fee simple lands within the Wildlife Harvest Area, other than Yale First Nation Land, but that harvesting is subject to Federal and Provincial Law in respect of access to fee simple lands.
- 10.1.9 Where lands owned by another First Nation under a treaty or land claims agreement fall within the Wildlife Harvest Area, Yale First Nation Members may exercise the Yale First Nation Right to Harvest Wildlife on those lands, but that

- harvesting is subject to Federal and Provincial Law and the laws of the other First Nation in respect of access to those lands.
- 10.1.10 Nothing in this Agreement precludes Yale First Nation from entering into an agreement with a federal department or agency in respect of access and harvesting by Yale First Nation Members on land owned or in use by that department or agency in accordance with that agreement and Federal and Provincial Law.
- 10.1.11 Subject to 10.1.12, Yale First Nation Members are not required to have federal or provincial licences or pay any fees, or royalties to Canada or British Columbia relating to the exercise of the Yale First Nation Right to Harvest Wildlife.
- 10.1.12 Nothing in this Agreement affects the application of Federal or Provincial Law in respect of the possession, use and regulation of firearms.
- 10.1.13 Nothing in this Agreement precludes Yale First Nation Members from harvesting Wildlife outside of the Wildlife Harvest Area throughout Canada in accordance with:
- a. Federal and Provincial Law;
  - b. any agreements, that are in accordance with Federal and Provincial Law, between Yale First Nation and another aboriginal group; or
  - c. an agreement between another aboriginal group and Canada or British Columbia.
- 10.1.14 The Minister retains authority for Wildlife, and their management, conservation and habitat.
- 10.1.15 Nothing in this Agreement alters Federal or Provincial Law in respect of property in Wildlife.
- 10.1.16 In the Wildlife Harvest Area, the use of resources on provincial Crown land for purposes reasonably incidental to the exercise of the Yale First Nation Right to Harvest Wildlife is subject to Federal and Provincial Law.
- 10.2 YALE FIRST NATION LAWS**
- 10.2.1 Yale First Nation Government may make laws in respect of the Yale First Nation Right to Harvest Wildlife in respect of:
- a. the distribution of harvested Wildlife among Yale First Nation Members;
  - b. the designation of Yale First Nation Members to harvest Wildlife;



- c. identification of Wildlife and Wildlife parts that may be transported by an undocumented Yale First Nation Member or by an aboriginal trading partner who is not a Yale First Nation Member; and
    - d. the Trade and Barter of Wildlife under 10.7.
- 10.2.2 Yale First Nation Law under 10.2.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 10.2.3 Yale First Nation Government will make laws in respect of the Yale First Nation Right to Harvest Wildlife to require:
  - a. Yale First Nation Members who harvest Wildlife under this Agreement:
    - i. to comply with any conservation measure established by the Minister;
    - ii. to carry documentation issued by Yale First Nation and to produce that documentation on request by an authorized individual; and
    - iii. to report to Yale First Nation the harvest of any Wildlife species that are subject to a conservation measure established by the Minister; and
  - b. all persons who transport Wildlife or Wildlife parts harvested under this Agreement to carry documentation issued by Yale First Nation and to produce that documentation on request by an authorized individual.
- 10.2.4 Yale First Nation Government may make laws in respect of the Yale First Nation Right to Harvest Wildlife for the methods, timing and location of harvesting, and individual allocation, of Wildlife.
- 10.2.5 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 10.2.3 and 10.2.4.

### **10.3 DOCUMENTATION**

- 10.3.1 Yale First Nation will issue documentation to Yale First Nation Members who exercise the Yale First Nation Right to Harvest Wildlife.
- 10.3.2 Documentation issued by Yale First Nation under 10.3.1 will:
  - a. be in the English language, which version is authoritative and, at the discretion of Yale First Nation, the Puchil dialect of the Nlaka'pamux (Thompson) language;
  - b. include the name and address of the individual; and

- c. meet any other requirements as set out by the Yale First Nation Government.
- 10.4 CONSERVATION MEASURES FOR WILDLIFE SPECIES**
- 10.4.1 The Minister may establish or vary conservation measures in respect of Wildlife species in the Wildlife Harvest Area.
- 10.4.2 If British Columbia or Yale First Nation proposes that a conservation measure be established or varied in respect of a Wildlife species in the Wildlife Harvest Area, the Minister will Consult with Yale First Nation regarding the conservation measure, including the role of Yale First Nation in the development and implementation of the conservation measure.
- 10.4.3 In establishing or varying a conservation measure under 10.4.1, the Minister will take into account all relevant information, including:
- a. the conservation risk to the Wildlife species;
  - b. the population of the Wildlife species:
    - i. within the Wildlife Harvest Area; and
    - ii. within its normal range or area of movement outside the Wildlife Harvest Area; and
  - c. the necessity for and the nature of the proposed conservation measure.
- 10.4.4 If the Minister establishes or varies a conservation measure under 10.4.1:
- a. the Minister will use reasonable efforts to minimize the impact of the conservation measure on the Yale First Nation Right to Harvest Wildlife;
  - b. the Minister will provide Yale First Nation with a copy of the conservation measure; and
  - c. upon the request of Yale First Nation, the Minister will provide Yale First Nation with written reasons for the adoption of the conservation measure.
- 10.4.5 Upon request by Yale First Nation, the Minister may approve a method of harvest that differs from those methods permitted under Federal or Provincial Law provided that the Minister is satisfied that the method is consistent with public safety.

**10.5 YALE FIRST NATION WILDLIFE ALLOCATION**

- 10.5.1 If the Minister determines that it is necessary to establish a Yale First Nation Allocation as a conservation measure for a Wildlife species, British Columbia and Yale First Nation will negotiate and attempt to reach agreement on the Yale First Nation Allocation for that species.
- 10.5.2 If British Columbia and Yale First Nation fail to agree on the Yale First Nation Allocation under 10.5.1, the Yale First Nation Allocation will be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution without having to proceed through Stages One and Two.
- 10.5.3 Yale First Nation and British Columbia in a negotiation of a Yale First Nation Allocation under 10.5.1, or an arbitrator in making a determination under 10.5.2, will take into account all relevant information presented by British Columbia and Yale First Nation and in particular information in respect of:
- a. the Total Allowable Wildlife Harvest for the Wildlife species;
  - b. current and past harvest by Yale First Nation for Domestic Purposes;
  - c. any change in Yale First Nation harvesting effort; and
  - d. harvest by individuals other than Yale First Nation Members.
- 10.5.4 The harvest of a Wildlife species subject to a Total Allowable Wildlife Harvest by individuals who are not Yale First Nation Members may be authorized by British Columbia to occur at any time in a given year, including before or concurrent with the harvest by Yale First Nation Members of the Yale First Nation Allocation.

**10.6 WILDLIFE ADVISORY MANAGEMENT PROCESSES**

- 10.6.1 Yale First Nation will have the right to participate in any Wildlife advisory management processes established by British Columbia in respect of the Wildlife Harvest Area.
- 10.6.2 If a Wildlife advisory management process is established by British Columbia for an area that includes any portion of the Wildlife Harvest Area, the Minister may request recommendations from the Wildlife advisory management process before determining whether a Wildlife species will be or continue to be subject to a conservation measure.

**10.7 TRADE, BARTER AND SALE**

- 10.7.1 Yale First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Wildlife or Wildlife parts, including meat and furs, harvested under the Yale First Nation Right to Harvest Wildlife.
- 10.7.2 Yale First Nation Members may exercise the right to Trade and Barter Wildlife or Wildlife parts under 10.7.1, except as otherwise provided under Yale First Nation Law under 10.2.1d.
- 10.7.3 If Federal and Provincial Law permit the sale of Wildlife or Wildlife parts, including meat and furs, Yale First Nation may sell Wildlife or Wildlife parts, including meat and furs, harvested under the Yale First Nation Right to Harvest Wildlife in accordance with Federal and Provincial Law.
- 10.7.4 Any transport of Wildlife or Wildlife parts, including meat, harvested under the Yale First Nation Right to Harvest Wildlife will be in accordance with:
- a. Federal and Provincial Law; and
  - b. Yale First Nation Law under 10.2.3b.
- 10.7.5 Any export of Wildlife or Wildlife parts, including meat or furs, harvested under the Yale First Nation Right to Harvest Wildlife will be in accordance with Federal and Provincial Law.

**10.8 TRAPPING**

- 10.8.1 British Columbia will not register a new trapline on Yale First Nation Land without the consent of Yale First Nation.

**10.9 GUIDING**

- 10.9.1 Guide outfitter certificates set out in Appendix H-1, Part 4 are retained by the persons who hold those interests. The privileges conferred by those interests may be transferred or renewed in accordance with Provincial Law.
- 10.9.2 Yale First Nation will allow reasonable access on Yale First Nation Land for the purpose of carrying out guiding activities to any person who:
- a. holds a guide outfitter certificate, set out in Appendix H-1, Part 4, or any renewal or replacement thereof by transfer;

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- b. holds a guide outfitter licence or assistant guide licence and is carrying out guiding activities in relation to a guide outfitter certificate area listed in Appendix H-1, Part 4, or any renewal or replacement thereof by transfer;
  - c. holds an angling guide licence or an assistant angling guide licence; or
  - d. is an employee, agent and other representatives of any person described in 10.9.2a through 10.9.2c.
- 10.9.3 British Columbia will not grant the privilege of guiding for game on any portion of Yale First Nation Land not included in a guide outfitter certificate set out in Appendix H-1, Part 4 without the consent of Yale First Nation.
- 10.9.4 If the privilege for guiding for game exercisable in an area that is wholly or partially within Yale First Nation Land ceases by reason of non-renewal of the privilege or operation of law, including by exercise of administrative discretion, British Columbia will not grant a privilege of guiding for game on that portion of Yale First Nation Land without the consent of Yale First Nation.



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## CHAPTER 11 MIGRATORY BIRDS

### 11.1 GENERAL

- 11.1.1 Yale First Nation has the right to harvest Migratory Birds for Domestic Purposes in the Migratory Birds Harvest Area in accordance with this Agreement.
- 11.1.2 The Yale First Nation Right to Harvest Migratory Birds is limited by measures necessary for conservation, public health or public safety.
- 11.1.3 Yale First Nation may not dispose of the Yale First Nation Right to Harvest Migratory Birds.
- 11.1.4 All Yale First Nation Members may exercise the Yale First Nation Right to Harvest Migratory Birds, except as otherwise provided under Yale First Nation Law.
- 11.1.5 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Migratory Birds under this Agreement, provided that British Columbia ensures that those authorized uses or dispositions do not deny Yale First Nation the reasonable opportunity to harvest Migratory Birds under the Yale First Nation Right to Harvest Migratory Birds.
- 11.1.6 For the purposes of 11.1.5, British Columbia and Yale First Nation will enter into an agreement, that will come into effect on the Effective Date, on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Yale First Nation's reasonable opportunity to harvest Migratory Birds.
- 11.1.7 Yale First Nation will exercise the Yale First Nation Right to Harvest Migratory Birds in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing on the Effective Date, or authorized in accordance with 11.1.5.
- 11.1.8 Yale First Nation may exercise the Yale First Nation Right to Harvest Migratory Birds on fee simple lands within the Migratory Birds Harvest Area other than Yale First Nation Land, but that harvesting is subject to Federal and Provincial Law in respect of access to fee simple lands.
- 11.1.9 Where lands owned by another First Nation under a treaty or land claims agreement fall within the Migratory Birds Harvest Area, Yale First Nation Members may exercise the Yale First Nation Right to Harvest Migratory Birds on those lands, but that harvesting is subject to Federal and Provincial Law and the laws of the other First Nation in respect of access to those lands.

- 11.1.10 Nothing in this Agreement precludes Yale First Nation from entering into an agreement with a federal department or agency in respect of access and harvesting by Yale First Nation Members on land owned or in use by that department or agency in accordance with that agreement and Federal and Provincial Law.
- 11.1.11 Subject to 11.1.12, Yale First Nation Members are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the exercise of the Yale First Nation Right to Harvest Migratory Birds.
- 11.1.12 Nothing in this Agreement affects the application of Federal or Provincial Law in respect of the possession, use and regulation of firearms.
- 11.1.13 Nothing in this Agreement precludes Yale First Nation Members from harvesting Migratory Birds outside of the Migratory Birds Harvest Area throughout Canada in accordance with:
- a. Federal and Provincial Law;
  - b. any agreements, that are in accordance with Federal and Provincial Law, between Yale First Nation and another aboriginal group; or
  - c. an agreement between another aboriginal group and Canada or British Columbia.
- 11.1.14 The Minister retains the authority to manage and conserve Migratory Birds and Migratory Bird habitat and will exercise that authority in a manner that is consistent with this Agreement.
- 11.1.15 Nothing in this Agreement alters Federal or Provincial Law in respect of property in Migratory Birds.
- 11.1.16 In the Migratory Birds Harvest Area, the use of resources on provincial Crown land for purposes reasonably incidental to the exercise of the Yale First Nation Right to Harvest Migratory Birds is subject to Federal and Provincial Law.

## **11.2 YALE FIRST NATION LAWS**

- 11.2.1 Yale First Nation Government may make laws in respect of the Yale First Nation Right to Harvest Migratory Birds for:
- a. the methods, timing, and location of the harvest of Migratory Birds by Yale First Nation Members;



- b. the distribution of harvested Migratory Birds among Yale First Nation Members;
  - c. the designation of Yale First Nation Members to harvest Migratory Birds;
  - d. the Trade and Barter of Migratory Birds under 11.3; and
  - e. the sale of inedible byproducts, including down, of harvested Migratory Birds.
- 11.2.2 Yale First Nation Law under 11.2.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 11.2.3 Yale First Nation Government may make laws in respect of the Yale First Nation Right to Harvest Migratory Birds for:
- a. the management of Migratory Birds and Migratory Bird habitat on Yale First Nation Land;
  - b. the sale of Migratory Birds, other than their inedible byproducts, if permitted by Federal and Provincial Law; and
  - c. the establishment of documentation to identify Yale First Nation Members who harvest Migratory Birds.
- 11.2.4 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 11.2.3.

### **11.3 TRADE AND BARTER**

- 11.3.1 Yale First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Migratory Birds harvested under the Yale First Nation Right to Harvest Migratory Birds.
- 11.3.2 All Yale First Nation Members may exercise the right to Trade and Barter Migratory Birds under 11.3.1, except as otherwise provided under Yale First Nation Law under 11.2.1d.

### **11.4 SALE**

- 11.4.1 If Federal and Provincial Law permit the sale of Migratory Birds Yale First Nation and Yale First Nation Members may sell Migratory Birds harvested under the Yale First Nation Right to Harvest Migratory Birds in accordance with Federal Law, Provincial Law and any Yale First Nation Law under 11.2.3b.

11.4.2 Notwithstanding 11.4.1, Yale First Nation and Yale First Nation Members may sell inedible byproducts, including down, of Migratory Birds harvested under the Yale First Nation Right to Harvest Migratory Birds in accordance with any Yale First Nation Law under 11.2.1e.

## **11.5 TRANSPORTATION AND EXPORT**

11.5.1 Any transport or export of Migratory Birds and their inedible byproducts, including down, harvested under the Yale First Nation Right to Harvest Migratory Birds will be in accordance with Federal and Provincial Law.

11.5.2 All individuals who transport Migratory Birds harvested under the Yale First Nation Right to Harvest Migratory Birds must have in their immediate possession a record of receipt of the Migratory Birds showing:

- a. the date and place of receipt; and
- b. the name and address of the Yale First Nation Member who harvested the Migratory Birds or from whom the Migratory Birds were acquired.

## **11.6 DOCUMENTATION**

11.6.1 Yale First Nation will issue documentation to Yale First Nation Members who exercise the Yale First Nation Right to Harvest Migratory Birds.

11.6.2 All Yale First Nation Members who exercise the Yale First Nation Right to Harvest Migratory Birds are required to carry documentation issued by Yale First Nation under 11.6.1 and to produce that documentation on request by an authorized individual.

11.6.3 Documentation issued by Yale First Nation under 11.6.1 will:

- a. be in the English language, which version is authoritative and, at the discretion of Yale First Nation, the Puchil dialect of the Nlaka'pamux (Thompson) language;
- b. include the name and address of the individual; and
- c. meet any other requirements as set out in a Yale First Nation Law under 11.2.3c.

## **11.7 CONSERVATION MEASURES**

- 11.7.1 Yale First Nation and Canada or British Columbia, or the Parties, may enter into conservation agreements in relation to matters of common concern in respect of Migratory Birds, including:
- a. information sharing;
  - b. actions to be taken by the Parties to jointly address conservation issues;
  - c. local management of Migratory Birds and their habitat;
  - d. population, harvest and habitat monitoring;
  - e. enforcement; and
  - f. licence or permit requirements.
- 11.7.2 If, in the opinion of the Minister, conservation measures are needed to protect a population of a species of Migratory Bird that is harvested under the Yale First Nation Right to Harvest Migratory Birds, the Minister will Consult with Yale First Nation in respect of:
- a. the necessity of the conservation measures;
  - b. the nature of the conservation measures;
  - c. measures to minimize or mitigate restrictions or limitations on the Yale First Nation Right to Harvest Migratory Birds resulting from the proposed conservation measures; and
  - d. if applicable, Yale First Nation's role in the development and the implementation of the conservation measures.
- 11.7.3 If Yale First Nation is of the opinion that conservation measures are needed in respect of a population of a species of Migratory Bird that is harvested by Yale First Nation under its Yale First Nation Right to Harvest Migratory Birds, Yale First Nation may present its views to the Minister in respect of the need for such conservation measures and its proposed role in the development and implementation of them, and the Minister will give full and fair consideration to Yale First Nation's proposal.
- 11.7.4 Where the Minister has authorized the implementation of conservation measures and the conservation measures will affect the Yale First Nation Right to Harvest Migratory Birds:

- a. the Minister will use reasonable efforts to avoid, minimize, or mitigate restrictions or limitations on the Yale First Nation Right to Harvest Migratory Birds; and
  - b. the Minister, if requested, will provide written reasons to Yale First Nation for the conservation measures adopted.
- 11.7.5 If Canada believes on reasonable grounds that an emergency exists in respect of a population of a species of Migratory Bird, it may act without first Consulting Yale First Nation in accordance with 11.7.2, and, as soon as practicable thereafter, Canada will inform Yale First Nation of, and provide reasons for, its action.

## **11.8 MANAGEMENT**

- 11.8.1 Yale First Nation will have the right to participate in any Migratory Bird advisory committee established by Canada or British Columbia, that addresses matters regarding Migratory Birds that occur in or impact the Migratory Bird Harvest Area.

## **11.9 DESIGNATED MIGRATORY BIRD POPULATIONS**

- 11.9.1 If, in the opinion of any Party, there is a conservation risk to a population of a species of Migratory Bird, that Party may make recommendations to the Minister for the designation of that population of Migratory Birds as a Designated Migratory Bird Population.
- 11.9.2 If the Minister, after Consulting with Yale First Nation, determines that there is a conservation risk to a population of a species of Migratory Bird that requires the allocation of the harvest of that population amongst user groups, and that any other conservation measures that have been implemented have not been effective in reducing the conservation risk to that population, the Minister may designate that population as a Designated Migratory Bird Population.
- 11.9.3 The Minister will, after Consulting with Yale First Nation, determine the Total Allowable Migratory Bird Harvest of the Designated Migratory Bird Population and the allocation of that Total Allowable Migratory Bird Harvest among the user groups.
- 11.9.4 The Minister, in determining the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population, will take into account all relevant factors, including:
- a. the status of the Designated Migratory Bird Population;

- b. continental and local conservation requirements; and
- c. Canada's international commitments in respect of Migratory Birds.

11.9.5 The Minister, in making a Yale First Nation Allocation of the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population, will take into account, among other things, the following factors:

- a. the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population;
- b. the current and past domestic needs and harvesting practices of Yale First Nation for the Designated Migratory Bird Population;
- c. the extent and nature of the Yale First Nation Right to Harvest Migratory Birds; and
- d. the interests of other user groups within the range of the Designated Migratory Bird Population.

11.9.6 On the recommendation of a Party, the Minister may determine that there is no longer a conservation risk to a Designated Migratory Bird Population and remove the designation from that population.

## **11.10 AGREEMENTS**

11.10.1 Yale First Nation and Canada or British Columbia, or the Parties, may enter into an agreement on the conservation or management of Migratory Birds, including a range of activities related to achieving Migratory Bird population and habitat conservation objectives, such as inventory, monitoring, assessment, research, harvest allocation, regulation, compliance and enforcement, creation and management of protected areas, stewardship, restoration, enhancement, outreach and education on best practices.



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## CHAPTER 12 LANDS

### 12.1 GENERAL

- 12.1.1 On the Effective Date, Yale First Nation Land comprises 1,966 hectares, more or less, including:
- a. 217 hectares, more or less, of Former Indian Reserves described in Appendix B-2, Part 1 and identified for illustrative purposes in Appendix B-2, Part 2; and
  - b. 1,749 hectares, more or less, of Former Provincial Crown Land identified for illustrative purposes in Appendix B-3.
- 12.1.2 Without limitation to the generality of 22.3.1 any rights of the Yale Band:
- a. to a one half interest in the sale of merchantable timber from Kuthlalth Indian Reserve #3; and
  - b. to firewood for personal use of Yale Band members from Kuthlalth Indian Reserve #3,
- vest in Yale First Nation and the Yale First Nation Members on the Effective Date.

### 12.2 OWNERSHIP OF YALE FIRST NATION LAND

- 12.2.1 On the Effective Date, subject to 12.6.1, Yale First Nation owns Yale First Nation Land in fee simple, being the largest estate known in law, and that estate is not subject to any condition, proviso, restriction, exception, or reservation set out in the *Land Act* or any comparable limitation under Federal or Provincial Law.
- 12.2.2 In accordance with this Agreement and any Yale First Nation Law, Yale First Nation may, without the consent of Canada or British Columbia:
- a. dispose of the whole of its fee simple interest in any parcel of Yale First Nation Land to any person; and
  - b. from the whole of its fee simple interest, or its interest in any parcel of Yale First Nation Land, create or dispose of any lesser estate or interest to any person, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*.

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- 12.2.3 Where Yale First Nation disposes of its fee simple interest in a parcel of Yale First Nation Land, that parcel of land does not cease to be Yale First Nation Land except as provided in 12.2.4, paragraph 12 of Appendix J-1 and paragraph 16 of Appendix J-2, or with the consent of Canada and British Columbia in accordance with 12.11.3.
- 12.2.4 Where Yale First Nation, by agreement, disposes of its fee simple interest in a parcel of Yale First Nation Land to Canada or British Columbia, that parcel of land will be removed from Yale First Nation Land and upon transfer of ownership of the land the Parties will amend Appendix B in accordance with 27.1.9 to reflect the removal, and that parcel of land will cease to be Yale First Nation Land when the amendment takes effect.
- 12.2.5 Yale First Nation may not dispose of its fee simple interest in a parcel of Yale First Nation Land until indefeasible title to that parcel of land has been registered in accordance with Chapter 13 Land Title.
- 12.2.6 If Yale First Nation disposes of its fee simple interest in a parcel of Yale First Nation Land to any person other than to a:
- a. Yale First Nation Member;
  - b. Yale First Nation Corporation; or
  - c. Yale First Nation Public Institution,
- expropriation of that land may occur in accordance with Federal or Provincial Law and not subject to 12.14, except 12.14.4, 12.15 or Appendix J, except for paragraph 12 of Appendix J-1 and paragraph 16 of Appendix J-2.
- 12.2.7 If, at any time, any parcel of or any interest in Yale First Nation Land finally escheats to the Crown, the Crown will transfer, at no cost, that parcel or interest to Yale First Nation.
- 12.2.8 All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in respect of Yale First Nation Land.
- 12.2.9 An interest, reservation, or exception held by Yale First Nation or by a Yale First Nation Public Institution in any parcel of Yale First Nation Land:
- a. the title to which is not registered in the Land Title Office; or



- b. in respect of which no title application for registration in the Land Title Office has been made,

is not subject to attachment, charge, seizure, distress, execution or sale under a writ of execution, order for sale or other process unless the attachment, charge, seizure, distress, execution or sale under a writ of execution, order for sale or other process is:

- c. made or issued for the purpose of enforcing, in accordance with its terms, a security instrument granted by Yale First Nation or by a Yale First Nation Public Institution;
- d. allowed under Yale First Nation Law; or
- e. made or issued for the purpose of enforcing a lien, charge or other encumbrance in favour of Canada or British Columbia.

### **12.3 SUBSURFACE RESOURCES**

- 12.3.1 Yale First Nation owns the Subsurface Resources on or under Yale First Nation Land.
- 12.3.2 Subject to 12.3.3, Yale First Nation, as owner of the Subsurface Resources on or under Yale First Nation Land, has the authority to set fees, rents, royalties and other charges, except taxes, for exploration, development, extraction and production of those Subsurface Resources.
- 12.3.3 Yale First Nation does not have the authority to establish fees, rents, royalties or other charges in relation to Subsurface Tenures or the exploration, development, extraction or production of Tenured Subsurface Resources.
- 12.3.4 12.3.2 does not limit British Columbia from determining, collecting or receiving administrative fees, charges or other payments relating to the exploration, development, extraction or production of Subsurface Resources on or under Yale First Nation Land.

### **12.4 SUBMERGED LANDS**

- 12.4.1 Subject to 12.4.2, Submerged Lands do not form part of Yale First Nation Land and nothing in this Agreement affects British Columbia's ownership of Submerged Lands.
- 12.4.2 Submerged Lands which are part of Former Indian Reserves form part of Yale First Nation Land.

- 12.4.3 British Columbia will notify Yale First Nation of any proposed disposition of an interest in, or use or occupation of, Submerged Lands that are wholly contained within Yale First Nation Land.
- 12.4.4 British Columbia will not, in respect of Submerged Lands that are wholly contained within Yale First Nation Land:
- a. grant a fee simple interest;
  - b. grant a lease that, with any rights of renewal, may exceed 25 years;
  - c. transfer administration and control for a period that may exceed 25 years; or
  - d. otherwise dispose of an interest in, or authorize the use or occupation of, Submerged Lands if that disposition, use or occupation would adversely affect Yale First Nation Land or the Section 35 Rights of Yale First Nation, without the consent of Yale First Nation.
- 12.4.5 12.4.3 and 12.4.4 do not affect the riparian rights of the upland owners of Yale First Nation Land adjacent to Submerged Lands.
- 12.4.6 No transfer of Submerged Lands to Yale First Nation in accordance with this Agreement includes the exclusive right to fish.

## **12.5 ACCRETIONS TO YALE FIRST NATION LAND**

- 12.5.1 Yale First Nation will own lawful accretions to Yale First Nation Land.
- 12.5.2 Where Yale First Nation provides to British Columbia and Canada a certificate issued by the Surveyor General certifying that there has been lawful accretion under 12.5.1, upon receipt of the certificate by Canada and British Columbia, the Parties will amend Appendix B in accordance with 27.1.9 to reflect the change to the boundary of Yale First Nation Land and the accreted land will become Yale First Nation Land when the amendment takes effect.

## **12.6 INTERESTS ON YALE FIRST NATION LAND**

### **General**

- 12.6.1 On the Effective Date, the title of Yale First Nation to Yale First Nation Land is free and clear of all interests, except:
- a. any applicable interests referred to in Appendix H-1;

- b. any applicable interests referred to in Appendix H-2, until such time as the Yale First Nation Fee Simple Interests are granted under 12.6.3;
  - c. any applicable interests referred to in Appendix H-3 and H-4, until such time as the interests are granted under 12.6.4, unless the person entitled to the interest has agreed in writing under that section that the interest does not need to be granted or issued; and
  - d. any other interests in Yale First Nation Land already registered in the Land Title Office.
- 12.6.2 On the Effective Date, every interest, other than those referred to in 12.6.1, that encumbered or applied to Yale First Nation Land before the Effective Date ceases to exist.
- 12.6.3 On the Effective Date, Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution will execute and deliver documents granting or issuing to each person identified in Appendix H-2, or any lawful successors, a Yale First Nation Fee Simple Interest, free and clear of all interests except any applicable interests referred to in Appendices H-1, H-3 and H-4. For greater certainty, Yale First Nation Law under 12.12.1 applies to Yale First Nation Fee Simple Interests.
- 12.6.4 On the Effective Date, Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution will execute and deliver documents granting or issuing to each person named in Appendices H-3 and H-4, or any lawful successors, that person's interest as set out in that Appendix, unless that person has agreed in writing that the interest does not need to be granted or issued.
- 12.6.5 Documents referred to in 12.6.3 and 12.6.4 will be in the applicable form, if any, set out in Appendix H-5 and will include any modifications that the Yale Band and the holder of the interest have agreed to in writing before the Effective Date.
- 12.6.6 Documents referred to in 12.6.3 and 12.6.4 will be deemed to have legal effect on the Effective Date as though they had been prepared, executed and delivered by Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution and by the applicable person named in Appendices H-2, H-3 and H-4 on that date.
- 12.6.7 Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution will physically deliver the applicable document referred to in 12.6.3 and 12.6.4:
- a. to the applicable person named in Appendix H-2, H-3 or H-4; or

- b. to any other person who, before the Effective Date, was identified by the Parties as the person who, instead of a person named in Appendix H-2, H-3 or H-4, should receive an interest referred to in Appendix H-2, H-3 or H-4 for any reason, including death, any form of transfer, error or operation of law and the Parties will amend that Appendix in accordance with 27.1.9 to reflect the change.
- 12.6.8 If, after the Effective Date, the Parties determine that an interest granted under 12.6.3 or 12.6.4:
- a. is in the name of a person who was not actually entitled to the interest on the Effective Date; or
- b. contains a clerical error or a wrong description of a material fact,
- the Parties will take reasonable measures to rectify the error.
- 12.6.9 If, after the Effective Date, Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution requests that BC Hydro or Telus construct facilities for the provision of electrical or telecommunications services on Yale First Nation Land, Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution will grant or issue to BC Hydro or Telus an interest for such facilities on terms substantially the same as those set out in Appendix H-5, Document 4 (Distribution Right of Way (BC Hydro and Telus)).

### **Continuing Interests**

- 12.6.10 Each interest listed in Appendix H-1 continues to be held by the person who held that interest on the Effective Date in accordance with Provincial Law and with the terms and conditions of that interest existing on the Effective Date, modified where appropriate to reflect ownership of the land by Yale First Nation. If any such interest is not renewed or replaced when it expires in accordance with its terms or Provincial Law, that interest ceases to exist.

### **Indemnity**

- 12.6.11 British Columbia will indemnify and forever save harmless Yale First Nation from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Yale First Nation may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of:
- a. the omission from Appendix H-1, H-2 or H-3 of the name of a person who, immediately before the Effective Date, had an interest in Yale First Nation Land that had been granted by British Columbia; or

- b. the incorrect naming of a person in Appendix H-1, H-2 or H-3 as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in Yale First Nation Land that had been granted by British Columbia.

12.6.12 For greater certainty, Yale First Nation does not release Canada from any damages, losses, liability or costs that Canada may otherwise be liable for before the Effective Date in relation to:

- a. the omission in Appendix H-2 of the name of an individual who, immediately before the Effective Date, had an interest or certificate of possession in respect of a Former Indian Reserve that had been granted by Canada; or
- b. the incorrect naming of an individual in Appendix H-2 as an individual entitled to an interest or certificate of possession, where another individual was actually entitled, immediately before the Effective Date, to the interest or the certificate of possession in respect of a Former Indian Reserve that had been granted by Canada.

#### **Tenured Subsurface Resources**

12.6.13 For greater certainty, Yale First Nation ownership of Subsurface Resources under 12.3.1 is subject to the Subsurface Tenures described in Appendix H-1, Part 1 and Part 2.

12.6.14 The Subsurface Tenures described in Appendix H-1, Part 1 and Part 2:

- a. continue, as referred to in 12.6.1a, in accordance with Provincial Law and this Agreement; and
- b. will be administered by British Columbia in accordance with Provincial Law and this Agreement.

12.6.15 Provincial Law applies to any exploration, development, extraction or production of Tenured Subsurface Resources as if the Tenured Subsurface Resources were owned by British Columbia.

12.6.16 In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia may grant, as necessary, any related extensions, renewals, continuations or replacements, and issue any further related authorizations as the Tenured Subsurface Resources are developed.

- 12.6.17 In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia will notify Yale First Nation before changing or eliminating any rents or royalties applicable to the Tenured Subsurface Resources.
- 12.6.18 British Columbia will:
- a. ensure that any rents and royalties applicable to Tenured Subsurface Resources that British Columbia would have been entitled to receive after the Effective Date if those Tenured Subsurface Resources were owned by British Columbia, and any interest earned on those rents and royalties, are paid to Yale First Nation; and
  - b. retain any fees, charges or other payments for administrative purposes applicable to Subsurface Tenures and Tenured Subsurface Resources under Provincial Law.
- 12.6.19 Yale First Nation Land will be treated as Private Land under Provincial Law in respect of Subsurface Resources for the purposes of determining access rights and compensation rights associated with any proposed entrance, occupation or use of the surface by holders of Subsurface Tenures. For greater certainty, any disagreements between holders of Subsurface Tenures and owners of Yale First Nation Land in respect of entrance, occupation or use of an area of Yale First Nation Land may be resolved under Provincial Law relating to entrance and compensation disputes involving Subsurface Resources.
- 12.6.20 If a Subsurface Tenure is forfeited, abandoned, or surrendered to British Columbia under Provincial Law, the Tenured Subsurface Resources and Yale First Nation Land will no longer be subject to that Subsurface Tenure.
- 12.6.21 For greater certainty, nothing in this Agreement limits or restricts the operation of Federal or Provincial Law in respect of Subsurface Resources on or under Yale First Nation Land.

## **12.7 AGRICULTURAL LAND RESERVE DESIGNATION**

- 12.7.1 On the Effective Date, Former Indian Reserves are excluded from the designation as an agricultural land reserve under the *Agricultural Land Commission Act*.
- 12.7.2 On the Effective Date, the Yale First Nation Land described in Appendix F retains its designation as an agricultural land reserve under the *Agricultural Land Commission Act*.
- 12.7.3 Any land designated as an agricultural land reserve that is added to Yale First Nation Land in accordance with this Agreement retains its designation as an agricultural land reserve under the *Agricultural Land Commission Act*.

- 12.7.4 A designation of Yale First Nation Land as an agricultural land reserve may be removed by the Provincial Agricultural Land Commission under the *Agricultural Land Commission Act*.
- 12.7.5 Notwithstanding 12.12.2, with respect to Yale First Nation Land that retains its designation as an agricultural land reserve under 12.7.2 or 12.7.3, the *Agricultural Land Commission Act* prevails to the extent of a Conflict with a Yale First Nation Law under 12.12.1.
- 12.7.6 Yale First Nation Land that is not designated as an agricultural land reserve on the Effective Date will not be designated as an agricultural land reserve after the Effective Date without the consent of Yale First Nation.

## **12.8 SURVEYS**

- 12.8.1 In those cases where Adequate Surveys do not already exist, before the Effective Date the exterior boundaries will be surveyed in accordance with Survey Instructions to be issued by the Surveyor General by:
- a. Canada in respect of Former Indian Reserves; and
  - b. British Columbia in respect of Former Provincial Crown Land.
- 12.8.2 Canada and British Columbia will, as agreed between them, pay the full cost of the surveys referred to in 12.8.1.
- 12.8.3 No new survey will be required under 12.8.1 where the Surveyor General determines that an Adequate Survey exists for that parcel.

## **12.9 SITE REMEDIATION**

- 12.9.1 The transfer of Former Indian Reserves to Yale First Nation in accordance with this Agreement does not, in and of itself, result in British Columbia being determined to be a Responsible Person in respect of any potential Contamination of any Former Indian Reserves.
- 12.9.2 British Columbia is not required to prepare and provide a Site Profile for any lands transferred to Yale First Nation in accordance with this Agreement.

**12.10 ADDITIONS TO YALE FIRST NATION LAND****General**

- 12.10.1 Yale First Nation may request that Canada and British Columbia consent to a parcel of land being added to Yale First Nation Land.
- 12.10.2 British Columbia will consider a request by Yale First Nation under 12.10.1, if:
- a. the fee simple interest in that parcel of land is owned by Yale First Nation;
  - b. the parcel of land is within the Yale First Nation Area; and
  - c. the parcel of land is outside of the boundaries of a municipality or is within the boundaries of a municipality and that municipality provides written consent.
- 12.10.3 In addition to the matters described in 12.10.2, in determining whether to consent to a request under 12.10.1, British Columbia may take into account such other matters as it considers relevant.
- 12.10.4 Canada will consider a request from Yale First Nation under 12.10.1 if:
- a. the fee simple interest in that parcel of land is owned by Yale First Nation;
  - b. the parcel of land is within the Yale First Nation Area; and
  - c. the parcel of land is in an area free from overlap with another First Nation unless that other First Nation consents.
- 12.10.5 In addition to the matters described in 12.10.4, in determining whether to consent to a request under 12.10.1, Canada may take into account such other matters as it considers relevant.
- 12.10.6 If British Columbia and Canada consent to a request under 12.10.1, each will provide notice of its consent to the other Parties. Upon receipt by Yale First Nation of the notices, the Parties will amend Appendix B in accordance with 27.1.9 to reflect the addition, and the parcel of land will become Yale First Nation Land when the amendment takes effect.

**Acquisition and Addition of Fee Simple Lands**

- 12.10.7 If, within 50 years after the Effective Date, Yale First Nation, a Yale First Nation Member, a Yale First Nation Public Institution or a Yale First Nation Corporation, owns the fee simple interest in the parcel of land, or any portion thereof, identified



for illustrative purposes as “Potential Additions to Yale First Nation Land”, and legally described, in Appendix C, Maps 1 and 3 through 5, and:

- a. where the owner of that parcel is a Yale First Nation Member, a Yale First Nation Public Institution or a Yale First Nation Corporation, that owner provides written consent; and
- b. the registered holder of any financial charge or encumbrance provides written consent,

that parcel of land will be added to Yale First Nation Land after the completion of the process set out in 12.10.8.

12.10.8 Before the addition of a parcel of land to Yale First Nation Land under 12.10.7, Yale First Nation will:

- a. hold discussions with the Fraser Valley Regional District and any resident of, or interest holder in, that parcel of land;
- b. consider the provision of any service provided by the Fraser Valley Regional District or any municipality to that parcel of land;
- c. consider the compatibility of any land use plan of Yale First Nation with any regional land use or transportation plan applying to that parcel of land; and
- d. provide reasonable notice to Canada, British Columbia and the Fraser Valley Regional District in respect of the addition.

12.10.9 The notice provided by Yale First Nation under 12.10.8d will include information relating to:

- a. the issues raised in the discussions undertaken in 12.10.8a and the measures taken to address those issues, if any; and
- b. the matters set out in 12.10.8b and 12.10.8c.

12.10.10 Upon receipt by Canada, British Columbia and the Fraser Valley Regional District of the notice referred to in 12.10.8d, the Parties will amend Appendix B in accordance with 27.1.9 to reflect the addition and the parcel of land will become Yale First Nation Land when the amendment takes effect.

#### **Acquisition and Addition of Toll Road East**

12.10.11 If Yale First Nation or a Yale First Nation Member, a Yale First Nation Public Institution or a Yale First Nation Corporation, owns the fee simple interest in the

parcel of land, or any portion thereof, identified for illustrative purposes as “Toll Road East” in Appendix C, Map 2, and:

- a. where the owner of that parcel is a Yale First Nation Member, a Yale First Nation Public Institution or a Yale First Nation Corporation, that owner provides written consent; and
- b. the registered holder of any financial charge or encumbrance provides written consent,

that parcel of land will be added to Yale First Nation Land after Yale First Nation provides reasonable notice to Canada, British Columbia and the Fraser Valley Regional District in respect of the addition.

- 12.10.12 Upon receipt by Canada, British Columbia and the Fraser Valley Regional District of the notice referred to in 12.10.11, the Parties will amend Appendix B in accordance with 27.1.9 to reflect the addition and the parcel of land will become Yale First Nation Land when the amendment takes effect.
- 12.10.13 If, in the process of adding a parcel of land to Yale First Nation Land under 12.10.11, it is determined that there is provincial Crown land within the lands described as “Toll Road East” in Appendix C, Map 2, British Columbia will offer to sell that land to Yale First Nation for fair market value.
- 12.10.14 If Yale First Nation acquires provincial Crown land under 12.10.13, that land will be added to Yale First Nation Land and the Parties will amend Appendix B in accordance with 27.1.9 to reflect the addition, and the land will become Yale First Nation Land when the amendment takes effect.

### **Emory Creek**

- 12.10.15 If it is determined that the powerhouse associated with the current application for a Water Licence for a hydro power purpose on Emory Creek and tributaries (British Columbia application file 2002654) will be located on land other than the parcel of land described in Appendix B-3, Map 11, at the request of Yale First Nation, British Columbia and Yale First Nation will negotiate and attempt to reach agreement that will:
  - a. transfer the parcel of land described in Appendix B-3, Map 11 from Yale First Nation to British Columbia; and
  - b. transfer provincial Crown land of equivalent fair market value at the site of the proposed powerhouse from British Columbia to Yale First Nation.

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- 12.10.16 If the hydro power project associated with the current application for a Water Licence for a hydro power purpose on Emory Creek and tributaries (British Columbia application file 2002654) does not proceed, at the request of Yale First Nation within 20 years of the Effective Date, British Columbia and Yale First Nation will negotiate and attempt to reach agreement that will:
- a. transfer the parcel of land described in Appendix B-3, Map 11 from Yale First Nation to British Columbia; and
  - b. transfer provincial Crown land of equivalent fair market value that is adjacent to Yale First Nation Land from British Columbia to Yale First Nation.
- 12.10.17 If British Columbia and Yale First Nation are unable to reach agreement on the fair market value of the lands identified in 12.10.15 or 12.10.16, either Yale First Nation or British Columbia may refer the issue to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution, without having to proceed through Stages One and Two.
- 12.10.18 Upon the transfer of the lands referred to in 12.10.15 or 12.10.16, the Parties will amend Appendix B, in accordance with 27.1.9 to reflect the addition and removal of land from Yale First Nation Land, and the change in the status of the lands will occur when the amendment takes effect.
- 12.10.19 The interest of Yale First Nation in a parcel of land that is added to Yale First Nation Land under 12.10.18 and any interests that continue under 12.10.33 will be registered, or will remain registered, in the Land Title Office in accordance with this Agreement and the requirements of the *Land Title Act*.
- 12.10.20 Registration under 12.10.19 will be at no cost to Yale First Nation or the holder of an interest that continues under 12.10.33.
- 12.10.21 British Columbia will pay the full cost of surveying the exterior boundaries of a parcel of land that is added to Yale First Nation Land under 12.10.18.
- 12.10.22 Unless the Parties otherwise agree, 12.8, and 13.1.1 do not apply to the parcel of land described in Appendix B-3, Map 11.
- 12.10.23 If the hydro power project associated with the current application for a Water Licence for a hydro power purpose on Emory Creek and tributaries (British Columbia application file 2002654) does proceed and the proposed powerhouse is located on the parcel of land described in Appendix B-3, Map 11, then:
- a. the interests of Yale First Nation in the parcel of land and any applicable interests referred to in Appendices H-3 and H-4 will be registered, or will remain registered, at no cost to Yale First Nation, in the Land Title Office in

accordance with this Agreement and the requirements of the *Land Title Act*;  
and

- b. British Columbia will pay the full cost of surveying the exterior boundaries of the parcel of land.

### **Top Landing**

12.10.24 Notwithstanding 15.7, if BC Hydro, at its sole discretion before transmission works are constructed, determines that it is necessary to relocate or widen the Crown Corridor described in Appendix D-1, Map 6 onto Yale First Nation Land for the purpose of transmission works:

- a. Yale First Nation will transfer the fee simple interest, including Subsurface Resources, of the applicable portion of Yale First Nation Land to British Columbia; and
- b. British Columbia will transfer the fee simple interest, including Subsurface Resources, in provincial Crown land of equivalent fair market value to Yale First Nation.

12.10.25 If British Columbia and Yale First Nation are unable to reach agreement on the fair market value of the lands referred to in 12.10.24, either Yale First Nation or British Columbia may refer the issue to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution, without having to proceed through Stages One and Two.

12.10.26 Upon the transfer of the lands referred to in 12.10.24:

- a. any Yale First Nation Land transferred to British Columbia will cease to be Yale First Nation Land and will become a Crown Corridor;
- b. any portion of the Crown Corridor transferred to Yale First Nation will cease to be a Crown Corridor and will become Yale First Nation Land; and
- c. any other provincial Crown land transferred to Yale First Nation will become Yale First Nation Land,

and upon such transfer, the Parties will amend Appendices B and D in accordance with 27.1.9 to reflect the relocation or widening of the Crown Corridor and the addition and removal of land from Yale First Nation Land, and the change in the status of the lands will occur when the amendment takes effect.

12.10.27 The interest of Yale First Nation in a parcel of land that is added to Yale First Nation Land under 12.10.26 and any interests that continue under

- 12.10.33 will be registered, or will remain registered, in the Land Title Office in accordance with this Agreement and the requirements of the *Land Title Act*.
- 12.10.28 Registration under 12.10.27 will be at no cost to Yale First Nation or the holder of an interest that continues under 12.10.33.
- 12.10.29 British Columbia will pay the full cost of surveying the exterior boundaries of a parcel of land that is added to Yale First Nation Land under 12.10.26.
- 12.10.30 Unless the Parties otherwise agree, 12.8 and 13.1.1 do not apply to the parcel of land described in Appendix B-3, Map 9.
- 12.10.31 If BC Hydro constructs transmission works on the Crown Corridor described in Appendix D-1, Map 6 as relocated or widened under 12.10.24, if applicable, then:
- a. the interests of Yale First Nation in the parcels of land described in Appendix B-3, Map 9 and any applicable interests referred to in Appendices H-3 and H-4 will be registered, or will remain registered, at no cost to Yale First Nation in the Land Title Office in accordance with this Agreement and the requirements of the *Land Title Act*; and
  - b. British Columbia will pay the full cost of surveying the exterior boundaries of the parcels of land.

### **Kuthlalth Indian Reserve #3**

- 12.10.32 In the event that, after the Effective Date, the Kuthlalth Indian Reserve #3, or a portion thereof, is absolutely surrendered in accordance with the *Indian Act* to Canada by the Shxw'owhamel First Nation or declared by a court to be held in trust for the benefit of Yale First Nation:
- a. Canada will undertake all necessary steps to transfer the fee simple interest in that parcel of land to Yale First Nation; and
  - b. that parcel of land will be added to Yale First Nation Land and upon Yale First Nation becoming owner of the land under 12.10.32a, the Parties will amend Appendix B in accordance with 27.1.9 to reflect the addition, and the parcel of land will become Yale First Nation Land when the amendment takes effect.

### **Continuation of Interests**

- 12.10.33 A parcel of land added to Yale First Nation Land under 12.10 continues to be subject to any interest existing immediately before the parcel becomes

Yale First Nation Land unless Yale First Nation and the holder of that interest otherwise agree in writing.

### **Subsurface Resources**

- 12.10.34 Yale First Nation will own Subsurface Resources on or under land that is added to Yale First Nation Land under 12.10 if:
- a. the fee simple interest includes ownership of Subsurface Resources; or
  - b. British Columbia and Yale First Nation agree.
- 12.10.35 British Columbia will not unreasonably withhold agreement under 12.10.34b.
- 12.10.36 For greater certainty, Yale First Nation's ownership of Subsurface Resources is subject to any existing Subsurface Tenures and those Subsurface Tenures continue to be administered by British Columbia in accordance with 12.6.13 through 12.6.21.

### **Other Matters**

- 12.10.37 The amount of Yale First Nation Land identified in 12.14.4 will increase by five percent of the area, in hectares, of land that is added to Yale First Nation Land under 12.10.
- 12.10.38 Unless otherwise agreed by Yale First Nation, Canada and British Columbia, neither Canada nor British Columbia is responsible for the costs associated with the survey, registration and transfer of any parcel of land acquired by Yale First Nation after the Effective Date.
- 12.10.39 Canada and British Columbia are not required to assume financial or other obligations in respect of any addition to Yale First Nation Land under 12.10.
- 12.10.40 If Yale First Nation owns the fee simple interest in the Sawmill Creek One Main Line, upon request by British Columbia, Yale First Nation will offer to sell the Sawmill Creek One Main Line to British Columbia for fair market value.
- 12.10.41 Where British Columbia has made a request under 12.10.40, British Columbia and Yale First Nation will negotiate and attempt to reach agreement on the fair market value of the Sawmill Creek One Main Line. If British Columbia and Yale First Nation cannot agree on the fair market value of the Sawmill Creek One Main Line, either British Columbia or Yale First Nation may refer the matter to be finally determined by arbitration.

12.10.42 If British Columbia acquires the Sawmill Creek One Main Line under 12.10.40, any portion of Sawmill Creek One Main Line that is adjacent to Yale First Nation Land will become a Crown Corridor and the Parties will amend Appendix D in accordance with 27.1.9 to reflect the addition, and the land will become a Crown Corridor when the amendment takes effect.

## **12.11 REMOVAL OF YALE FIRST NATION LAND**

12.11.1 On or after the Effective Date, before disposing of the fee simple interest in a parcel of Yale First Nation Land, Yale First Nation may request the consent of Canada and British Columbia to having that parcel of land removed from Yale First Nation Land.

12.11.2 In considering whether to consent to a request under 12.11.1, Canada and British Columbia may consider:

- a. necessary jurisdictional, administrative, and servicing arrangements;
- b. the views of any affected Local Government or neighbouring First Nation;
- c. whether the removal of the land will have an impact on fiscal arrangements negotiated between Yale First Nation and Canada or British Columbia;
- d. whether the removal of the land will have any legal or financial implications for Canada or British Columbia; and
- e. any other matter that Canada or British Columbia considers relevant.

12.11.3 If Canada and British Columbia consent to a request under 12.11.1, each will provide notice of its consent to the other Parties. After receipt by Yale First Nation of the notices and upon Yale First Nation disposing of the fee simple interest in the parcel of land, the Parties will amend Appendix B, in accordance with 27.1.9, to reflect the removal, and the parcel of land will cease to be Yale First Nation Land when the amendment takes effect.

### **Old Yale Road**

12.11.4 On the Effective Date, Yale First Nation will transfer ownership of that portion of the "Old Yale Road" located on Stullawheets Indian Reserve #8, as shown on Highway Plan H-1080-3 (deposited in the Kamloops Land Title Office as Plan No. H847 and copy recorded in the Canada Lands Survey Records as Plan No. 52414), and labelled as "Old R/W" having an area of 0.34 acres (0.14 ha) and a width of 66 feet (20.117 m) as shown on said plan, and illustrated as "Road Transferred to British Columbia on the Effective Date" in Appendix B-2, Part 2,

Map 8, including the Subsurface Resources, to British Columbia and it will cease to be Yale First Nation Land and will become a Crown Corridor.

- 12.11.5 Upon the transfer of the land under 12.11.4 the Parties will amend Appendices B and D in accordance with 27.1.9 to reflect the removal of land from Yale First Nation Land, and the change in the status of the lands will occur when the amendment takes effect.

## **12.12 YALE FIRST NATION LAWS**

- 12.12.1 Yale First Nation Government may make laws in respect of:
- a. the use of Yale First Nation Land, including management, planning, zoning, and development;
  - b. the ownership and disposition of interests in Yale First Nation Land owned by Yale First Nation, a Yale First Nation Corporation, a Yale First Nation Public Institution or a Yale First Nation Member; and
  - c. expropriation for public purposes or public works by Yale First Nation Government of interests in Yale First Nation Land other than:
    - i. interests granted or continued on the Effective Date, or thereafter replaced in accordance with this Agreement, unless specifically provided for otherwise in this Agreement;
    - ii. interests expropriated by a Federal Expropriating Authority or a Provincial Expropriating Authority or otherwise acquired by Canada or British Columbia; and
    - iii. any other interests upon which the Parties have agreed in this Agreement, if Yale First Nation Government provides fair compensation to the owner of the interest and the expropriation is of the smallest interest necessary for the public purpose or public work.
- 12.12.2 Yale First Nation Law under 12.12.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 12.12.3 For greater certainty, notwithstanding 12.12.2, Federal or Provincial Law in respect of the division of matrimonial real property prevails to the extent of a Conflict with Yale First Nation Law under 12.12.1b.



- 12.12.4 Notwithstanding 12.12.2, Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law in respect of Subsurface Resources under 12.12.1.
- 12.12.5 Notwithstanding 12.12.2, the *Land Title Act* prevails to the extent of a Conflict with Yale First Nation Law under 12.12.1.
- 12.12.6 Yale First Nation Law under 12.12.1b. in respect of interests that are recognized under Federal or Provincial Law must be consistent with Federal and Provincial Law in respect of estates or interests in land.
- 12.12.7 If a proposed development on Yale First Nation Land is likely to have adverse effects on federal or provincial interests, Yale First Nation will ensure that Canada or British Columbia, as appropriate, is consulted with respect to the proposed development.
- 12.12.8 Nothing in this Agreement confers authority on Yale First Nation Government to make laws in relation to development, production, use or application of, nuclear energy and atomic energy or the exploration, development, production, possession or use, for any purpose, of nuclear substances and prescribed substances, or to the development, production, possession or use, for any purpose, of prescribed equipment and prescribed information.
- 12.12.9 Nothing in this Agreement confers authority on Yale First Nation Government to make laws in respect of:
- a. Subsurface Tenures and Tenured Subsurface Resources;
  - b. spacing and target areas related to Petroleum and Natural Gas; or
  - c. conservation and allocation of Petroleum and Natural Gas among parties having interests in the same reservoir.

## **12.13 FLOOD PROTECTION**

- 12.13.1 Yale First Nation will identify risks associated with the possible failure of any dam, dike or other protective work for which Yale First Nation has responsibility, and develop plans for:
- a. immediate local response in the event of a potential emergency;
  - b. quick notice to all other jurisdictions that may be threatened by the uncontrolled release of water; and

- c. coordination with provincial authorities for disaster assistance when local capacity is exceeded.
- 12.13.2 Where Yale First Nation Land is vulnerable to flooding, Yale First Nation will, in the management of land use and development on those lands, consider any provincial guidelines respecting flood hazard management and land use and development.

#### **12.14 PROVINCIAL EXPROPRIATION OF YALE FIRST NATION LAND**

- 12.14.1 British Columbia acknowledges as a general principle that where it is reasonable to use other means, expropriation of Yale First Nation Land under Provincial Law will be avoided.
- 12.14.2 Where a Provincial Expropriating Authority has determined that it must use Yale First Nation Land, the Provincial Expropriating Authority will make reasonable efforts to acquire the necessary interest through agreement with Yale First Nation.
- 12.14.3 Notwithstanding 12.14.1, 12.14.2, and 17.1.1 an interest in Yale First Nation Land may be expropriated by and for the use of a Provincial Expropriating Authority in accordance with Provincial Law and Appendix J-1 and with the consent of the Lieutenant Governor-in-Council.
- 12.14.4 Subject to 12.10.37, the total amount of fee simple interests in Yale First Nation Land that can be expropriated by all Provincial Expropriating Authorities will not exceed 98 hectares.

#### **12.15 FEDERAL EXPROPRIATION OF YALE FIRST NATION LAND**

- 12.15.1 Canada and Yale First Nation agree that as a general principle Yale First Nation Land will not be subject to expropriation.
- 12.15.2 Notwithstanding 12.15.1, any interest in Yale First Nation Land may be expropriated by a Federal Expropriating Authority in accordance with Federal Law, Appendix J-2 and with the consent of the Governor-in-Council.
- 12.15.3 Nothing in this Agreement affects or limits the application of the *Emergencies Act* or any successor legislation, and the *Emergencies Act* continues to apply in all aspects to Yale First Nation Land.

**12.16 INTERGOVERNMENTAL LAND COORDINATION**

- 12.16.1 Yale First Nation Government will make laws that will take effect on the Effective Date governing the establishment, amendment, repeal and content of community plans for Yale First Nation Land.
- 12.16.2 Yale First Nation Law under 12.16.1 will require that the community plans include:
- a. a statement of objectives and policies that will guide decisions on land use planning and management of Yale First Nation Land; and
  - b. content similar to that required in the official community plans of Local Governments.
- 12.16.3 Yale First Nation may develop and adopt community plans on an incremental basis, provided that it will develop and adopt community plans for Yale First Nation Land within 10 years of the Effective Date.
- 12.16.4 Any development or use of Yale First Nation Land approved by Yale First Nation will be in accordance with a community plan adopted by Yale First Nation in accordance with this Agreement or a development plan in place as of the Effective Date.
- 12.16.5 Yale First Nation will consult with other organizations and authorities in respect of the development, amendment and repeal of its community plans similar to the manner and extent that Local Governments are required to consult with other organizations and authorities in respect of the development, amendment and repeal of their official community plans.



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**CHAPTER 13 LAND TITLE****13.1 REGISTRATION OF YALE FIRST NATION LAND**

## 13.1.1 On the Effective Date:

- a. the interests of Yale First Nation in Yale First Nation Land;
- b. the interests referred to in Appendices H-2, H-3 and H-4, unless that person has agreed in writing under 12.6.4 that the interest does not need to be granted or issued; and
- c. any other interests in Yale First Nation Land already registered in the Land Title Office,

will be registered, or will remain registered, in the Land Title Office in accordance with this Agreement and the requirements of the *Land Title Act*.

## 13.1.2 On registration of the indefeasible title to a parcel of Yale First Nation Land, the Registrar will make a notation on the indefeasible title that the parcel is Yale First Nation Land and may be subject to conditions, provisos, restrictions, exceptions and reservations in favour of Yale First Nation.

## 13.1.3 On the Effective Date, subject to this Agreement, to the extent that the following instruments are applicable to a parcel of Yale First Nation Land, the Parties will present the instruments for registration in the following order of priority:

- a. any right of way in favour of Yale First Nation;
- b. any transmission rights of way in favour of BC Hydro;
- c. any distribution rights of way in favour of BC Hydro and Telus;
- d. any rights of way in favour of other Public Utilities; and
- e. any other instruments.

## 13.1.4 Upon the request of the Parties, each holder of an interest referred to in 13.1.3 may irrevocably appoint Yale First Nation, Canada or British Columbia, as applicable, as its agent for the purpose of making such changes to the instruments, whether executed or not, as may be necessary in order to ensure that the instruments are in registrable form.

- 13.1.5 Registration under 13.1.1, including the provision of a State of Title Certificate, will be at no cost to:
- a. Yale First Nation, a Yale First Nation Member, a Yale First Nation Public Institution or a Yale First Nation Corporation; or
  - b. the holder of an interest referred to in 13.1.1, except for a Public Utility that:
    - i. has an interest referred to in Appendix H-3; and
    - ii. is not Yale First Nation, a Yale First Nation Public Institution or a Yale First Nation Corporation.
- 13.1.6 Upon registration under 13.1.1, the Parties, if necessary, will amend Appendices B, D and E, in accordance with 27.1.9, to reflect any adjustments to the boundaries of Yale First Nation Land.
- 13.1.7 No title adverse to, or in derogation of, the title of the registered owner of a parcel of Yale First Nation Land under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply in respect of Yale First Nation Land.

## **13.2 CANCELLATION OF INDEFEASIBLE TITLE**

- 13.2.1 Yale First Nation, and no other person, may apply under the *Land Title Act* in accordance with this Chapter for cancellation of the registration of an indefeasible title to a parcel of Yale First Nation Land.
- 13.2.2 When applying for cancellation of the registration of an indefeasible title to a parcel of Yale First Nation Land, Yale First Nation will provide to the Registrar an application for cancellation of registration and will deliver to the Registrar any duplicate indefeasible title that may have been issued in respect of that parcel.
- 13.2.3 Upon receiving an application from Yale First Nation for cancellation of the registration of an indefeasible title to a parcel of Yale First Nation Land under 13.2.1 and 13.2.2, the Registrar will cancel the registration of the indefeasible title if:
- a. the registered owner of the fee simple interest in the parcel is Yale First Nation, a Yale First Nation Corporation or a Yale First Nation Public Institution;
  - b. the registered owner consents; and

- c. the indefeasible title to the parcel is free and clear of all charges, except those in favour of Yale First Nation.

13.2.4 The *Land Title Act* will not apply to a parcel of Yale First Nation Land for which the indefeasible title under the *Land Title Act* has been cancelled under that Act in accordance with this Agreement.

### **13.3 SUBSEQUENT REGISTRATION OF CANCELLED INDEFEASIBLE TITLE**

13.3.1 If the indefeasible title to a parcel of Yale First Nation Land has been cancelled by the Registrar under 13.2.3, Yale First Nation, and no other person, may subsequently apply under the *Land Title Act* for the registration of an indefeasible title to that parcel of Yale First Nation Land and such application may be made in the name of Yale First Nation or on behalf of another person.

13.3.2 Yale First Nation, when applying for the registration of an indefeasible title to a parcel of Yale First Nation Land under 13.3.1, will provide to the Registrar:

- a. a plan of the land affected by the application that has been prepared by a Land Surveyor and signed by the Surveyor General;
- b. a certificate of Yale First Nation that complies with the *Land Title Act* and certifies that, on the date of the Yale First Nation Certificate, the person named as the owner of the fee simple interest in the Yale First Nation Certificate is the owner of the fee simple interest of the parcel, and that the Yale First Nation Certificate sets out all:
  - i. subsisting conditions, provisos, restrictions, exceptions, and reservations contained in the original or any other conveyance or disposition from Yale First Nation, whether in favour of Yale First Nation or another person;
  - ii. estates or interests; and
  - iii. charges, including charges in respect of a debt owed to Yale First Nation, to which the fee simple interest of the parcel is subject; and
- c. registrable instruments for all estates, interests and other charges to which the parcel is subject.

13.3.3 If Yale First Nation makes an application for the registration of indefeasible title to a parcel of Yale First Nation Land under 13.3.1, and if the Registrar is satisfied that:

- a. a good safe holding and marketable title in fee simple for the parcel has been established by Yale First Nation;
- b. the boundaries of the parcel are sufficiently defined by the plan provided by Yale First Nation;
- c. all of the estates, interests and other charges set out in the Yale First Nation Certificate are registrable under the *Land Title Act*; and
- d. the Yale First Nation Certificate complies with the *Land Title Act*;

then the Registrar must:

- e. register the indefeasible title to the parcel;
- f. make a note on the indefeasible title that the parcel is Yale First Nation Land and may be subject to conditions, provisos, restrictions, exceptions, and reservations in favour of Yale First Nation or another person; and
- g. register as charges the estates, interests and other charges set out in the Yale First Nation Certificate.

13.3.4 The Registrar is entitled to rely on, and is not required to make any enquiries in respect of, the matters certified in the Yale First Nation Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation in or to a parcel of Yale First Nation Land as a result of the reliance by the Registrar on a Yale First Nation Certificate, and the issuance by the Registrar of an indefeasible title based on the Yale First Nation Certificate, will have no recourse, at law or in equity, against the Registrar, the Assurance Fund, British Columbia or Canada.

13.3.5 If Yale First Nation makes an application for the registration of indefeasible title to a parcel of Yale First Nation Land under 13.3.1, then, effective from the time of application and until the application has been withdrawn or rejected, or the indefeasible title for that parcel is cancelled, the *Land Title Act* applies to the parcel.



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## CHAPTER 14 ACCESS

### 14.1 GENERAL

- 14.1.1 Except as modified by this Agreement, as owner of Yale First Nation Land, Yale First Nation has the same rights and obligations in respect of public access to, occupation of, and trespass on, Yale First Nation Land as other fee simple interest owners have in respect of their land.
- 14.1.2 Nothing in this Agreement affects the public right of navigation.

### 14.2 YALE FIRST NATION LAWS

- 14.2.1 Yale First Nation Government may make laws in respect of access to Yale First Nation Land.
- 14.2.2 Yale First Nation Law under 14.2.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 14.2.3 Notwithstanding 14.2.2, Federal and Provincial Law prevails to the extent of a Conflict with a Yale First Nation Law under 14.2.1 in respect of public access to Frozen Lakes Land.

### 14.3 YALE FIRST NATION ACCESS TO CROWN LANDS

- 14.3.1 Agents, employees, contractors, subcontractors and other representatives of Yale First Nation have access, in accordance with Federal and Provincial Law, at no cost, to Crown lands in order to:
- a. deliver and manage programs and services;
  - b. carry out duties under Yale First Nation Law;
  - c. enforce Yale First Nation Law;
  - d. respond to emergencies; or
  - e. carry out the terms of this Agreement.
- 14.3.2 If practicable, persons who access Federal Crown Land under 14.3.1 will provide Canada with reasonable notice before accessing those lands.

**14.4 YALE FIRST NATION ACCESS TO YALE FIRST NATION LAND**

14.4.1 If an authorized use or disposition of provincial Crown land would deny Yale First Nation Members reasonable access to Yale First Nation Land, British Columbia will provide Yale First Nation Members with reasonable alternative means of access to Yale First Nation Land.

14.4.2 British Columbia or Yale First Nation may refer any Disagreement in respect of 14.4.1 to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution without having to proceed through Stages One and Two.

**14.5 CROWN ACCESS TO YALE FIRST NATION LAND**

14.5.1 Agents, employees, contractors, subcontractors and other representatives of Canada, British Columbia, Public Utilities, Railways, and members of the Canadian Armed Forces, and peace officers, have access, in accordance with Federal and Provincial Law, at no cost, to Yale First Nation Land in order to:

- a. deliver and manage programs and services;
- b. carry out duties under Federal and Provincial Law;
- c. enforce laws;
- d. respond to emergencies;
- e. access Crown land, including Submerged Lands, located adjacent or in close proximity to Yale First Nation Land if no other reasonable access exists across Crown land; and
- f. carry out the terms of this Agreement.

14.5.2 Nothing in this Agreement limits the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security on Yale First Nation Land, without payment of any fees or other charges to Yale First Nation except as provided for under Federal Law.

**14.6 ACCESS TO INTERESTS**

14.6.1 Yale First Nation will allow reasonable access to Yale First Nation Land, at no cost, to the interests listed in Appendices H-1 through H-4, consistent with the terms and conditions of those interests.

14.6.2 If no other reasonable access exists across provincial Crown land, Yale First Nation will allow reasonable access across Yale First Nation Land:

- a. to any interest located on or beneath lands adjacent, or in close proximity to, Yale First Nation Land, consistent with the terms and conditions of those interests; and
- b. to a fee simple interest located adjacent, or in close proximity to, Yale First Nation Land.

14.6.3 British Columbia or Yale First Nation may refer any Disagreement in respect of 14.6 to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution, without having to proceed through Stages One and Two.

#### **14.7 PUBLIC ACCESS TO FROZEN LAKES LAND**

14.7.1 Yale First Nation will allow reasonable public access to Frozen Lakes Land for temporary recreational and non-commercial purposes, including reasonable opportunities for the public to hunt and fish.

14.7.2 Public access does not include:

- a. harvesting or extracting resources unless authorized by Yale First Nation or as in accordance with this Agreement;
- b. causing damage to land or resources; or
- c. causing nuisance.

14.7.3 Yale First Nation may authorize uses of or dispose of portions of Frozen Lakes Land and any such authorized use or disposition may affect the methods, times and locations of public access, provided that Yale First Nation ensures that those authorized uses or dispositions do not deny reasonable public access under 14.7.1.

14.7.4 For greater certainty, public access under 14.7.1 will be in accordance with any applicable Yale First Nation Law under 14.2.1.

14.7.5 Yale First Nation will take reasonable measures to notify the public of the terms and conditions respecting public access to Frozen Lakes Land.

14.7.6 Yale First Nation's liability for public access to the Frozen Lakes Land is comparable to the liability of the provincial Crown for public access to unoccupied provincial Crown lands.

**14.8 ACCESS TO YALE FIRST NATION LAND**

- 14.8.1 Yale First Nation will consider a request by an individual for Reasonable Access to Yale First Nation Land other than Frozen Lakes Land and may refuse such request on reasonable grounds. In the event that Yale First Nation accepts the request, Yale First Nation will provide the individual with a Permit, or otherwise allow Reasonable Access to the requested site.
- 14.8.2 For greater certainty, access under 14.8.1 will be in accordance with any applicable Yale First Nation Law under 14.2.1.

**14.9 EMERGENCIES AND NATURAL DISASTERS**

- 14.9.1 Any Party may respond to an emergency or natural disaster on Crown land or Yale First Nation Land or the bodies of water immediately adjacent to Yale First Nation Land, if the person with primary responsibility for responding has not responded, or is unable to respond, in a timely way.
- 14.9.2 The Party responding will, if possible, notify the person with primary responsibility in advance of taking action but, in any case, will notify that person as soon as practicable after responding.
- 14.9.3 In the event of a provincial declaration of emergency or natural disaster, access to Yale First Nation Land will be in accordance with Federal or Provincial Law.

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## CHAPTER 15 ROADS AND CORRIDORS

### 15.1 YALE FIRST NATION ROADS

- 15.1.1 Yale First Nation Roads are administered, controlled, and maintained by Yale First Nation.
- 15.1.2 The closure of a Yale First Nation Road, or a portion of it, is subject to 14.5, 14.6 and 14.7.

### 15.2 CROWN CORRIDORS

- 15.2.1 For greater certainty, Crown Corridors are not part of Yale First Nation Land and are owned by British Columbia.
- 15.2.2 The detailed location and dimensions of Crown Corridors are deemed to be described conclusively in plans registered in the Land Title Office under 13.1.1.
- 15.2.3 British Columbia will Consult with Yale First Nation regarding new uses or major road construction within Crown Corridors.

### 15.3 RAILWAYS AND RAILWAY CORRIDORS

- 15.3.1 For greater certainty, Railway Corridors are not part of Yale First Nation Land.
- 15.3.2 If at any time British Columbia acquires, or otherwise assumes administration and control of, a Railway Corridor described in Appendix E-1, Part 1 or E-2, Part 1, or any portion thereof, and that land is no longer required for a Railway or any other public purpose, British Columbia will offer to sell that land to Yale First Nation by providing notice to Yale First Nation setting out:
- a. a description of the parcel of land;
  - b. the purchase price of the land which, unless British Columbia and Yale First Nation otherwise agree, will be equal to the fair market value of the land;
  - c. any interests which the parcel of land will be subject to; and
  - d. any other terms and conditions applicable to the purchase and sale of the land.
- 15.3.3 An offer to sell a parcel of land under 15.3.2 will be open for acceptance by Yale First Nation for a period of one year from the receipt of the offer after which

Yale First Nation is deemed to have refused the offer to sell, the offer to sell expires and British Columbia may otherwise dispose of the parcel of land.

- 15.3.4 If British Columbia and Yale First Nation disagree on the fair market value of any land offered for sale under 15.3.2, either British Columbia or Yale First Nation may refer the matter to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution, without having to proceed through Stages One and Two.
- 15.3.5 If Yale First Nation acquires a parcel of land in accordance with 15.3.2 through 15.3.4, that land will be added to Yale First Nation Land and upon Yale First Nation becoming owner of the land the Parties will amend Appendix B in accordance with 27.1.9 to reflect the addition, and the parcel of land will become Yale First Nation Land when the amendment takes effect.

#### **15.4 PUBLIC UTILITIES**

- 15.4.1 In addition to the provisions of Chapter 14 Access, British Columbia or any Public Utility and their respective agents, employees, contractors, subcontractors and other representatives have access to Yale First Nation Land, including Yale First Nation Roads, at no cost for the purpose of undertaking works, including:
- a. constructing drainage works;
  - b. constructing or extending transmission or distribution works;
  - c. maintaining slope stability;
  - d. removing dangerous Timber or other hazards; or
  - e. carrying out vegetation management,
- as required for the protection, care, maintenance, or construction of Provincial Roads or Public Utility works on or adjacent to Yale First Nation Land.
- 15.4.2 Unless otherwise agreed to by Yale First Nation, Timber removed from Yale First Nation Land under 15.4.1 is the property of Yale First Nation.
- 15.4.3 Before British Columbia or a Public Utility commences any work referred to in 15.4.1 on Yale First Nation Land, British Columbia or the Public Utility, as applicable, will:
- a. provide notice to Yale First Nation of its intention to carry out work; and

- b. if requested by Yale First Nation, deliver a work plan to Yale First Nation describing the effects and extent of the proposed work on Yale First Nation Land for approval, which will not be unreasonably withheld.
- 15.4.4 If, within 30 days of the delivery of a work plan delivered under 15.4.3b, Yale First Nation does not approve the content of the work plan, either British Columbia or Yale First Nation may refer the Disagreement to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution, without having to proceed through Stages One and Two.
- 15.4.5 Notwithstanding any other provision of this Agreement, British Columbia or a Public Utility may undertake works and take steps on Yale First Nation Land that are urgently required in order to protect works constructed on Crown Corridors or to protect persons or vehicles using Crown Corridors.
- 15.4.6 British Columbia or a Public Utility will notify Yale First Nation in writing that it has acted under 15.4.5.
- 15.4.7 The party acting under 15.4.1 will minimize the damage to and time spent on Yale First Nation Land, and will pay compensation for any damage to Yale First Nation Land that results from its actions.
- 15.4.8 British Columbia or Yale First Nation may refer a Disagreement in respect of compensation under 15.4.7 to be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution, without having to proceed through Stages One and Two.
- 15.4.9 For greater certainty, as provided for in 12.6, Yale First Nation will grant or issue interests on Yale First Nation Land to any Public Utility identified in Appendix H-3 or H-4.
- 15.4.10 The terms and conditions of any interest granted or issued by Yale First Nation under 12.6 prevail to the extent of an inconsistency with 15.4.1 through 15.4.4, 15.4.7 or 15.4.8.
- 15.4.11 With the prior written approval of Yale First Nation, a Public Utility may extend existing works, or locate and install new works, on Yale First Nation Land on substantially the same terms and conditions as set out in Appendix H-5, Document 2 (Transmission Right of Way (BC Hydro)) or Document 4 (Distribution Right of Way (BC Hydro and Telus)), as applicable, where extending existing works or locating and installing new works is necessary to meet the demand for service on or off Yale First Nation Land.
- 15.4.12 Yale First Nation will not unreasonably withhold its approval under 15.4.11.

- 15.4.13 For greater certainty, nothing in 15.4.11 requires a Public Utility to obtain the approval of Yale First Nation for usual service extensions or connections to Public Utility works or to deliver and manage service to customers of a Public Utility.
- 15.4.14 Yale First Nation Law will not:
- a. apply to the regulation of the business of a Public Utility, nor apply to the planning, development, construction, repair, maintenance, operation or decommissioning of the authorized works of a Public Utility; or
  - b. impair or frustrate a Public Utility's authorized use or occupation of:
    - i. any interest granted or issued to the Public Utility under this Agreement;
    - ii. Yale First Nation Land; or
    - iii. the works of a Public Utility located on Yale First Nation Land.
- 15.4.15 Yale First Nation's use and occupation of Yale First Nation Land will not impair or frustrate a Public Utility's authorized use or occupation of:
- a. any interest granted or issued to the Public Utility under this Agreement;
  - b. Yale First Nation Land; or
  - c. the works of a Public Utility located on Yale First Nation Land.

## **15.5 ACCESS AND SAFETY REGULATION**

- 15.5.1 Nothing in this Agreement limits the authority of British Columbia to regulate all matters relating to:
- a. the location and design of intersecting Yale First Nation Roads giving access to Crown Corridors from Yale First Nation Land, including:
    - i. regulating or requiring signs, signals, or other traffic control devices;
    - ii. regulating or requiring merging lanes, on ramps and off ramps; or
    - iii. requiring contributions to the cost of the matters referred to in 15.5.1a.i and 15.5.1a.ii; and



- b. the height and location of structures on Yale First Nation Land immediately adjacent to Crown Corridors, only to the extent reasonably required to protect the safety of the users of Crown Corridors.

15.5.2 British Columbia will provide Yale First Nation with any licence, permit or approval required under Provincial Law to join or cross a Provincial Road with a Yale First Nation Road if:

- a. the application for the required licence, permit or approval complies with Provincial Law; and
- b. the intersecting Yale First Nation Road complies with standards established under Provincial Law for equivalent Provincial Roads.

15.5.3 Subject to provincial requirements, including those set out in 15.5.1, British Columbia will not unreasonably deny Yale First Nation access to a Provincial Road from Yale First Nation Land.

15.5.4 Yale First Nation will Consult with British Columbia on any access or public safety issue associated with land use decisions relating to the development of Yale First Nation Land adjacent to Crown Corridors.

## **15.6 CROWN CORRIDORS NO LONGER REQUIRED**

15.6.1 If British Columbia no longer requires any portion of a Crown Corridor with the exception of the Trans-Canada Highway, also known as Highway #1, it will transfer the fee simple interest, including the Subsurface Resources, for that portion of the Crown Corridor to Yale First Nation.

15.6.2 If Yale First Nation acquires a portion of a Crown Corridor under 15.6.1, that land will be added to Yale First Nation Land and upon Yale First Nation becoming the owner of the land, the Parties will amend Appendices B and D in accordance with 27.1.9, and the change in the status of the lands will occur when the amendment takes effect.

15.6.3 The amount of Yale First Nation Land identified in 12.14.4 will increase by five percent of the area, in hectares, of land that is added to Yale First Nation Land under 15.6.2.

## **15.7 RELOCATION OF CROWN CORRIDORS**

15.7.1 British Columbia may request that a portion of a Crown Corridor be relocated onto Yale First Nation Land and if:

- a. the new location is reasonably suitable for use as a corridor;

- b. British Columbia pays all reasonable costs associated with decommissioning that portion of the Crown Corridor; and
- c. British Columbia and Yale First Nation reach agreement on the value of the land exchange,

Yale First Nation will not unreasonably refuse to provide its consent to the relocation.

15.7.2 If Yale First Nation requires a portion of a Crown Corridor for another purpose, Yale First Nation may request that a portion of a Crown Corridor be relocated, and if:

- a. the new location is reasonably suitable for use as a corridor of a comparable standard considering construction, maintenance, operation, and costs;
- b. British Columbia and Yale First Nation reach agreement on the value of the land exchange; and
- c. Yale First Nation pays all reasonable costs, including costs of design, planning, supervision, land, and construction,

British Columbia will not unreasonably refuse to undertake the relocation.

15.7.3 If a Crown Corridor is relocated as a result of a consent provided by Yale First Nation or British Columbia in accordance with 15.7.1 or 15.7.2:

- a. any portion of a Crown Corridor transferred to Yale First Nation will cease to be a Crown Corridor and will become Yale First Nation Land; and
- b. any Yale First Nation Land transferred to British Columbia will cease to be Yale First Nation Land and will become a Crown Corridor,

and, upon any such transfer, the Parties will amend Appendices B and D in accordance with 27.1.9 to reflect the relocation of the Crown Corridor, and the change in the status of the lands will occur when the amendment takes effect.

## **15.8 CONSULTATION REGARDING TRAFFIC REGULATIONS**

15.8.1 Upon request of Yale First Nation, British Columbia will Consult with Yale First Nation with respect to regulation of traffic and transportation on a Crown Corridor that is adjacent to a settled area on Yale First Nation Land.

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## CHAPTER 16 FOREST RESOURCES

### 16.1 GENERAL

- 16.1.1 On the Effective Date, Yale First Nation owns all Forest Resources on Yale First Nation Land.
- 16.1.2 Yale First Nation Land will be treated as Private Land for the purposes of Provincial Law in respect of Forest Resources, Forest Practices and Range Practices.
- 16.1.3 Yale First Nation, as owner, has the exclusive authority to determine, collect and administer any fees, rent or other charges, except taxes, relating to the harvesting of Forest Resources on Yale First Nation Land.

### 16.2 YALE FIRST NATION LAWS

- 16.2.1 Yale First Nation Government may make laws in respect of Forest Resources, Forest Practices and Range Practices on Yale First Nation Land.
- 16.2.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 16.2.1.

### 16.3 MANUFACTURE AND EXPORT OF TIMBER

- 16.3.1 Timber harvested from Yale First Nation Land is not subject to any legal requirement under Provincial Law for use or manufacturing in British Columbia.
- 16.3.2 Logs from Yale First Nation Land may be proposed for export under Federal Law and policy as if the Logs had been harvested from an Indian Reserve in British Columbia.

### 16.4 TIMBER MARKING AND SCALING

- 16.4.1 Nothing in this Agreement confers authority on Yale First Nation Government to make laws in respect of Timber marks, Timber marking or Timber scaling.

### 16.5 FOREST AND RANGE HEALTH

- 16.5.1 Yale First Nation is responsible for the control of insects, diseases, invasive plants, animals or abiotic factors on Yale First Nation Land that may affect the health of Forest Resources on Yale First Nation Land.

- 16.5.2 If Canada or British Columbia becomes aware of insects, diseases, invasive plants, animals or abiotic factors on their respective Crown lands that may threaten the health of Forest Resources on adjacent Yale First Nation Land, British Columbia or Canada, as the case may be, will notify Yale First Nation and:
- a. in the case of British Columbia, British Columbia and Yale First Nation will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources on Yale First Nation Land and on provincial Crown lands, in accordance with Federal and Provincial Law; and
  - b. in the case of Canada, Canada and Yale First Nation will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources on Yale First Nation Land and on Federal Crown Land, in accordance with Federal and Provincial Law.
- 16.5.3 If Yale First Nation becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Yale First Nation Land that may threaten the health of Forest Resources on adjacent provincial Crown land or Federal Crown Land, it will notify British Columbia or Canada, as the case may be, and:
- a. in the case of British Columbia, Yale First Nation and British Columbia will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources on Yale First Nation Land and on provincial Crown lands, in accordance with Federal and Provincial Law; and
  - b. in the case of Canada, Yale First Nation and Canada will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources on Yale First Nation Land and on Federal Crown Land, in accordance with Federal and Provincial Law.
- 16.5.4 For greater certainty, nothing in this Agreement limits the application of Federal or Provincial Law in relation to the health of Forest Resources.

## **16.6 WILDFIRE SUPPRESSION AND CONTROL**

- 16.6.1 Subject to the Wildfire Suppression Agreement entered into in accordance with 16.6.2, and subject to 16.6.3 and 16.6.5, Provincial Law in respect of the protection of resources from wildfire and for wildfire prevention and control applies to Yale First Nation Land as Private Land.

- 16.6.2 On the Effective Date the Parties will enter into a Wildfire Suppression Agreement that will set out how the costs incurred by British Columbia for wildfire control on Yale First Nation Land for wildfires that originate on such lands will be shared by British Columbia, Canada and Yale First Nation.
- 16.6.3 Subject to the limitations on the scope of Yale First Nation's responsibility to pay wildfire control costs set out in the Wildfire Suppression Agreement, Yale First Nation is responsible for one third of the costs incurred by British Columbia for wildfire control on Yale First Nation Land for wildfires that originate on such lands.
- 16.6.4 For greater certainty, the responsibility of Yale First Nation under 16.6.3 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off Yale First Nation Land.
- 16.6.5 British Columbia will respond to a wildfire originating on Yale First Nation Land on the same priority basis as for provincial Crown lands and in accordance with any priorities as set by the Minister.
- 16.6.6 For the purposes of 16.6.2:
- a. unless terminated at the written request of Yale First Nation, the Wildfire Suppression Agreement remains in effect between Yale First Nation and British Columbia on the same terms, subject to those terms that Yale First Nation and British Columbia negotiate on a periodic basis; and
  - b. Canada's participation in the Wildfire Suppression Agreement is limited to assuming a share of costs under that agreement for a period of 10 years commencing on the Effective Date.
- 16.6.7 Subject to any cost sharing arrangement that may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided under land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time in respect of Canada's continuing participation in the Wildfire Suppression Agreement following the 10 year period referred to in 16.6.6b.
- 16.6.8 Nothing in 16.6.2 or 16.6.3 limits the ability of any Party to pursue legal action against third parties.
- 16.6.9 At the request of Yale First Nation, or in accordance with Provincial Law, British Columbia may enter on Yale First Nation Land and assist in the provision of, or carry out, wildfire control.

**16.7 TIMBER HARVESTING RIGHTS EXISTING BEFORE EFFECTIVE DATE**

- 16.7.1 British Columbia will ensure that on the Effective Date any right to harvest Timber granted under Provincial Law that applies to Yale First Nation Land ceases to be valid.

**16.8 OBLIGATIONS EXISTING BEFORE EFFECTIVE DATE**

- 16.8.1 Unless otherwise requested by Yale First Nation, British Columbia will ensure that on the Effective Date, or as soon as practicable after that date, any obligations that apply on Yale First Nation Land with respect to Forest Practices and Range Practices, including road deactivation and reforestation, will be fulfilled in accordance with Provincial Law.
- 16.8.2 Yale First Nation will provide access to Yale First Nation Land, at no cost, to British Columbia and any interest holder whose rights to Forest Resources cease to be valid in accordance with 16.7.1, and to their respective employees, agents, contractors, successors or assigns, in order to fulfill the obligations referred to in 16.8.1.

**16.9 INFORMATION SHARING**

- 16.9.1 British Columbia and Yale First Nation agree to share information with respect to Forest Practices and Range Practices on Yale First Nation Land and on provincial Crown land immediately adjacent to Yale First Nation Land from time to time.

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## CHAPTER 17 ENVIRONMENTAL ASSESSMENT

### 17.1 GENERAL

- 17.1.1 Notwithstanding any decision made by Canada or British Columbia in respect of a Federal Project or a Provincial Project, no Federal Project or Provincial Project on Yale First Nation Land will proceed without the consent of Yale First Nation.
- 17.1.2 Notwithstanding 17.1.1, consent of Yale First Nation is not required in respect of:
- a. a Federal Project or Provincial Project if an interest in a parcel of Yale First Nation Land required for the Federal Project or Provincial Project has been expropriated in accordance with Chapter 12 Lands; or
  - b. a project that is within the terms and conditions of an interest set out in Appendix H-3 or H-4, where that project is a Federal Project or Provincial Project.

### 17.2 YALE FIRST NATION

- 17.2.1 The Yale First Nation Government may make laws, applicable on Yale First Nation Land, in respect of the Environmental Assessment of Yale First Nation Projects.
- 17.2.2 Yale First Nation Law under 17.2.1 will have the equivalent effect of, or exceed the requirements of, the *Canadian Environmental Assessment Act*.
- 17.2.3 Where the Yale First-Nation Government exercises law-making authority under 17.2.1, Canada and Yale First Nation will negotiate and attempt to reach agreement to:
- a. coordinate their respective Environmental Assessment requirements; and
  - b. avoid duplication where a Yale First Nation Project is also a Federal Project.
- 17.2.4 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 17.2.1.

### **17.3 YALE FIRST NATION PARTICIPATION IN FEDERAL ENVIRONMENTAL ASSESSMENTS**

- 17.3.1 If a proposed Federal Project may reasonably be expected to adversely affect Yale First Nation Land or Section 35 Rights of Yale First Nation:
- a. Canada will ensure that Yale First Nation is provided with timely notice of the Environmental Assessment and information describing the Federal Project in sufficient detail to permit Yale First Nation to determine if it is interested in participating in the Environmental Assessment;
  - b. if Yale First Nation confirms that it is interested in participating in the Environmental Assessment of the Federal Project, Canada will provide Yale First Nation with an opportunity to comment on the Environmental Assessment conducted under the *Canadian Environmental Assessment Act*, including:
    - i. the scope of the Federal Project;
    - ii. the environmental effects of the Federal Project;
    - iii. any mitigation measures to be implemented; and
    - iv. any follow-up programs to be implemented;
  - c. during the course of the Environmental Assessment conducted under the *Canadian Environmental Assessment Act*, Canada will give full and fair consideration to any comments referred to in 17.3.1b and will respond to the comments before taking any decision to which those comments pertain; and
  - d. Yale First Nation will have access to information in Canada's possession related to the Environmental Assessment of the Federal Project in accordance with the public registry provisions in the *Canadian Environmental Assessment Act*.
- 17.3.2 If a proposed Federal Project described in 17.3.1 is referred to a panel under the *Canadian Environmental Assessment Act*, Canada will provide Yale First Nation with:
- a. the opportunity to propose to the Minister a list of names that the Minister may consider for appointment to the panel, unless the panel is an Independent Regulatory Agency, or Yale First Nation is a proponent of the Federal Project; and
  - b. formal standing before the panel.



17.3.3 If a proposed Federal Project that is referred to a panel under the *Canadian Environmental Assessment Act* will be located on Yale First Nation Land, Canada will provide Yale First Nation with:

- a. the opportunity to propose to the Minister a list of names from which the Minister will appoint one member in accordance with the requirements of the *Canadian Environmental Assessment Act*, unless the panel is a decision-making body, such as the National Energy Board, or if the Yale First Nation Government is a proponent of the proposed Federal Project;
- b. the opportunity to comment on the terms of reference of the panel; and
- c. formal standing before that panel.

#### **17.4 YALE FIRST NATION PARTICIPATION IN PROVINCIAL ENVIRONMENTAL ASSESSMENTS**

17.4.1 If a Provincial Project is located within the Yale First Nation Area or may reasonably be expected to adversely affect Yale First Nation Land, residents of Yale First Nation Land or Section 35 Rights of Yale First Nation, British Columbia will ensure that Yale First Nation:

- a. is provided with timely notice of, and relevant available information on, the Provincial Project;
- b. is Consulted regarding the environmental effects of that Provincial Project; and
- c. is provided with an opportunity to participate in any Environmental Assessment of that Provincial Project.

17.4.2 After giving full and fair consideration to the comments received under 17.4.1, British Columbia will respond to any views provided by Yale First Nation under 17.4.1 before making a decision that would enable the Provincial Project to be carried out in whole or in part.



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## CHAPTER 18 ENVIRONMENTAL PROTECTION

### 18.1 YALE FIRST NATION LAWS

- 18.1.1 Yale First Nation Government may make laws applicable on Yale First Nation Land to manage, protect, preserve and conserve the Environment including laws in respect of:
- a. the prevention, mitigation and remediation of pollution and degradation of the Environment;
  - b. waste management, including solid wastes and wastewater;
  - c. the protection of local air quality; and
  - d. Environmental Emergency response.
- 18.1.2 Federal or Provincial Law prevails to the extent of a Conflict with Yale First Nation Law under 18.1.1.

### 18.2 AGREEMENTS

- 18.2.1 The Parties may enter into agreements for cooperation and coordination on matters relating to the Environment that may affect Yale First Nation Land or the Yale First Nation Area.

### 18.3 ENVIRONMENTAL EMERGENCIES

- 18.3.1 Any Party may respond to an Environmental Emergency on Yale First Nation Land, or Crown land or waters immediately adjacent to Yale First Nation Land, if the person with primary responsibility for responding has not responded or is unable to respond in a timely way.
- 18.3.2 The Party responding will, if possible, notify the person with primary responsibility in advance of taking action but otherwise will notify that person as soon as practicable after responding.
- 18.3.3 Yale First Nation may enter into agreements with Canada, British Columbia, Local Governments, Bands, or First Nation Governments in British Columbia for the prevention of, preparedness for, response to and recovery from Environmental Emergencies originating on Yale First Nation Land, or lands or waters immediately adjacent to Yale First Nation Land.

**18.4 YALE FIRST NATION COMMUNITY WATERSHED LAND**

- 18.4.1 Yale First Nation acknowledges that, on the Effective Date, Yale First Nation Community Watershed Land is located within an area designated under Provincial Law as a community watershed in order to protect water being diverted for human consumption through a licensed waterwork.
- 18.4.2 Yale First Nation will manage, use and develop Yale First Nation Community Watershed Land in accordance with those standards and objectives established under Provincial Law for the purpose of protecting water being diverted for human consumption that apply to provincial Crown land adjacent to such lands.
- 18.4.3 British Columbia will Consult with Yale First Nation before discontinuing a community watershed designation that applies to Yale First Nation Community Watershed Land.
- 18.4.4 If British Columbia determines that any part of Yale First Nation Community Watershed Land is no longer required for the purpose of protecting water being diverted for human consumption, British Columbia will notify Yale First Nation and the obligation to manage, use and develop those lands in accordance with 18.4.2 will terminate.
- 18.4.5 For greater certainty, nothing in this Agreement limits the application of the *Drinking Water Protection Act* to Yale First Nation Community Watershed Land.

**CHAPTER 19 CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT****19.1 CAPITAL TRANSFER**

19.1.1 Subject to 19.3.2, the Capital Transfer from Canada and British Columbia to Yale First Nation will be paid in accordance with the Capital Transfer Payment Plan.

**19.2 ECONOMIC DEVELOPMENT FUND**

19.2.1 Canada will pay \$1.1 million in 3<sup>rd</sup> quarter 2008\$ to Yale First Nation in accordance with the Economic Development Fund Payment Plan.

19.2.2 The Parties acknowledge that British Columbia agrees to pay \$1.1 million in 3<sup>rd</sup> quarter 2008\$ to Yale First Nation for economic development under the initial Fiscal Financing Agreement.

**19.3 NEGOTIATION LOAN REPAYMENT**

19.3.1 Yale First Nation will make a negotiation loan repayment to Canada in accordance with the Negotiation Loan Repayment Plan.

19.3.2 Canada may set off and deduct from a payment made by Canada under 19.1.1 or 19.2.1 the amount of a repayment to be made under 19.3.1 on the same date, except to the extent that the negotiation loan repayment amount has been prepaid.

**SCHEDULE 19-A – CAPITAL TRANSFER AND ECONOMIC DEVELOPMENT  
FUND PAYMENT PLANS**

**Part 1 - Capital Transfer Payment Plan**

<b>PAYMENT DATE</b>	<b>PROVISIONAL PAYMENT AMOUNT</b>	
	<b>CANADA WILL PAY</b>	<b>BRITISH COLUMBIA WILL PAY</b>
Effective Date	\$8,239,000	\$2,461,000

**Part 2 - Economic Development Fund Payment Plan**

<b>FUND</b>	<b>PAYMENT DATE</b>	<b>PROVISIONAL PAYMENT AMOUNT</b>
		<b>CANADA WILL PAY</b>
Economic Development Fund	Effective Date	\$1,100,000

## NOTES FOR FINALIZING SCHEDULE 19-A

The purpose of these notes is to enable the Parties to calculate on the Revision Date the amounts to be shown in the final version of the Capital Transfer Payment Plan and Economic Development Payment Plan. The provisional payment amounts are expressed in third quarter 2008\$.

These notes will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with these notes and the Effective Date occurs.

1. In these notes:

“**FDDIPI**” means the Final Domestic Demand Implicit Price Index for Canada, series D100466, published regularly by Statistics Canada in Matrix 10512: Implicit Price Indexes, Gross Domestic Product, or its replacement series as specified by Statistics Canada;

“**Revision Date**” means the date 30 days before the Effective Date, or another date if the Parties agree;

“**Signing Date**” means the date on which this Agreement is signed by the Parties; and

“**Transition Date**” is the date that is 15 months after the Signing Date.

2. If the period between the Signing Date and the Effective Date is less than 15 months, on the Revision Date the provisional payment amounts in the Capital Transfer Payment Plan and the Economic Development Fund Payment Plan will be adjusted as follows:

provisional payment amount \* M/L

where,

“/” means divided by;

“\*” means multiplied by;

“L” is the value of FDDIPI for the third quarter of 2008 published by Statistics Canada at the same time that the values used in M are published; and

“M” is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the Revision Date.

3. If the period between the Signing Date and the Effective Date is greater than 15 months, on the Revision Date the provisional payment amounts in the Capital Transfer Payment Plan and the Economic Development Fund Payment Plan will be adjusted as follows:

$$\text{provisional payment amount} * [(P/Q) * (1 + C)^Y * (1+C*D/365)]$$

where:

“Q” is the value of FDDIPI for the third quarter of 2008 published by Statistics Canada at the same time that the values used in P are published;

“P” is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the Transition Date;

“Y” means the number of complete years between the Transition Date and the Effective Date;

“D” is the number of days remaining in the period between the Transition Date and the Effective Date, after deducting the complete years in that period that have been taken into account in the determination of Y; and

“C” is 3.335% per year.

The purpose of this paragraph is to limit the period for which the Capital Transfer and the Economic Development Fund are adjusted by FDDIPI to the period that ends on the Transition Date, and to lengthen the period for which the Capital Transfer and Economic Development Fund payments are adjusted by the calculation rate to the period between the Transition Date and the Effective Date.

4. On the Revision Date, following the adjustment performed in accordance with either paragraph 2 or 3 of these notes, as applicable, the Capital Transfer Payment Plan will be amended to incorporate the adjusted figures and the Capital Transfer Payment Plan above will be replaced by the following headings:

PAYMENT DATE	PAYMENT AMOUNT	
		CANADA WILL PAY



5. On the Revision Date, following the adjustment performed in accordance with either paragraph 2 or 3 of these notes, as applicable, the Economic Development Fund Payment Plan will be amended to incorporate the adjusted figures and the headings in the Economic Development Fund Payment Plan will be replaced by the following headings:

<b>FUND</b>	<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>
		<b>CANADA WILL PAY</b>

**SCHEDULE 19-B – NEGOTIATION LOAN REPAYMENT PLAN**

<b>PAYMENT DATE</b>	<b>PROVISIONAL NEGOTIATION LOAN REPAYMENT AMOUNT</b>
Effective Date	<b>\$6,487,714.40</b>

### NOTES FOR FINALIZING SCHEDULE 19-B

The purpose of these notes is to enable the Parties to calculate on the Revision Date the amount to be shown in the final version of this Schedule. These notes will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with these notes and the Effective Date occurs.

The provisional loan repayment amount is based on total outstanding negotiation loans and interest accrued as of November 1, 2009. The final loan repayment amount, including any further negotiation loans made and interest accrued after November 1, 2009, will be calculated and included in the final Negotiation Loan Repayment Plan in accordance with the following notes.

1. In these notes:

“**Revision Date**” has the same meaning as “Revision Date” in the notes to Schedule 19-A; and

“**C**” is 3.335%.

2. On the Revision Date, the provisional negotiation loan repayment amount in the Negotiation Loan Repayment Plan will be adjusted to the final negotiation loan repayment amount by incorporating the amount of additional negotiation loans made by Canada to Yale First Nation that were not included in the calculation of the provisional negotiation loan repayment amount and any additional interest accrued since the provisional negotiation loan and interest amounts were calculated; and any prepayment of negotiation loans made by Yale First Nation to Canada.
3. Canada will calculate the final negotiation loan repayment amounts based on a document that Canada and Yale First Nation will produce jointly before the Revision Date, setting out the final negotiation loan and interest amounts, and the relevant terms and conditions of the loans as at the Effective Date.
4. On the Revision Date, following the adjustment performed in accordance with paragraph 2 of these notes, the headings in the Negotiation Loan Repayment Plan will be amended to incorporate the adjusted figures and the headings in the Negotiation Loan Repayment Plan will be replaced by the following headings:

<b>PAYMENT DATE</b>	<b>NEGOTIATION LOAN REPAYMENT AMOUNT</b>
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## CHAPTER 20 FISCAL RELATIONS

### 20.1 GENERAL

- 20.1.1 The Parties acknowledge they each have a role in supporting Yale First Nation, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements.
- 20.1.2 Every five years, or other periods as may be agreed, the Parties will negotiate and attempt to reach agreement on a Fiscal Financing Agreement that will:
- a. set out the Agreed-Upon Programs and Services, including, where appropriate, the recipients of those programs and services;
  - b. set out the responsibilities of each of the Parties in respect of the Agreed-Upon Programs and Services;
  - c. set out the funding for Agreed-Upon Programs and Services;
  - d. set out the contribution of Yale First Nation to the funding of Agreed-Upon Programs and Services from its own source revenues as determined under 20.1.4 and 20.1.5;
  - e. set out mechanisms for the transfer of funds to Yale First Nation from Canada or British Columbia;
  - f. set out procedures for:
    - i. the collection and exchange of information, including statistical and financial information, required for the administration of Fiscal Financing Agreements;
    - ii. dispute resolution in relation to Fiscal Financing Agreements;
    - iii. accountability requirements, including those respecting reporting and audit, of Yale First Nation;
    - iv. negotiating the inclusion of additional programs and services to the list of Agreed-Upon Programs and Services within a Fiscal Financing Agreement;
    - v. addressing exceptional circumstances and emergencies; and

- vi. negotiation of subsequent Fiscal Financing Agreements; and
  - g. address other matters as agreed to by the Parties.
- 20.1.3 In negotiating a Fiscal Financing Agreement, the Parties will take into account:
- a. the cost of providing, either directly or indirectly, Agreed-Upon Programs and Services that are reasonably comparable to similar programs and services available in other communities of similar size and circumstance in the Fraser Valley Regional District;
  - b. efficiency and effectiveness, including opportunities for economies of scale, in the provision of Agreed-Upon Programs and Services, which may include, where appropriate, cooperative arrangements with other governments, First Nations, or existing service providers;
  - c. the costs of operating Yale First Nation Government;
  - d. existing levels of funding provided by Canada or British Columbia;
  - e. prevailing fiscal policies of Canada or British Columbia;
  - f. the location and accessibility of communities on Yale First Nation Land;
  - g. the jurisdictions, authorities, programs and services assumed by the Yale First Nation Government under this Agreement;
  - h. the desirability of reasonably stable, predictable and flexible fiscal arrangements;
  - i. changes in price and volume, which may include the number of persons eligible to receive Agreed-Upon Programs and Services; and
  - j. other matters as agreed to by the Parties.
- 20.1.4 In negotiating Yale First Nation's contribution to the funding of Agreed-Upon Programs and Services under 20.1.2d, the Parties will take into account:
- a. the capacity of Yale First Nation to generate revenues;
  - b. the existing Yale First Nation own source revenue arrangements negotiated under this Agreement;
  - c. the prevailing fiscal policies with respect to the treatment of First Nation own source revenue in self-government fiscal arrangements;

- d. that own source revenue arrangements should not unreasonably reduce incentives for Yale First Nation to generate revenues;
- e. that the reliance of Yale First Nation on fiscal transfers should decrease over time as it becomes more self-sufficient; and
- f. other matters as agreed to by the Parties.

20.1.5 In negotiating the own source revenue contribution of Yale First Nation to the funding of Agreed-Upon Programs and Services under 20.1.2d, unless otherwise agreed:

- a. own source revenue arrangements will not include:
  - i. the Capital Transfer received under this Agreement, in the manner set out in the initial agreement in respect of own source revenues;
  - ii. proceeds from the sale of Yale First Nation Land;
  - iii. any federal or provincial payments under Fiscal Financing Agreements or other agreements for programs and services with Yale First Nation;
  - iv. gifts or charitable donations;
  - v. amounts received as compensation for specific losses or damages to property or assets;
  - vi. a Specific Claim Settlement; and
  - vii. other sources agreed to by the Parties; and
- b. own source revenue arrangements will not permit:
  - i. Canada to benefit from the decision of British Columbia to vacate tax room or to transfer revenues or tax authorities to Yale First Nation; or
  - ii. British Columbia to benefit from the decision of Canada to vacate tax room or to transfer revenues or tax authorities to Yale First Nation.

20.1.6 If the Parties do not reach agreement on a subsequent Fiscal Financing Agreement by the expiry date of an existing Fiscal Financing Agreement, that Fiscal Financing Agreement:

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- a. will continue in effect for up to two years from its original expiry date, or for such other period of time as the Parties may agree to in writing; and
  - b. will terminate on the earlier of:
    - i. the expiry of the extended term determined in accordance with 20.1.6a; or
    - ii. the date of commencement of a subsequent Fiscal Financing Agreement.
- 20.1.7 Unless otherwise agreed to by the Parties in a Fiscal Financing Agreement, the creation of the Yale First Nation Government, the provision of Yale First Nation Government law-making authority in this Agreement or the exercise of a Yale First Nation Government law-making authority does not create or imply any financial obligation or service responsibility on the part of any Party.
- 20.1.8 Any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are required or permitted under any provision of this Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
- a. in the case of Canada, by Parliament;
  - b. in the case of British Columbia, by the Legislature of British Columbia; or
  - c. in the case of Yale First Nation, by the Yale First Nation Government.



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## CHAPTER 21 TAXATION

### 21.1 DIRECT TAXATION

21.1.1 Yale First Nation Government may make laws in respect of:

- a. Direct taxation of Yale First Nation Members within Yale First Nation Land in order to raise revenue for Yale First Nation Government purposes; and
- b. the implementation of any taxation agreement entered into between Yale First Nation and Canada or British Columbia.

21.1.2 Yale First Nation Government law-making authority provided for in 21.1.1a does not limit the taxation powers of Canada or British Columbia.

21.1.3 Notwithstanding 2.18.1, any Yale First Nation Law made under this Chapter or any exercise of power by Yale First Nation Government, is subject to and will conform with International Legal Obligations respecting taxation, and 2.8.1 through 2.8.6 do not apply in respect of International Legal Obligations respecting taxation.

### 21.2 TAXATION POWERS AGREEMENTS

21.2.1 From time to time, at the request of Yale First Nation, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with Yale First Nation respecting:

- a. the extent to which the Direct taxation law-making authority of Yale First Nation Government under 21.1.1a may be extended to apply to Persons, other than Yale First Nation Members, within Yale First Nation Land; and
- b. the manner in which the Yale First Nation Government law-making authority under 21.1.1a, as extended by the application of 21.2.1a, will be coordinated with existing federal or provincial tax systems, including:
  - i. the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by the Yale First Nation Government; and
  - ii. the terms and conditions under which Canada or British Columbia may administer, on behalf of Yale First Nation, taxes imposed by the Yale First Nation Government.

21.2.2 Notwithstanding the provisions of Chapter 3 Governance, parties to an agreement under 21.2.1 may provide for an alternative approach to the appeal, enforcement or adjudication of matters related to a Yale First Nation Law in respect of taxation.

### **21.3 YALE FIRST NATION LAND**

21.3.1 Yale First Nation is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of Yale First Nation in Yale First Nation Land on which there are no improvements or on which there is a designated improvement.

21.3.2 In 21.3.1, “designated improvement” means:

- a. a residence of a Yale First Nation Member;
- b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
  - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Yale First Nation cultural or spiritual purposes;
  - ii. works of public convenience constructed or operated for the benefit of Yale First Nation Members, occupiers of Yale First Nation Land or individuals visiting or in transit through Yale First Nation Land, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks and public parking lots; or
  - iii. other improvements similar in nature to those described in 21.3.2b.i and 21.3.2b.ii;
- c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a Forest Resource or a fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
- d. Forest Resources and forest roads.

21.3.3 In 21.3.2b, “public purpose” does not include the provision of property or services primarily for the purpose of profit.

21.3.4 For the purposes of 21.3.1 and 21.3.2:

- a. for greater certainty, Yale First Nation Land includes the improvements on those lands; and
- b. an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.

21.3.5 For greater certainty, the exemption from taxation in 21.3.1 does not apply to a taxpayer other than Yale First Nation nor does it apply in respect of a disposition of Yale First Nation Land or interests in those lands by Yale First Nation.

21.3.6 For federal and provincial income tax purposes, proceeds of disposition received by Yale First Nation on expropriation of Yale First Nation Land in accordance with Chapter 12 Lands are not taxable.

#### **21.4 TRANSFER OF YALE FIRST NATION CAPITAL**

21.4.1 A transfer under this Agreement of Yale First Nation Capital is not taxable and a recognition of ownership under this Agreement of Yale First Nation Capital is not taxable.

21.4.2 For purposes of 21.4.1, an amount paid to a Yale First Nation Member is deemed to be a transfer of Yale First Nation Capital under this Agreement if the payment:

- a. reasonably can be considered to be a distribution of a Capital Transfer received by Yale First Nation; and
- b. becomes payable to the Yale First Nation Member within 90 days and is paid to the Yale First Nation Member within 270 days from the date that Yale First Nation receives a payment of the Capital Transfer.

21.4.3 For federal and provincial income tax purposes, Yale First Nation Capital is deemed to have been acquired by Yale First Nation at a cost equal to its fair market value on the later of:

- a. the Effective Date; and
- b. the date of transfer of ownership or the date of recognition of ownership, as the case may be.

**21.5 INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION**

- 21.5.1 Section 87 of the *Indian Act* will have no application to a Yale First Nation Member:
- a. with respect to Transaction Taxes, as of the first day of the first month after the eighth anniversary of the Effective Date; and
  - b. with respect to all other taxes, as of the first day of the first calendar year after the twelfth anniversary of the Effective Date.
- 21.5.2 Subject to 21.1.1a, 21.2.1a and 21.5.3 through 21.5.6, as of the Effective Date, the following is exempt from taxation:
- a. the interest of an Indian in Yale First Nation Land that was an Indian Reserve or Surrendered Lands on the day before the Effective Date;
  - b. the personal property of an Indian situated on Yale First Nation Land that was an Indian Reserve on the day before the Effective Date; and
  - c. an Indian in respect of the ownership, occupation, possession or use of any property mentioned in 21.5.2a or 21.5.2b.
- 21.5.3 21.5.2 will cease to be effective:
- a. with respect to Transaction Taxes, as of the first day of the first month after the eighth anniversary of the Effective Date; and
  - b. with respect to all other taxes, as of the first day of the first calendar year after the twelfth anniversary of the Effective Date.
- 21.5.4 21.5.2 will be interpreted to exempt an Indian in respect of a property or interest, or in respect of the ownership, occupation, possession or use thereof, in the same manner and under the same conditions in which section 87 of the *Indian Act* would have applied, but for this Agreement, if the property were situated on, or the interest were in, an Indian Reserve.
- 21.5.5 21.5.2 only applies to an Indian during the period that section 87 of the *Indian Act* applies to the Indian.
- 21.5.6 If Yale First Nation Government imposes a tax within Yale First Nation Land and concludes a tax agreement for that purpose with Canada or British Columbia as contemplated in 21.2.1, 21.5.2 does not apply to the extent that Yale First Nation Government, Canada or British Columbia, as the case may be, imposes a tax that

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the particular taxation agreement specifies is applicable to Yale First Nation Members and other Indians within Yale First Nation Land.

**21.6 TAX TREATMENT AGREEMENT**

- 21.6.1 The Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date.
- 21.6.2 Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the tax treatment agreement be given effect and force of law under federal and provincial legislation.



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## CHAPTER 22 *INDIAN ACT TRANSITION*

### 22.1 **ESTATES**

22.1.1 The *Indian Act* applies, with any modifications that the circumstances require, to the estate of an individual who:

- a. died testate or intestate before the Effective Date; and
- b. at the time of death, was a member of the Yale Band.

22.1.2 Before the Effective Date, Canada will take reasonable steps to:

- a. notify in writing all members of the Yale Band who have deposited wills with the Minister; and
- b. provide information to all members of the Yale Band who have not deposited wills with the Minister and to all individuals who are eligible to be enrolled under this Agreement,

that their wills may not be valid after the Effective Date and that their wills should be reviewed to ensure validity under Provincial Law.

22.1.3 Section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property of a Yale First Nation Member whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date, until that individual is declared to be no longer incapable under the *Patients Property Act*.

22.1.4 The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a Yale First Nation Member:

- a. who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before the Effective Date;
- b. whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date and at the time of death; and
- c. who did not execute a will that complies with the requirements as to form and execution under Provincial Law during a period after the Effective Date in which that individual was declared to be no longer incapable under the *Patients Property Act*.

22.1.5 Sections 52, 52.2, 52.3, 52.4 and 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which a Yale First Nation Member who is a Child is entitled, if the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister in respect of the administration have been discharged.

## **22.2 CONTINUATION OF INDIAN ACT BY-LAWS**

22.2.1 The by-laws of the Yale Band under the *Indian Act* that were in effect on the day before the Effective Date, continue to have effect for 30 days after the Effective Date on those parcels of Yale First Nation Land that comprised the Former Indian Reserves.

22.2.2 The relationship between a by-law referred to in 22.2.1 and Federal or Provincial Law is governed by the provisions of this Agreement that govern the relationship between Federal or Provincial Law and Yale First Nation Law in respect of the subject matter of the by-law.

22.2.3 Yale First Nation Government may repeal, but not amend, a by-law referred to in 22.2.1.

22.2.4 Nothing in this Agreement precludes a person from challenging the validity of a by-law referred to in 22.2.1.

## **22.3 STATUS OF BAND AND TRANSFER OF BAND ASSETS**

22.3.1 On the Effective Date all of the rights, titles, interests, assets, obligations and liabilities of the Yale Band vest in Yale First Nation and the Yale Band ceases to exist.

## **22.4 TRANSFER OF CAPITAL AND REVENUE MONEYS**

22.4.1 All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of the Yale Band, including capital and revenue moneys of the Yale Band, will be transferred by Canada to Yale First Nation as soon as practicable after the Effective Date.

22.4.2 Upon transfer of the moneys referred to in section 22.4.1, Canada will no longer thereafter be responsible for the collection of moneys payable:

- a. to or for the benefit of Yale First Nation; or
- b. except as provided in section 22.1.1, 22.1.3, 22.1.4, and 22.1.5, to or for the benefit of a Yale First Nation Member.



- 22.4.3 For greater certainty, Canada will not be liable for any errors or omissions in the administration of all moneys held by Yale First Nation for the use and benefit of Yale First Nation that occur subsequent to the transfer of capital and revenue moneys of the Yale Band from Canada to Yale First Nation.



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## CHAPTER 23 IMPLEMENTATION

### 23.1 GENERAL

23.1.1 The Implementation Plan takes effect on the Effective Date and has a term of 10 years, which may be renewed or extended upon the agreement of the Parties.

### 23.2 IMPLEMENTATION PLAN

23.2.1 The Implementation Plan:

- a. identifies the obligations in this Agreement, the activities to be undertaken to fulfill those obligations, the responsible Party or Parties and the timeframe for completion of those activities;
- b. specifies how the Implementation Plan may be revised;
- c. specifies how the Implementation Plan may be renewed or extended; and
- d. addresses other matters as agreed to by the Parties.

23.2.2 Without limiting 2.16.1, the Implementation Plan:

- a. does not create legal obligations;
- b. does not alter any rights or obligations described in this Agreement;
- c. does not preclude any Party from asserting that rights or obligations exist under this Agreement even though they are not referred to in the Implementation Plan; and
- d. is not to be used to interpret this Agreement.

### 23.3 IMPLEMENTATION COMMITTEE

23.3.1 On the Effective Date, the Parties will establish the implementation committee for a term of 10 years, which may be extended for a period as agreed to by the Parties.

23.3.2 On the Effective Date, Yale First Nation, Canada and British Columbia will each appoint one member as their representative on the implementation committee. Other individuals may participate in implementation committee meetings to support or assist a member.

- 23.3.3 The implementation committee will:
- a. be a forum for the Parties to:
    - i. discuss the implementation of this Agreement; and
    - ii. attempt to resolve any implementation issues arising among the Parties in respect of this Agreement;
  - b. establish its own procedures and operating guidelines;
  - c. develop a communication strategy in respect of the implementation and content of this Agreement;
  - d. recommend revisions to the Implementation Plan;
  - e. provide for the preparation of annual reports on the implementation of this Agreement;
  - f. before the expiry of the Implementation Plan, review the Implementation Plan and advise the Parties on the further implementation of this Agreement; and
  - g. address other matters as agreed to by the Parties.

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## CHAPTER 24 DISPUTE RESOLUTION

### 24.1 GENERAL

24.1.1 The Parties share the following objectives:

- a. to cooperate with each other to develop harmonious working relationships;
- b. to prevent or, alternatively, to minimize Disagreements;
- c. to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner possible; and
- d. to resolve Disagreements in a non-adversarial, collaborative, and informal atmosphere.

24.1.2 Except as otherwise provided in this Agreement, Participating Parties may agree to vary a procedural requirement contained in this Chapter, or in Appendix N, as it applies to a particular Disagreement.

24.1.3 Participating Parties may agree to, or the Supreme Court of British Columbia, on application, may order:

- a. the abridgment of a time limit in this Chapter or in Appendix N; or
- b. the extension of a time limit in this Chapter or in Appendix N, despite the expiration of that time limit.

### 24.2 SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT

24.2.1 In this Chapter and in Appendix N, a Party is deemed to be directly engaged in a Disagreement if another Party, acting reasonably, provides that Party a notice requiring it to participate in a process described in this Chapter to resolve the Disagreement.

24.2.2 This Chapter is not intended to apply to all conflicts or disputes between or among the Parties, but is limited to the conflicts or disputes described in 24.2.3.

24.2.3 This Chapter only applies to:

- a. a conflict or dispute respecting:
  - i. the interpretation, application, or implementation of this Agreement; or

- ii. a breach or anticipated breach of this Agreement;
  - b. a conflict or dispute, where provided for in this Agreement; or
  - c. negotiations required to be conducted under any provision of this Agreement that provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”.
- 24.2.4 This Chapter does not apply to:
- a. any agreement, plan, guideline or other document contemplated in this Agreement that is entered into, negotiated or prepared by the Parties unless the Parties have agreed that this Chapter applies to that agreement, plan, guideline or other document;
  - b. conflicts or disputes, where excluded from this Chapter.
- 24.2.5 Nothing in this Chapter limits the application of a dispute resolution process, under Federal or Provincial Law, to a conflict or dispute involving a person if that conflict or dispute is not a Disagreement.
- 24.2.6 Nothing in Federal or Provincial Law limits the right of a Party to refer a Disagreement to this Chapter.
- 24.3 DISAGREEMENTS TO GO THROUGH STAGES**
- 24.3.1 The Parties desire and expect that most Disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this Chapter.
- 24.3.2 Except as otherwise provided in this Agreement, Disagreements not resolved informally will progress, until resolved, through the following stages:
- a. Stage One: formal, unassisted efforts to reach agreement between or among the Participating Parties, in collaborative negotiations under Appendix N-1;
  - b. Stage Two: structured efforts to reach agreement between or among the Participating Parties with the assistance of a Neutral, who has no authority to resolve the Disagreement, in a facilitated process under Appendix N-2, N-3, N-4, or N-5 as applicable; and
  - c. Stage Three: final adjudication in arbitral proceedings under Appendix N-6, or in judicial proceedings.

- 24.3.3 Except as otherwise provided in this Agreement, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and a facilitated process in Stage Two as required in this Chapter.
- 24.3.4 Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
- a. to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
  - b. to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this Chapter.

#### **24.4 STAGE ONE: COLLABORATIVE NEGOTIATIONS**

- 24.4.1 If a Disagreement is not resolved by informal discussion and a Party directly engaged in the Disagreement wishes to invoke this Chapter, that Party will deliver a notice, as required under Appendix N-1, to the other Parties, requiring the commencement of collaborative negotiations.
- 24.4.2 Upon receiving a notice under 24.4.1, a Party directly engaged in the Disagreement will participate in the collaborative negotiations.
- 24.4.3 A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving notice to the other Parties, preferably before the collaborative negotiations commence.
- 24.4.4 If the Parties have commenced negotiations in the circumstances described in 24.2.3c, then, for all purposes under this Chapter, those negotiations are deemed collaborative negotiations and the particular matter under negotiation is a Disagreement.
- 24.4.5 Collaborative negotiations terminate in the circumstances described in Appendix N-1.

#### **24.5 STAGE TWO: FACILITATED PROCESSES**

- 24.5.1 Within 15 days of termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement, by delivering a notice to the other Parties, may require the commencement of a facilitated process.

- 24.5.2 A notice under 24.5.1:
- a. will include the name of the Party or Parties directly engaged in the Disagreement and a summary of the particulars of the Disagreement; and
  - b. may propose the use of a particular facilitated process described in 24.5.5.
- 24.5.3 Upon receiving a notice under 24.5.1, a Party directly engaged in the Disagreement will participate in a facilitated process described in 24.5.5.
- 24.5.4 A Party not directly engaged in the Disagreement may participate in the facilitated process by giving notice to the other Parties within 15 days of delivery of a notice under 24.5.1.
- 24.5.5 Within 30 days after delivery of a notice under 24.5.1, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:
- a. mediation under Appendix N-2;
  - b. technical advisory panel under Appendix N-3;
  - c. neutral evaluation under Appendix N-4;
  - d. community advisory council under Appendix N-5; or
  - e. any other non-binding dispute resolution process assisted by a Neutral,
- and if they fail to agree, they are deemed to have selected mediation under Appendix N-2.
- 24.5.6 A facilitated process terminates:
- a. in the circumstances set out in the applicable Appendix N; or
  - b. as agreed by the Participating Parties, if Appendix N does not apply.

## **24.6 NEGOTIATING CONDITIONS**

- 24.6.1 In order to enhance the prospect of reaching agreement, the Participating Parties will:



- a. at the request of a Participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;
- b. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
- c. negotiate in good faith.

## **24.7 SETTLEMENT AGREEMENT**

24.7.1 Any agreement reached in a process under this Chapter:

- a. will be:
  - i. recorded in writing;
  - ii. signed by authorized representatives of the Parties to the agreement; and
  - iii. delivered to all Parties; and
- b. is binding only on the Parties who have signed the agreement.

24.7.2 For greater certainty, any agreement reached in a facilitated process under this Chapter requires the agreement only of those Participating Parties who are directly engaged in the Disagreement.

## **24.8 STAGE THREE: ADJUDICATION - ARBITRATION**

24.8.1 After the later of termination of collaborative negotiations, or of a required facilitated process, in respect of a Disagreement arising out of any provision of this Agreement that provides that a matter will be “finally determined by arbitration”, the Disagreement will, on the delivery of a notice by a Party directly engaged in the Disagreement to all Parties as required under Appendix N-6, be referred to and finally resolved by arbitration in accordance with that Appendix.

24.8.2 After the later of termination of collaborative negotiations, or a required facilitated process, in respect of any Disagreement, other than a Disagreement referred to in 24.8.1, and with the written agreement of all Parties directly engaged in the Disagreement, the Disagreement will be referred to, and finally resolved by, arbitration in accordance with Appendix N-6.

- 24.8.3 If two Parties make an agreement under 24.8.2, they will deliver a copy of the agreement to the Party that is not directly engaged in the Disagreement.
- 24.8.4 Upon delivering notice to the Participating Parties to the arbitration within 15 days after receiving a notice under 24.8.1 or copy of a written agreement under 24.8.2, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a Participating Party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.
- 24.8.5 Notwithstanding 24.8.4, an arbitral tribunal may make an order adding a Party as a Participating Party at any time, if the arbitral tribunal considers that:
- a. the other Participating Parties will not be unduly prejudiced; or
  - b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under 24.8.1 or the agreement to arbitrate under 24.8.2,
- and, in that event, the arbitral tribunal may make any order it considers appropriate or necessary in the circumstances respecting conditions, including the payment of costs, upon which the Party may be added.

## **24.9 EFFECT OF ARBITRAL AWARD**

- 24.9.1 An arbitral award, as defined in Appendix N-6, is final and binding on all Parties whether or not a Party has participated in the arbitration.
- 24.9.2 Notwithstanding 24.9.1, an arbitral award, as defined in Appendix N-6, is not binding on a Party that has not participated in the arbitration if:
- a. the Party did not receive copies of:
    - i. the notice of arbitration or the agreement to arbitrate; or
    - ii. the pleadings and any amendments or supplements to the pleadings; or
  - b. the arbitral tribunal refused to add the Party as a Participating Party to the arbitration under 24.8.5.

## **24.10 APPLICATION OF LEGISLATION**

- 24.10.1 No legislation of any Party respecting arbitration, except the Settlement Legislation, applies to an arbitration conducted under this Chapter.

24.10.2 A court must not intervene or offer assistance in an arbitration or review an arbitral award, as defined in Appendix N-6, under this Chapter except as provided in Appendix N-6.

### **24.11 STAGE THREE: ADJUDICATION – JUDICIAL PROCEEDINGS**

24.11.1 Nothing in this Chapter creates a cause of action where none otherwise exists.

24.11.2 Subject to 24.11.3, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a Disagreement.

24.11.3 A Party may not commence judicial proceedings in respect of a Disagreement if the Disagreement:

- a. is required to be referred to arbitration under 24.8.1 or has been agreed to be referred to arbitration under 24.8.2;
- b. has not been referred to collaborative negotiations or a facilitated process as required under this Chapter; or
- c. has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.

24.11.4 Nothing in 24.11.3a prevents an arbitral tribunal or the Participating Parties from requesting the Supreme Court of British Columbia to make a ruling respecting a question of law as permitted in Appendix N-6.

### **24.12 NOTICE TO PARTIES**

24.12.1 If, in any judicial or administrative proceeding, an issue arises in respect of:

- a. the interpretation or validity of this Agreement; or
- b. the validity, or applicability of:
  - i. any Settlement Legislation; or
  - ii. any Yale First Nation Law,

the issue will not be decided until the party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada and Yale First Nation.

24.12.2 In any judicial or administrative proceeding to which 24.12.1 applies, the Attorney General of British Columbia, the Attorney General of Canada and Yale First Nation may appear and participate in the proceedings as parties with the same rights as any other party.

### **24.13 COSTS**

24.13.1 Except as provided otherwise in Appendix N, each Participating Party will bear the costs of its own participation, representation, and appointments in collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.

24.13.2 Subject to 24.13.1 and except as provided otherwise in Appendix N, the Participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.

24.13.3 For purposes of 24.13.2, “costs” include:

- a. fees of the Neutrals;
- b. costs of hearing and meeting rooms;
- c. actual and reasonable costs of communications, accommodation, meals, and travel of the Neutrals;
- d. costs of required secretarial and administrative support for the Neutrals, as permitted in Appendix N; and
- e. administration fees of a Neutral Appointing Authority.

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## CHAPTER 25 ELIGIBILITY AND ENROLMENT

### 25.1 ELIGIBILITY CRITERIA

- 25.1.1 An individual is eligible for enrolment under this Agreement if that individual:
- a. is of Yale First Nation ancestry and has a demonstrated attachment to Yale First Nation;
  - b. was a member, or was entitled to be a member, of the Yale Band under the *Indian Act* as of the day before the Effective Date;
  - c. was adopted as a Child under laws recognized in Canada or by Yale First Nation custom by an individual who is eligible for enrolment under this Agreement;
  - d. has been accepted into the community under Yale First Nation custom; or
  - e. is a descendant of an individual who is eligible for enrolment under 25.1.1a, 25.1.1b, 25.1.1c or 25.1.1d.
- 25.1.2 In determining whether an individual has a demonstrated attachment under 25.1.1a the Enrolment Committee, or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3, will take into account all relevant factors, including:
- a. the number and degree of ancestral connections between the individual and Yale First Nation;
  - b. present family connections between the individual and Yale First Nation;
  - c. the individual's ordinary place of residence;
  - d. cultural, linguistic, and spiritual ties between the individual and Yale First Nation; and
  - e. participation by the individual in the community activities, culture and traditions of Yale First Nation.
- 25.1.3 Enrolment under this Agreement will not:

- a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
- b. except as set out in this Agreement or in any Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

## **25.2 APPLICATIONS FOR ENROLMENT**

25.2.1 An individual may, in accordance with this Chapter:

- a. apply to the Enrolment Committee, or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3, for enrolment under this Agreement;
- b. appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; and
- c. seek judicial review of a decision of the Enrolment Appeal Board or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3,

on the individual's own behalf, or on behalf of a Child or an adult whose affairs the individual has legal authority to manage.

25.2.2 Each applicant has the burden of demonstrating that he or she meets the Eligibility Criteria.

## **25.3 OTHER LAND CLAIMS AGREEMENTS**

25.3.1 Other than as provided below, an applicant who is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada will not at the same time be enrolled under this Agreement.

25.3.2 Upon application to be enrolled under this Agreement, an applicant must notify the Enrolment Committee or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3 if he or she is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada.

25.3.3 Subject to 25.3.4, an individual described in 25.3.1 may be enrolled if he or she meets the Eligibility Criteria.

- 25.3.4 An individual who has been enrolled under 25.3.3 will:
- a. within 120 days after the Effective Date; or
  - b. where the decision to accept his or her application to be enrolled under 25.3.3 is made after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3 that he or she has been enrolled,
- provide written evidence to a body established by Yale First Nation to undertake responsibilities provided under 25.7.3 to demonstrate that he or she has ceased to be a beneficiary of, or has withdrawn his or her application for enrolment under, another treaty or land claims agreement in Canada.
- 25.3.5 If an individual enrolled under 25.3.3 fails to satisfy the requirements of 25.3.4, his or her name will be removed from the Enrolment Register.
- 25.3.6 An individual enrolled under 25.3.3 is not entitled to exercise any rights or receive any benefits under this Agreement until he or she has satisfied the requirements of 25.3.4.

## **25.4 MEMBERSHIP IN A BAND OTHER THAN THE YALE BAND**

- 25.4.1 For greater certainty, as provided in 2.10.1, after the Effective Date, upon becoming a Yale First Nation Member an individual ceases to be a member or a registered Indian of any Band.
- 25.4.2 An individual who was a member or a registered Indian of a Band other than the Yale Band will:
- a. within 120 days after the Effective Date; or
  - b. where the decision to accept his or her application to be enrolled under 25.3.3 is made after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee or a body established under 25.7 that he or she has been enrolled,
- do all things necessary to request Canada to change his or her affiliation to Yale First Nation and to issue a new status card.

**25.5 ENROLMENT COMMITTEE**

- 25.5.1 At the beginning of the Initial Enrolment Period, the Yale Band will establish an Enrolment Committee that will be responsible for the enrolment process during the Initial Enrolment Period and will be comprised of three representatives appointed by the Yale Band.
- 25.5.2 Yale First Nation will notify Canada and British Columbia of the members of the Enrolment Committee.
- 25.5.3 The Enrolment Committee will:
- a. establish enrolment procedures and time limits;
  - b. take reasonable steps to notify individuals potentially eligible to be enrolled of the Eligibility Criteria and enrolment procedures;
  - c. publish its enrolment procedures, including a list of the documentation and information required of each applicant;
  - d. publish the Eligibility Criteria, provide information on the enrolment process and provide application forms to any individual who wishes to apply for enrolment;
  - e. during the Initial Enrolment Period, receive enrolment applications, consider each application, request further information if required, enrol applicants who meet the Eligibility Criteria, and maintain a record of those decisions;
  - f. establish and maintain an Enrolment Register;
  - g. notify in writing each applicant and the Parties of its decision and, if enrolment is refused, provide written reasons;
  - h. on request, provide information with respect to an applicant's enrolment application, in confidence, to the Parties and the Enrolment Appeal Board;
  - i. add names to, delete names from, or amend names on, the Enrolment Register in accordance with this Chapter and decisions of the Enrolment Appeal Board;
  - j. unless otherwise provided in this Chapter, keep information provided by and about applicants confidential;
  - k. provide a copy of the Enrolment Register to the Parties; and



1. provide a copy of the Enrolment Register, and any other relevant information requested, to the Ratification Committee in a timely manner.
- 25.5.4 During the Initial Enrolment Period, after a decision of the Enrolment Committee and before any appeal of that decision is commenced, an applicant may submit new information to the Enrolment Committee.
- 25.5.5 The Enrolment Committee may, before an appeal of a decision is commenced, vary the decision on the basis of new information if it considers the decision was in error.
- 25.5.6 If the Enrolment Committee fails to decide upon an application for enrolment within the time limit established in its enrolment procedures, the application is deemed to be refused and the failure to decide constitutes grounds for appeal to the Enrolment Appeal Board.
- 25.5.7 No action lies or may be commenced against the Enrolment Committee or any member of the Enrolment Committee for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.
- 25.5.8 Subject to this Chapter, all decisions of the Enrolment Committee will be final and binding.
- 25.5.9 If an applicant applies to have his or her own name, or the name of a Child or an adult whose affairs he or she has the legal authority to manage, removed from the Enrolment Register, the Enrolment Committee will remove the name and will notify the applicant.

## **25.6 ENROLMENT APPEAL BOARD**

- 25.6.1 Yale First Nation and Canada will establish the Enrolment Appeal Board at a date agreed upon by the Parties.
- 25.6.2 Yale First Nation and Canada will each appoint one member to the Enrolment Appeal Board and will jointly appoint a third member, and the members will select a chairperson from among themselves.
- 25.6.3 A member of the Enrolment Committee may not also be a member of the Enrolment Appeal Board.
- 25.6.4 During the Initial Enrolment Period, an applicant or a Party may appeal by written notice to the Enrolment Appeal Board:

- a. any decision of the Enrolment Committee made under 25.5.3e or 25.5.5; and
  - b. any application that is deemed to be refused under 25.5.6.
- 25.6.5 The Enrolment Appeal Board will:
- a. establish and publish its own procedures and time limits;
  - b. hear and determine any appeal brought under 25.6.4 and decide whether the applicant will be enrolled;
  - c. conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing;
  - d. provide written reasons for its decision to the applicant, the Enrolment Committee and the Parties; and
  - e. maintain a record of its decisions and communicate them to the Enrolment Committee as required.
- 25.6.6 As of the Effective Date, the Enrolment Appeal Board may:
- a. by summons require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in his or her possession; and
  - b. direct a witness to answer on oath or solemn affirmation any relevant question posed to the witness.
- 25.6.7 If a person fails to comply with a summons or direction of the Enrolment Appeal Board made under 25.6.6, on application by the Enrolment Appeal Board, a judge of the Provincial Court of British Columbia may enforce the summons or direction.
- 25.6.8 Any applicant, Party or witness appearing before the Enrolment Appeal Board may be represented by counsel or an agent.
- 25.6.9 No action lies or may be commenced against the Enrolment Appeal Board or any member of the Enrolment Appeal Board for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

25.6.10 Subject to 25.8, all decisions of the Enrolment Appeal Board will be final and binding.

## **25.7 ENROLMENT AFTER THE INITIAL ENROLMENT PERIOD**

25.7.1 The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered final decisions with respect to those applications or appeals commenced during the Initial Enrolment Period.

25.7.2 On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records to Yale First Nation and to Canada or British Columbia upon request.

25.7.3 After the Initial Enrolment Period, Yale First Nation will:

- a. be responsible for the enrolment process, including the application of the Eligibility Criteria;
- b. maintain the Enrolment Register;
- c. provide a copy of the Enrolment Register to Canada and British Columbia each year or as otherwise requested by Canada or British Columbia; and
- d. provide information respecting enrolment to Canada or British Columbia upon request.

## **25.8 JUDICIAL REVIEW**

25.8.1 An applicant or a Party may apply to the Supreme Court of British Columbia for judicial review of a decision of the Enrolment Appeal Board, or any body established by Yale First Nation to undertake responsibilities provided under 25.7.3, on the grounds that the Enrolment Appeal Board or body:

- a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- b. failed to observe procedural fairness;
- c. erred in law; or
- d. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

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- 25.8.2 On an application for judicial review under 25.8.1 the Supreme Court of British Columbia may dismiss the application, set aside the decision or refer the matter back to the Enrolment Appeal Board, or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3, for determination in accordance with such directions as the court considers appropriate.
- 25.8.3 If the Enrolment Appeal Board, or a body established by Yale First Nation to undertake responsibilities provided under 25.7.3, fails to hear or decide an appeal within a reasonable time, an applicant or a Party may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board or body to hear or decide the appeal in accordance with such directions as the court considers appropriate.
- 25.8.4 An application for judicial review under 25.8.1 must be brought within 60 days of notification of the decision of the Enrolment Appeal Board or any body established by Yale First Nation to undertake responsibilities provided under 25.7.3.
- 25.8.5 Notwithstanding 25.8.4, the court may extend the time for making an application for judicial review on terms the court considers proper.
- 25.9 COSTS**
- 25.9.1 Canada and British Columbia will provide to Yale First Nation an agreed amount of funding for the Enrolment Committee and the Enrolment Appeal Board to carry out the functions with respect to those applications or appeals commenced during the Initial Enrolment Period.
- 25.9.2 The Enrolment Committee and the Enrolment Appeal Board will operate within their approved budgets.
- 25.9.3 After the Initial Enrolment Period, Yale First Nation will bear the administrative costs associated with enrolment.

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## CHAPTER 26 RATIFICATION

### 26.1 GENERAL

26.1.1 This Agreement is legally binding once ratified by all of the Parties in accordance with this Chapter.

26.1.2 This Agreement will be submitted to the Parties for ratification as set out in this Chapter after it has been initialled by chief negotiators for the Parties.

### 26.2 RATIFICATION OF YALE FIRST NATION CONSTITUTION

26.2.1 Ratification of the Yale First Nation Constitution requires:

- a. that Eligible Voters have a reasonable opportunity to review the Yale First Nation Constitution;
- b. a vote by way of a secret ballot that is conducted by the Ratification Committee in accordance with 26.4 and 26.5.2; and
- c. that at least fifty percent plus one of individuals on the List of Eligible Voters vote in favour of the Yale First Nation Constitution.

26.2.2 Once ratified, the Yale First Nation Constitution will come into force on the Effective Date.

### 26.3 RATIFICATION OF THIS AGREEMENT BY YALE FIRST NATION

26.3.1 Ratification of this Agreement by Yale First Nation requires:

- a. that Eligible Voters have a reasonable opportunity to review this Agreement;
- b. a vote by way of a secret ballot that is conducted by the Ratification Committee in accordance with 26.4 and 26.5.2;
- c. that at least fifty percent plus one of individuals on the List of Eligible Voters vote in favour of this Agreement;
- d. ratification of the Yale First Nation Constitution under 26.2.1; and
- e. that this Agreement be signed by the authorized representative of Yale First Nation.

**26.4 ELIGIBLE VOTERS**

26.4.1 An individual is eligible to vote if:

- a. he or she is a Yale First Nation Member;
- b. he or she is at least 18 years of age on the last day of voting; and
- c. his or her name is included on the List of Eligible Voters.

26.4.2 Notwithstanding 26.4.1, an individual whose name is not included on the List of Eligible Voters is eligible to vote if he or she:

- a. provides the voting officer with a completed enrolment application form or evidence satisfactory to the voting officer that the individual has submitted a completed enrolment application form to the Enrolment Committee; and
- b. provides the voting officer with evidence satisfactory to the voting officer that the individual meets the requirement in 26.4.1b.

26.4.3 If the Enrolment Committee notifies the Ratification Committee that an individual referred to in 26.4.2 meets the Eligibility Criteria:

- a. the name of the individual will be added to the List of Eligible Voters; and
- b. the ballot of the individual will be tabulated for the purposes of the votes under 26.2.1b and 26.3.1b.

**26.5 RATIFICATION COMMITTEE**

26.5.1 The Parties will establish a Ratification Committee, consisting of one representative appointed by each Party, to be responsible for the Yale First Nation processes for ratifying the Yale First Nation Constitution and this Agreement as set out in this Chapter.

26.5.2 The Ratification Committee will:

- a. ensure that Yale First Nation has provided Eligible Voters a reasonable opportunity to review the Yale First Nation Constitution and this Agreement;
- b. establish and publish its procedures;
- c. set its time limits;

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- d. at least 30 days before the first day of voting, prepare and publish a List of Eligible Voters based on the Enrolment Register provided by the Enrolment Committee under 25.5.3 by determining whether each individual on the register is eligible to vote under 26.4.1b; and
  - e. update the List of Eligible Voters by:
    - i. at any time on or before the last day of voting, adding to the List of Eligible Voters the name of each individual provided by the Enrolment Committee under 25.5.3 whom the Ratification Committee determines to be eligible to vote under 26.4.1b;
    - ii. adding to the List of Eligible Voters the name of each individual provided by the Enrolment Committee under 26.4.3;
    - iii. removing from the List of Eligible Voters the name of each individual who died on or before the last day of voting without having voted;
    - iv. removing from the List of Eligible Voters the name of each individual who did not vote and who provides to the Ratification Committee, within four days of the last day of voting, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that he or she could not have voted on the dates set for voting; and
    - v. removing from the List of Eligible Voters the name of each individual who has applied, or on whose behalf application has been made, by the close of polls on the last day of voting, to have his or her name removed from the Enrolment Register under 25.5.9, provided the individual has not already voted;
  - f. after updating the List of Eligible Voters in accordance with 26.5.2e, prepare and publish a final List of Eligible Voters for each of the votes;
  - g. approve the form and content of the ballots;
  - h. authorize and provide general direction to voting officers to be employed in the conduct of the votes;
  - i. establish polling stations;
  - j. conduct the votes on the dates established by the Ratification Committee;

- k. ensure that information about the dates set for voting and location of the polling stations be made publicly available;
  - l. tabulate the results of the votes;
  - m. provide the Parties with the result of the votes;
  - n. publish the result of the vote to ratify this Agreement; and
  - o. prepare and provide to the Parties a written report on the outcome of the vote to ratify this Agreement within 90 days of the last day of voting.
- 26.5.3 For greater certainty, the Ratification Committee may conduct the votes to ratify the Yale First Nation Constitution and this Agreement on separate dates.

## **26.6 RATIFICATION BY BRITISH COLUMBIA**

- 26.6.1 Ratification of this Agreement by British Columbia requires:
- a. that this Agreement be signed by a Minister authorized to do so; and
  - b. the coming into force of Provincial Settlement Legislation.

## **26.7 RATIFICATION BY CANADA**

- 26.7.1 Ratification of this Agreement by Canada requires:
- a. that this Agreement be signed by a Minister authorized to do so by the federal Cabinet; and
  - b. the coming into force of Federal Settlement Legislation.

## **26.8 CHANGES TO AGREEMENT PRIOR TO EFFECTIVE DATE**

- 26.8.1 Before the Parties sign this Agreement, the chief negotiators for the Parties may agree to make minor changes to this Agreement.
- 26.8.2 Before the Effective Date, the chief negotiators for the Parties may agree to correct any editing, grammatical or typographical errors found in this Agreement, and the corrections may be incorporated in the final printing of this Agreement after the Effective Date.



**26.9 COSTS**

- 26.9.1 Canada and British Columbia will provide an amount of funding agreed upon by the Parties for the Ratification Committee to carry out the duties and responsibilities set out in this Chapter.



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**CHAPTER 27 AMENDMENT****27.1 GENERAL**

- 27.1.1 Any Party may propose an amendment to this Agreement.
- 27.1.2 Before proceeding with an amendment to this Agreement under section 27.1.1, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.
- 27.1.3 Except as provided under 27.1.9 and 27.1.10, amendments to this Agreement require the consent of the Parties.
- 27.1.4 Where the Parties agree to amend this Agreement, they will determine the form and wording of the amendment, including additions, substitutions and deletions.
- 27.1.5 Except as provided under 27.1.9 and 27.1.10, the Parties will provide consent to an amendment to this Agreement in the following manner:
- a. Canada by order of the Governor in Council;
  - b. British Columbia by a resolution of the Legislative Assembly; and
  - c. Yale First Nation by a resolution adopted by at least two-thirds of the elected members of Yale First Nation Government.
- 27.1.6 Where 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.
- 27.1.7 Unless the Parties agree otherwise, an amendment to this Agreement takes effect once the consent requirements under 27.1.5 are completed and any legislation required under 27.1.6, if applicable, has been brought into force.
- 27.1.8 Each Party will give notice to the other Parties when consent in accordance with 27.1.5 has been given and when any legislation referred to in 27.1.6, if applicable, has been brought into force.
- 27.1.9 Where this Agreement provides that the Parties will amend this Agreement upon the happening of an event:
- a. the requirements for consent referred to in 27.1.3 and 27.1.5 will not apply;

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- b. 27.1.7 will not apply;
  - c. as soon as practicable after the happening of the event:
    - i. the Parties will take all steps necessary to conclude and give effect to the amendment including those steps referred to in 27.1.4 and, if applicable, 27.1.6; and
    - ii. each Party will provide notice to the other Parties when it has completed all of its respective requirements to conclude and give effect to the amendment; and
  - d. the amendment will take effect on the date agreed by the Parties, but if no date is agreed to, on the date that the last Party provides notice to the other Parties that it has completed all of its requirements to conclude and give effect to the amendment.
- 27.1.10 Notwithstanding 27.1.1 through 27.1.8, if:
- a. this Agreement provides:
    - i. that the Parties, or any two of them, 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 a Schedule or an Appendix; and
    - ii. that if agreement is not reached, the matter will be finally determined by arbitration in accordance with Chapter 24 Dispute Resolution; and
  - b. those Parties have reached an agreement or the matter has been finally determined by arbitration,
- this Agreement will be deemed to be amended on the date the agreement or the decision of the arbitrator, as the case may be, takes effect.
- 27.1.11 In respect of amendments contemplated by 27.1.10, the applicable Parties will:
- a. provide notice to any Party that is not a party to the agreement of the agreement reached or of any arbitrator's decisions, as the case may be; and
  - b. agree on the form and wording of the amendment, including additions, substitutions and deletions.

- 27.1.12 In the case of an arbitrator's decision referred to in 27.1.10, if the Parties are unable to agree, the form and wording of the amendment will be finally determined by the arbitrator.

### **Implementation of Amendments**

- 27.1.13 The Parties will take the necessary steps to implement an amendment to this Agreement after the amendment takes effect.
- 27.1.14 Amendments to this Agreement will be:
- a. published by Canada in the Canada Gazette;
  - b. published by British Columbia in The British Columbia Gazette; and
  - c. deposited by Yale First Nation in the Yale First Nation registry of laws as contemplated by this Agreement.

## **27.2 PERIODIC REVIEW**

- 27.2.1 The Parties recognize and acknowledge that this Agreement provides a foundation for an ongoing relationship among the Parties and commit to conducting a periodic review of this Agreement in accordance with 27.2.2 through 27.2.8.
- 27.2.2 Sixty days before each Periodic Review Date, each Party will provide the other Parties with notice if the Party wishes to discuss a matter contemplated by 27.2.3, and if no notice is provided by any Party, the Parties will forgo engaging in a review for that Review Period.
- 27.2.3 The purpose of the periodic review is to provide an opportunity for the Parties to meet and discuss:
- a. practicability of the harmonization of Yale First Nation legal and administrative systems, including law-making authorities that are being exercised by Yale First Nation Government, under this Agreement, with those of British Columbia and Canada;
  - b. practicability of processes established by the Parties in accordance with this Agreement; and
  - c. other matters with respect to the implementation of this Agreement as the Parties may agree in writing.

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- 27.2.4 Unless the Parties otherwise agree, the discussion contemplated by 27.2.3 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period, and within 60 days of the end of that discussion each Party will provide the other Parties with its written response on any matter discussed during that Review Period.
- 27.2.5 The periodic review contemplated by 27.2 and all discussions and information relating to the matters of the periodic review are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done in respect of a periodic review, including the discussions or the written responses provided by the Parties, except for the amendments made in accordance with 27.2.7, creates any legally binding rights or obligations.
- 27.2.6 Except for the Parties' commitment to meet and provide written responses as described in 27.2.4, neither the periodic review process contemplated by 27.2, nor the decisions and actions of the Parties relating in any way to the periodic review process, are:
- a. subject to the process described in Chapter 24 Dispute Resolution; or
  - b. reviewable by a court or in any other forum.
- 27.2.7 For greater certainty:
- a. none of the Parties are required to agree to amend this Agreement or any agreement contemplated by this Agreement as a result of the periodic review contemplated by 27.2;
  - b. if the Parties agree to amend this Agreement, any such amendment will be made in accordance with 27.1; and
  - c. if the Parties agree to amend an agreement contemplated by this Agreement, the agreement will be amended in accordance with its terms.
- 27.2.8 Each of the Parties is responsible for its own costs in relation to the periodic review process.