

# Kitsumkalum Treaty: A Living Agreement





## **Kitsumkalum Treaty Negotiations – Initialling Version**

This initialling version of the Kitsumkalum Treaty is an important milestone toward finalizing the Kitsumkalum Treaty and is subject to the following understandings:

1. **Legal and Technical Review:** The legal and technical review, including the legal drafting process, is not yet complete. The initialling version is therefore subject to change as a result of this review.
2. **Substantive Changes:** The initialling version is subject to potential changes:
  - (a) to resolve any substantive matters that may arise as part of the legal and technical review as described in #1 above;
  - (b) to resolve any substantive matters that may remain outstanding at the time of initialling;
  - (c) as a result of the ongoing consultations as described in #3 below; and
  - (d) as a result of any outstanding internal reviews, including Kitsumkalum internal community consultations, between initialling and the start of the community ratification process.
3. **Ongoing Consultations:** Canada and British Columbia are conducting consultations with other Nations potentially impacted by the Kitsumkalum Treaty, in order to fulfill the Crown's legal duty to consult. These consultations will proceed beyond the initialling stage and may result in further changes to the Kitsumkalum Treaty.
4. **Document Revision for Ratification:** A ratification version of the Kitsumkalum Treaty will be prepared after completion of all remaining reviews and incorporation of potential changes. It is this later ratification version that will be presented for ratification by the Parties in accordance with the terms of the Kitsumkalum Treaty.



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# GENERAL





## PREAMBLE

### WHEREAS:

- A. Kitsumkalum is an aboriginal people of Canada and has used, occupied and governed its traditional territory since time immemorial;
- B. Section 35 of 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;
- C. Kitsumkalum has existing aboriginal rights, including aboriginal title and the inherent right to self-government, recognized and affirmed by the *Constitution Act, 1982*;
- D. Canada and British Columbia endorsed the *Recognition and Reconciliation of Rights Policy for Treaty Negotiations* which states that the inherent right of self-determination is recognized and affirmed in Section 35 of the *Constitution Act, 1982* and expressed in the *United Nations Declaration on the Rights of Indigenous Peoples*;
- E. The Parties recognize Kitsumkalum's inherent right of self-determination, which includes:
  - (a) an inextricable link to the lands, territories and resources traditionally owned, occupied or otherwise used or acquired by Kitsumkalum;
  - (b) rights to determine their own identity and membership in accordance with their customs, traditions and laws;
  - (c) inherent rights of jurisdiction and self-government;
  - (d) laws, law-making authority and legal systems;
  - (e) rights to determine, maintain, develop and strengthen their distinct political systems, institutional structures and representative institutions, through representatives chosen by themselves in accordance with their own procedures; and
  - (f) rights to freely pursue economic, political, social and cultural development;
- F. Reconciliation of the prior presence of aboriginal peoples and the assertion of sovereignty by the Crown is best achieved through negotiation and agreement rather than through litigation;
- G. The Parties have negotiated this Agreement by agreeing to the recognition and continued exercise of Kitsumkalum's aboriginal rights as set out in this Agreement, rather than by extinguishment of those rights;
- H. Kitsumkalum people are Tsimshian people who speak Sm'algayax and whose heritage, history and culture, including their language and religion, are tied to the lands and waters of the lower Skeena River and the north coast of British Columbia;
- I. The Parties have negotiated this Agreement under the British Columbia Treaty Commission process;

- J. With the foregoing in mind, the Parties enter into this Agreement with the following Common Objectives:
- (a) recognizing the Kitsumkalum aboriginal rights and title and the inherent right to self-government;
  - (b) reconciling differences between the Parties over lands and resource ownership and jurisdiction through a new treaty relationship that is flexible and intended to evolve over time;
  - (c) providing for an effective and sustainable Kitsumkalum self-government through among other things, a common commitment to capacity building and a new and enhanced fiscal relationship;
  - (d) providing flexibility, clarity and predictability for all Parties with respect to the nature, scope, and geographic extent of the exercise of the Kitsumkalum Exercisable Section 35 Rights;
  - (e) implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in accordance with the Constitution of Canada;
  - (f) achieving equity with other Canadians in socioeconomic outcomes and overall well-being of Kitsumkalum and its Members;
  - (g) enhancing economic opportunities for Kitsumkalum, Kitsumkalum Members and the surrounding community; and
  - (h) preserving, revitalizing, and strengthening of the culture, language, and heritage of Kitsumkalum;
- K. The Parties agree that comprehensive treaties are among the highest forms of reconciliation between the Crown and Indigenous Nations; and
- L. This Agreement advances the objectives of the *United Nations Declaration on the Rights of Indigenous Peoples*.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

## CHAPTER 1 – GENERAL PROVISIONS

### Living Agreement

1. The Parties recognize and acknowledge that this Agreement is a living Agreement and provides a foundation for an ongoing relationship amongst the Parties.
2. The Parties commit to the following specific treaty arrangements that support the evolution of this Agreement:
  - (a) Periodic Renewal;
  - (b) Orderly Process;
  - (c) the review, renewal or amendment in accordance with their terms, of agreements associated with this Agreement but outside this Agreement;
  - (d) the development of Fiscal Arrangements and Fiscal Provisions over time in accordance with the Fiscal Relations Chapter;
  - (e) the evolution of consultation arrangements pursuant to paragraphs 61 to 74;
  - (f) existing amendment provisions in Chapter 31 Amendment; and
  - (g) other processes as agreed to by the Parties.

### Nature of this Agreement

3. This Agreement is a treaty and land claim agreement within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.
4. This Agreement is binding on the Parties and all persons.
5. The Parties and all persons are entitled to rely on this Agreement.
6. Ratification of this Agreement by the Parties in accordance with Chapter 27 Ratification is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.
7. Canada and British Columbia will recommend to Parliament and the Legislature, respectively, that Federal Settlement Legislation and Provincial Settlement Legislation provide that this Agreement is approved, given effect, declared valid and has the force of law.

### Honour of the Crown and UNDRIP

8. This Agreement shall be interpreted and implemented in a manner that is consistent with the honour of the Crown.
9. The *United Nations Declaration on the Rights of Indigenous Peoples* is an authoritative source for the interpretation of this Agreement, and, accordingly, informs the Parties in their implementation of this Agreement.

### **Representations and Warranties**

10. Kitsumkalum represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, it has the authority to enter, and it enters, into this Agreement on behalf of all individuals who are entitled to be enrolled under this Agreement on Effective Date.
11. Canada and British Columbia represent and warrant to Kitsumkalum that, in relation to the matters dealt with in this Agreement, they have the authority to enter into this Agreement within their respective authorities.

### **Constitution of Canada**

12. This Agreement does not alter the Constitution of Canada, including:
  - (a) the distribution of powers between Canada and British Columbia;
  - (b) the identity of Kitsumkalum as an aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - (c) Sections 25 and 35 of the *Constitution Act, 1982*.
13. The *Canadian Charter of Rights and Freedoms*, including Section 25, applies to the Kitsumkalum Government in respect of all matters within its authority.

### **Character of Kitsumkalum Lands, Other Kitsumkalum Lands, and Port Essington Lands**

14. Kitsumkalum Lands are not “lands reserved for the Indians” within the meaning of Section 91(24) of the *Constitution Act, 1867*, and, subject to paragraph 2 of Chapter 3 Kitsumkalum Lands, if applicable, there are no “reserves” within the meaning of the *Indian Act* for Kitsumkalum.

### **Application of Federal and Provincial Law**

15. This Agreement prevails to the extent of any inconsistency or Conflict with a Federal or Provincial Law.
16. Federal Settlement Legislation prevails over other Federal Law to the extent of any inconsistency or Conflict.
17. Provincial Settlement Legislation prevails over other Provincial Law to the extent of any inconsistency or Conflict.
18. Federal and Provincial Law apply to Kitsumkalum, Kitsumkalum Members, Kitsumkalum Institutions, Kitsumkalum Corporations, and on Kitsumkalum Lands.
19. Any licence, permit, or other authorization to be issued by Canada or British Columbia under this Agreement will be issued under Federal or Provincial Law and will not be part of this Agreement, and this Agreement prevails to the extent of any inconsistency with the licence, permit or other authorization.

**Relationship of Laws**

20. Notwithstanding any other rule of priority in this Agreement, in the event of a Conflict between a Federal or Provincial Law and a Kitsumkalum Law that has an incidental effect on an area of jurisdiction over which Kitsumkalum:
  - (a) does not have law-making authority under this Agreement; or
  - (b) does have law-making authority under this Agreement but for which Federal and Provincial Laws prevail to the extent of a Conflict,

Federal or Provincial Law prevails with respect to the incidental effect to the extent of the Conflict.
21. Notwithstanding any other rule of priority in this Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, and the protection of the health and safety of all Canadians, or other matters of overriding national importance prevails in the event of any Conflict with Kitsumkalum Law.
22. Canada will recommend to Parliament that Federal Settlement Legislation will make Provincial Law apply to Kitsumkalum, Kitsumkalum Institutions, Kitsumkalum Members, Kitsumkalum Lands, Kitsumkalum Coastal Site Lands and the Miller Bay Parcel if those Provincial Laws do not apply of their own force.
23. Kitsumkalum Law does not apply:
  - (a) to Canada unless otherwise provided in this Agreement;
  - (b) to British Columbia unless otherwise provided in:
    - (i) this Agreement; or
    - (ii) a Provincial Law.
24. Notwithstanding paragraph 23, Kitsumkalum Law applies to agents of Canada or British Columbia on Kitsumkalum Lands acting outside the purposes for which they are agents of Canada or British Columbia.
25. Kitsumkalum Law is of no force or effect to the extent of an inconsistency or Conflict with this Agreement.
26. For greater certainty, Kitsumkalum law-making authorities set out in this Agreement do not extend to criminal law and procedure, Intellectual Property, official languages of Canada, aeronautics, navigation, shipping, and labour relations and working conditions.
27. Nothing in this Agreement affects the public right of navigation.

**International Legal Obligations**

28. Prior to expressing consent to be bound by an International Treaty that would give rise to a new International Legal Obligation, Canada will Consult Kitsumkalum, separately or through a forum or means as appropriate, if compliance with the new International Legal Obligation may adversely affect a right of Kitsumkalum under this Agreement.
29. If, due to a law or other exercise of governmental authority of Kitsumkalum, Canada is or may be unable to comply with an International Legal Obligation, Canada and Kitsumkalum will collaborate to ensure that Canada is able to comply with the International Legal Obligation, taking into account the importance of the Parties complying with this Agreement.
30. For greater certainty, for the purposes of paragraph 29, laws or other exercises of government authority cover both acts and omissions that can result in Canada being in violation of its International Legal Obligations.
31. Domestic dispute resolution is available under Chapter 29 Dispute Resolution to address issues under this Agreement, except for:
  - (a) making any determination regarding Canada’s compliance with an International Legal Obligation;
  - (b) conducting a review of any determination by an International Tribunal concerning Canada’s compliance with an International Legal Obligation; and
  - (c) conducting a review of any advice, recommendation or views by an international body concerning Canada’s compliance with an International Legal Obligation.

**Application of the *Indian Act***

32. Except for the purposes of determining whether an individual is an Indian, subject to Chapter 30 Transition and Chapter 24 Tax, and subject to paragraph 2(b) of Chapter 3 Kitsumkalum Lands, if applicable, the *Indian Act* will have no application to Kitsumkalum, Kitsumkalum Members, Kitsumkalum Institutions or Kitsumkalum Lands as of the Effective Date.
33. Subject to paragraph 6 of Chapter 30 Transition, the Framework Agreement on First Nation Land Management, the *Framework Agreement on First Nation Land Management Act* and the *Kitsumkalum Land Code* have no application to Kitsumkalum, Kitsumkalum Institutions, Kitsumkalum Members or Kitsumkalum Lands.
34. For so long as the Framework Agreement on First Nation Land Management is in effect and has the force of law, Canada will indemnify Kitsumkalum, and Kitsumkalum will indemnify Canada, in relation to Former Kitsumkalum Indian Reserves, in the same manner and under the same conditions as would be the case if the Framework Agreement on First Nation Land Management applied to those lands.
35. For greater certainty, nothing in this Agreement will prevent a Kitsumkalum Member from being registered as an Indian if that individual is entitled to be registered in accordance with the *Indian Act*.

### **Other Rights, Benefits and Programs**

36. This Agreement does not affect the ability of Kitsumkalum Members to enjoy rights and benefits for which they would be eligible as Canadian citizens or permanent residents of Canada.
37. Subject to paragraph 38, nothing in this Agreement affects the ability of Kitsumkalum, Kitsumkalum Institutions, Kitsumkalum Corporations or Kitsumkalum Members to participate in, or benefit from, federal or provincial programs for aboriginal people, registered Indians or other Indians, in accordance with general criteria established for those programs from time to time.
38. Kitsumkalum Members are eligible to participate in programs established by Canada or British Columbia and to receive public services, including health, education, and social services, from Canada or British Columbia, in accordance with general criteria established for those programs or services from time to time, to the extent that Kitsumkalum has not assumed responsibility for those programs or public services under the Fiscal Agreement.
39. Nothing in this Agreement affects the ability of Kitsumkalum, Kitsumkalum Institutions, Kitsumkalum Corporations or Kitsumkalum Members to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
40. Nothing in this Agreement will preclude Kitsumkalum from entering into arrangements for economic opportunities, including economic benefit agreements with third parties, provided that these arrangements are consistent with this Agreement.

### **Court Decisions**

41. 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 is 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.
42. No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.
43. A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

### **Recognition and Predictability**

44. Canada and British Columbia recognize that Kitsumkalum has aboriginal rights within Kitsumkalum’s traditional territory, as recognized and affirmed by Section 35 of the *Constitution Act*.

45. For greater certainty, the aboriginal rights of Kitsumkalum include aboriginal title and the inherent right of self-government, as recognized and affirmed by Section 35 of the *Constitution Act, 1982*, and Kitsumkalum has advised Canada and British Columbia that the aboriginal rights of Kitsumkalum, including aboriginal title and the right to self-government are rooted in the *Kitsumkalum Adawx (History and Tradition)*.
46. The Parties agree that this Agreement is intended to achieve flexibility, clarity and predictability in providing for the implementation of those rights as part of an ongoing relationship between Kitsumkalum, Canada and British Columbia, by setting out:
- (a) the Kitsumkalum Exercisable Section 35 Rights, their attributes, the geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed; and
  - (b) processes as set out in Chapter 31 Amendment and Chapter 2 Periodic Renewal and Orderly Process provisions of this Agreement, by which aboriginal rights of Kitsumkalum, or attributes or geographic extent of those rights, that are not exercisable or assertable pursuant to paragraph 48 may become Kitsumkalum Exercisable Section 35 Rights.
47. Nothing in this Agreement or the Settlement Legislation modifies or extinguishes any aboriginal rights of Kitsumkalum, and Canada and British Columbia will not assert against Kitsumkalum that any aboriginal rights of Kitsumkalum are modified, surrendered or extinguished as a result of this Agreement or the Settlement Legislation.
48. Kitsumkalum will only exercise or assert Kitsumkalum Exercisable Section 35 Rights.
49. The purpose of paragraph 48 is to ensure that as of the Effective Date:
- (a) Kitsumkalum can assert and exercise the Kitsumkalum Exercisable Section 35 Rights; and
  - (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 do not have any obligations, including any fiduciary duties or duty to consult, in respect of any aboriginal rights that pursuant to paragraph 48 are not exercisable or assertable.
50. Kitsumkalum releases Canada, British Columbia and all other persons from all suits, actions, claims, proceedings or demands of whatever kind, whether known or unknown, that Kitsumkalum had, has or may have in the future, relating to or arising from any act or omission:
- (a) before the Effective Date that may have affected, interfered with or infringed any aboriginal rights of Kitsumkalum; and
  - (b) on or after the Effective Date that may have affected, interfered with or infringed any aboriginal rights of Kitsumkalum that pursuant to paragraph 48 are not exercisable or assertable.
51. For greater certainty, paragraph 50 includes any suits, actions, claims, proceedings or demands based on the duty to consult in respect of the matters set out in paragraph 50(a) and 50(b).



52. For greater certainty, the releases in paragraphs 50 are not intended to affect any rights and recourses that Kitsumkalum may have with respect to suits, actions, claims, proceedings or demands, including as these may relate to railways, including railway corridor lands through the former Kitsumkalum Indian Reserves, that have not been resolved pursuant to a specific claim or otherwise, that are not based on any aboriginal rights of Kitsumkalum.
53. The Parties will not challenge, and will vigorously defend any challenge to, the validity or legal effectiveness of Kitsumkalum’s agreement not to assert or exercise aboriginal rights of Kitsumkalum that are other than, or different in attributes, geographic extent or limitations from, the Kitsumkalum Exercisable Section 35 Rights.

### **Specific Claims and Other Claims**

54. Notwithstanding any other provision of this Agreement, nothing in this Agreement precludes Kitsumkalum from pursuing any claims that fall within the scope of Canada’s Specific Claims Policy, in accordance with that policy, the *Specific Claims Tribunal Act*, or in court, including any claims respecting Casey Point, Barrett Rock, or Dzadaedil’s (Watson Island).
55. For greater certainty, if Kitsumkalum pursues a specific claim in court, Canada reserves the right to plead all defences available to it, and Kitsumkalum reserves the right to make all possible counter arguments available to it.
56. Claims referred to in paragraph 54 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 Kitsumkalum or an Indian Reserve for the use and benefit of Kitsumkalum.

### **Other Aboriginal Peoples**

57. This Agreement will not affect, recognize or provide any rights under Section 35 of the *Constitution Act, 1982* for any aboriginal people other than Kitsumkalum.
58. 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 Kitsumkalum, 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.
59. 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 a Kitsumkalum Exercisable Section 35 Right, Canada or British Columbia, or both, as the case may be, will provide Kitsumkalum with additional or replacement rights or other appropriate remedies.
60. At the request of Kitsumkalum, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies under paragraph 59.

## Consultation

61. Canada and British Columbia acknowledge that they have a duty to consult and, if appropriate, accommodate Kitsumkalum regarding Contemplated Crown Conduct that may adversely impact Kitsumkalum Exercisable Section 35 Rights.
62. British Columbia and Canada will carry out consultation, as set out in paragraphs 61 to 74, with a view to trying to obtain the free, prior and informed consent of Kitsumkalum.
63. The Parties have considered and designed processes and arrangements that are intended to govern the Crown’s consultation obligations in respect of Contemplated Crown Conduct and agree that consultation, and, if appropriate, accommodation, will occur in accordance with the processes and arrangements contemplated under paragraphs 61 to 74.
64. Where a Specific Consultation Process applies to a particular type of Contemplated Crown Conduct, Canada or British Columbia, as applicable, and Kitsumkalum will rely on that process for the purposes of consultation in respect of that conduct.
65. Where there is no Specific Consultation Process applicable in respect of a particular type of Contemplated Crown Conduct, Canada or British Columbia, as applicable, will fulfill its duty to consult Kitsumkalum regarding that conduct in accordance with the process described in the term “Consult”.
66. In relation to paragraphs 64 and 65, Canada or British Columbia, as applicable, and Kitsumkalum may supplement, change or replace that consultation process in respect of a particular type of Contemplated Crown Conduct by written agreement made outside of the Agreement.
67. Where Canada or British Columbia, as applicable, may have a consultation obligation in respect of Contemplated Crown Conduct but it reasonably believes that an emergency exists, it may act immediately to respond to that emergency.
68. Canada or British Columbia will give notice of its intent to implement any measure to respond to an emergency situation, including the reasons for the measure identified under paragraph 67 to Kitsumkalum:
  - (a) before the measure is implemented if it is practicable to do so; or
  - (b) as soon as practicable after the measure is implemented.
69. Any measure implemented by Canada or British Columbia to reasonably respond to an emergency pursuant to paragraph 67 shall only be in force for as long as necessary.
70. Canada or British Columbia will give notice to Kitsumkalum when the measure implemented pursuant to paragraph 67 is no longer in force.
71. Kitsumkalum may request that Canada or British Columbia review the continued necessity of any measure implemented pursuant to paragraph 67 and Canada or British Columbia shall fully and fairly consider any such request.

72. For greater certainty, the provision of notice under paragraph 68 does not limit the ability of the Parties to discuss, while the emergency is in effect and if the circumstances so allow:
- (a) the adequacy and effectiveness of any measure implemented pursuant to paragraph 67; or
  - (b) the interests or concerns of any Party related to that emergency measure.
73. Within 120 days from the notice given in paragraph 68, if requested by Kitsumkalum, Canada or British Columbia as applicable will meet with Kitsumkalum to discuss:
- (a) their respective views on the implementation of the measure for purposes of future emergency planning;
  - (b) if applicable, the interests or concerns of any Party related to that emergency measure, including the impacts of the measure on the Kitsumkalum Exercisable Section 35 Rights; and
  - (c) if applicable, measures mutually agreed upon to address, mitigate or rectify the impacts of the emergency measure identified in paragraph 67.
74. The applicable Parties will participate in the processes set out in paragraphs 61 to 73 in good faith and in a timely, responsive, and meaningful way.

### **Interpretation**

75. To the extent of any inconsistency, the provisions of this Chapter and Chapter 2 Periodic Renewal and Orderly Process prevail over the provisions in the other Chapters and the Appendices.
76. Subject to paragraph 77, there is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.
77. Any doubtful expressions, terms or provisions are to be interpreted in accordance with modern treaty interpretation principles, including that the text is to be interpreted in light of this Agreement as a whole and this Agreement’s objectives, consistent with paragraph 8, and having regard to the shared objective of advancing reconciliation between the Parties.
78. 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 recognizes or affirms aboriginal or treaty rights, within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.
79. Where an authority of British Columbia referred to in this Agreement is delegated to Canada, the reference to British Columbia will be deemed to be a reference to Canada.

80. Where 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) 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 to be a reference to Canada.
81. Where an authority of Canada referred to in this Agreement is delegated to British Columbia, the reference to Canada will be deemed to be a reference to British Columbia.
82. Where 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) 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 to be a reference to British Columbia.
83. In this Agreement:
- (a) 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;
  - (b) unless the context requires otherwise, the use of the singular will include the plural, and the use of the plural will include the singular;
  - (c) unless the context requires otherwise, “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;
  - (d) a “may” is to be construed as permissive and empowering;
  - (e) “includes” means “includes, but not limited to”;
  - (f) “including” means “including, but not limited to”;
  - (g) “harvest” includes an attempt to harvest;
  - (h) “gather” includes an attempt to gather;
  - (i) unless the context otherwise requires, a reference in a Chapter or an Appendix of this Agreement to a “paragraph”, or “Schedule” means a paragraph or Schedule of that Chapter or Appendix;
  - (j) unless the context otherwise requires, a reference to a “Chapter”, “paragraph”, “Schedule” or “Appendix” means a Chapter, paragraph, Schedule or Appendix of this Agreement;

- (k) 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;
  - (l) “provincial” refers to the province of British Columbia; and
  - (m) where a word is defined in this Agreement or described in this paragraph, other parts of speech and grammatical forms of the same word have corresponding meanings.
84. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to this Agreement, including the execution of this Agreement.

### **Information and Privacy**

85. For the purposes of federal and provincial access to information and privacy legislation, information that Kitsumkalum provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
86. If Kitsumkalum 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 Kitsumkalum information that is only available to a particular province or particular provinces or that is not available to any provinces.
87. 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.
88. Canada or British Columbia may provide information to Kitsumkalum in confidence if Kitsumkalum has made a law or has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
89. Notwithstanding any other provision of this Agreement:
- (a) Canada and British Columbia are not required to disclose any information that they are required to or authorized to withhold under any Federal or Provincial Law, including under 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 under a privilege at law.

### **Entire Agreement**

90. The Schedules and Appendices to this Agreement form part of this Agreement.

91. This Agreement is the entire agreement among the Parties in relation to 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.

**No Implied Waiver**

92. Any waiver of:

- (a) a provision of this Agreement;
- (b) the performance by a Party of an obligation under this Agreement; or
- (c) a default by a Party of an obligation under this Agreement,

will be in writing and signed by the Party or Parties giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

**Obligation to Negotiate**

93. Whenever the Parties are obliged under any provision of this Agreement to negotiate and attempt to reach agreement, all Parties will participate in the negotiations unless the Parties otherwise agree.
94. 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 the Dispute Resolution Chapter, but none of the Parties are obliged to proceed to arbitration under Stage Three of the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28 of the Dispute Resolution Chapter.
95. Where this Agreement provides that a dispute will be “finally determined by arbitration”, the dispute will be referred to arbitration under paragraph 28 of the Dispute Resolution Chapter, unless none of the Parties directly engaged in the Disagreement delivers notice to all Parties under Appendix O-5.

**Assignment**

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

**Enurement**

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

**Minor Changes and Corrections**

98. Before the Parties sign this Agreement, the chief negotiators on behalf of Canada, British Columbia and Kitsumkalum may agree to minor changes to this Agreement.

99. Before the Effective Date, the chief negotiators for Canada, British Columbia and Kitsumkalum may agree to amendments to this Agreement and the Appendices to update information or correct any editing, grammatical or typographical errors. Any updated information or corrections may be incorporated in the printing of this Agreement and the Appendices after the Effective Date.

### **Deposit of Treaty**

100. 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 Crown-Indigenous Relations and Northern Affairs 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 Kitsumkalum in its government office; and
  - (d) any other locations agreed to by the Parties.

### **Notice**

101. In paragraphs 102 to 106, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.
102. Unless otherwise described in this Agreement, a communication between or among the Parties under this Agreement will be in writing and will be:
- (a) delivered personally or by courier;
  - (b) transmitted by fax or email; or
  - (c) mailed by any method for which confirmation of delivery is provided.
103. 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.

104. The Parties may agree to give, make or deliver a communication by means other than those provided in paragraphs 102 and 103.

105. The Parties will provide to each other addresses for delivery of communications under this Agreement, and subject to paragraph 104 will deliver a communication to the address provided by each Party.

106. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered or mailed to the address of the intended recipient as set out below:

For: Canada

Attention: Minister of Crown Indigenous Relations

House of Commons

Confederation Building

Ottawa, Ontario

K1A 0A6

For: British Columbia

Attention: Minister of Indigenous Relations and Reconciliation

Provincial Legislature

PO Box 9051, Stn Prov Govt

Victoria, British Columbia

V8W 9E2

For: Kitsumkalum

Attention: Kitsumkalum

3514 W Kalum Rd,

Terrace, BC

V8G 0C8

107. If, in any judicial or administrative proceeding, an issue arises in relation to:

- (a) the interpretation or validity of this Agreement;
- (b) the validity or applicability of the Federal Settlement Legislation or the Provincial Settlement Legislation; or



(c) the validity, applicability or operability of a Kitsumkalum 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 Kitsumkalum.

108. In any judicial or administrative proceeding to which paragraph 107 applies, the Attorney General of British Columbia, the Attorney General of Canada and Kitsumkalum may appear and participate in the proceedings as parties with the same rights as any other party.



## CHAPTER 2 – PERIODIC RENEWAL AND ORDERLY PROCESS

### Periodic Renewal

1. The Parties will conduct and implement Periodic Renewals of this Agreement in accordance with paragraphs 2 to 25.
2. The Parties will commence the first Periodic Renewal on a date agreed to by the Parties that will be no later than the 10th anniversary of the Effective Date.
3. The Parties will commence all subsequent Periodic Renewals on the Periodic Renewal Date that falls in the tenth year following the conclusion of the previous Periodic Renewal.
4. Periodic Renewals will conclude on the date that is the earlier of:
  - (a) the date agreed to by all Parties;
  - (b) thirty days following the date any Party has provided the other Parties with a notice that it is withdrawing from the Periodic Renewal; or
  - (c) on the Periodic Renewal Date in respect of which the Parties did not engage in a Periodic Renewal pursuant to paragraph 6.
5. The Parties will meet at least six months before each Periodic Renewal Date to discuss possible agenda items and scheduling for the upcoming Periodic Renewal.
6. At least sixty days before each Periodic Renewal Date, each Party will provide the other Parties with notice if the Party wishes to address any matter contemplated by paragraphs 7 and 11, and if no notice is provided by any Party, the Parties will forego engaging in Periodic Renewal for that Renewal Period.
7. As part of the Periodic Renewal discussions, at the request of any Party, the Parties will discuss and if requested by a Party, negotiate potential amendments to this Agreement or other measures relating to:
  - (a) the occurrence of any of the following during the Renewal Period:
    - (i) new developments in the common law related to the matters set out in this Agreement;
    - (ii) changes to federal or provincial legislation that relate directly to the matters set out in this Agreement;
    - (iii) any developments in federal or provincial policy related to the matters set out in this Agreement;
    - (iv) innovations in other modern treaties and land claims agreements, with a view to incorporating such innovations into this Agreement, if applicable;

- (b) improving the harmonization of the legal and administrative systems, including law-making authorities that are being exercised under this Agreement, with those of British Columbia and Canada;
  - (c) changes required because of unforeseen circumstances that significantly impact:
    - (i) the Kitsumkalum Exercisable Section 35 Rights; or
    - (ii) other treaty arrangements or benefits;
  - (d) other matters with respect to the implementation of the provisions of this Agreement as the Parties may agree in writing.
8. For greater certainty, paragraph 7(a) applies to developments, changes or innovations related to:
- (a) releases in paragraph 50 in Chapter 1 General Provisions; or
  - (b) agreements between one or more Indigenous nations and the Crown recognizing Aboriginal title,
- and also fall within one or more of the occurrences described in paragraphs 7(a)(i) to 7(a)(iv).
9. For greater certainty, paragraphs 7(a) to (c) applies to the Kitsumkalum Fish Allocations described in Schedule 1 of Chapter 21 Fish.
10. For greater certainty, the matters under paragraph 7(a) may include discussions regarding issues pertaining to corridors adjacent to and through Kitsumkalum Lands.
11. As part of the Periodic Renewal discussions, at the request of any Party, the Parties will review and evaluate progress on the Common Objectives of the Parties, and determine whether agreed upon steps should be taken to advance those objectives.
12. For greater certainty, while the requirement to review and evaluate progress on the Common Objectives in paragraph 11 is legally binding, the Parties agree that the Common Objectives on their own do not create independently enforceable legally binding obligations and are not agreed upon interpretative tools for any other purpose other than the application of the Periodic Renewal provisions.
13. The Parties acknowledge the importance of having a common agreement on the socio economic indicators necessary to inform the review and evaluation of Common Objective (f).
14. If at the time of the Periodic Renewal, the Parties have not reached agreement on the socio-economic indicators necessary to review and evaluate progress on Common Objective (f) and the mechanisms for measuring such indicators, the Parties will evaluate progress on Common Objective (f) based on the best available empirical data.
15. If a proposal advanced as part of Periodic Renewal relates to the fiscal relationship referred to in Chapter 25 Fiscal, the review will take place in accordance with Chapter 25 Fiscal, unless that Chapter does not provide for a review process of the Fiscal Relationship.

16. Unless the Parties agree otherwise, the discussions and any negotiations under paragraphs 7 and 11 respectively will commence on the Periodic Renewal Date.
17. During the Periodic Renewal, the Parties are required to participate in the discussions and negotiations in good faith. Good faith negotiations require the Parties to, among other things:
  - (a) enter into the negotiations with the goal of reaching a mutually acceptable outcome;
  - (b) provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter;
  - (c) respond appropriately, and in a timely manner to bargaining positions;
  - (d) not unreasonably reject a position of the other Party; and
  - (e) act consistently with the standard of good faith as articulated in the common law.
18. In assessing proposals brought forward by the Parties in a Periodic Renewal, the Parties may consider, amongst other things:
  - (a) whether the innovation described in paragraph 7(a)(iv) is based on such particular circumstances that it could not reasonably be applied to the Kitsumkalum;
  - (b) whether the proposal in relation to a specific issue can be addressed in another forum, under another process or through other arrangements, agreed to by the Parties;
  - (c) availability of resources and lower cost alternatives that would reasonably address the Parties' interests;
  - (d) the interests and potential impact of the proposal on third parties;
  - (e) any obligations that Canada or British Columbia may have to other Indigenous groups;
  - (f) other alternatives that would reasonably address the Parties' interests that do not require amendment of this Agreement.
19. Following the conclusion of a Periodic Renewal, any Party may, within sixty days of said conclusion refer the question of whether any of the Parties has failed to participate in the Periodic Renewal process in good faith to Dispute Resolution in accordance with Appendix O-5, to be finally determined by arbitration without having to go through Stage One and Stage Two.
20. If an Arbitral Tribunal determines that a Party failed to participate in a Periodic Renewal in good faith, that Party will be required to pay:
  - (a) the costs of the arbitration, as determined in accordance with section 116 of Appendix O-5;
  - (b) the other Parties' reasonable negotiation costs in the Periodic Renewal as determined in accordance with section 116 of Appendix O-5; and

- (c) a financial penalty of up to three times the aforementioned costs, as may be determined by the Arbitral Tribunal in accordance with section 121 of Appendix O-5.
21. The Periodic Renewal contemplated by paragraphs 1 to 25 and all discussions and information relating to the matter of the Periodic Renewal are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done with respect to a Periodic Renewal, including the discussions or the responses provided by the Parties, except for any amendments made pursuant to paragraph 20(b), creates any legally binding rights or obligations, including financial obligations, other than those contemplated by paragraph 20.
  22. For greater certainty:
    - (a) while the Parties are required to participate in the discussions and negotiations in good faith, none of the Parties are required to agree to amend this Agreement or take other measures requested by another Party as a result of the Periodic Renewal contemplated by paragraphs 1 to 25;
    - (b) if the Parties agree to amend this Agreement, any such amendment will be made in accordance with Chapter 31 Amendment; and
    - (c) if the Parties agree to amend an agreement contemplated by this Agreement, the agreement will be amended in accordance with its terms.
  23. Each of the Parties will be responsible for its own costs in relation to the Periodic Renewal process, unless otherwise determined by an arbitrator.
  24. The Parties may choose to engage in regional or collective Periodic Renewals, provided all Parties have agreed.
  25. For greater certainty, following a final determination by an arbitrator under paragraph 19, the Parties are not precluded from engaging in additional discussions outside of the Periodic Renewal process described in paragraphs 1 to 24 on such terms and conditions as the Parties may agree in their absolute discretion.

### **Orderly Process**

26. Following notice from Kitsumkalum, the Parties will negotiate and attempt to reach agreement on amendments to this Treaty to incorporate an Aboriginal right into this Treaty, subject to the following conditions:
  - (a) a Final Judgment of a Superior Court confirms the existence of the Aboriginal right in favour of another First Nation;
  - (b) on the Effective Date, the right, as characterized by the Final Judgment referenced in paragraph 26(a), had not yet been recognized by a Superior Court in a Final Judgment as an Aboriginal right recognized and affirmed under Section 35 of the *Constitution Act, 1982*;
  - (c) the Aboriginal right relates to a matter that this Treaty is not designed to resolve; and

- (d) a *prima facie* case for the existence of the Aboriginal right can be established in favour of Kitsumkalum.
27. If, within one year following the commencement of collaborative negotiations under Stage One of Chapter 29 Dispute Resolution, the Parties:
- (a) do not agree that the conditions under paragraph 26 have been met, or
  - (b) agree that the conditions under paragraph 26 have been met, but do not agree on:
    - (i) the manner in which the Aboriginal right is to be exercised, or
    - (ii) the form and wording of the amendment,
 then, within 15 days of the conclusion of the foregoing period, a Party may refer the dispute to mediation under Stage Two of Chapter 29 Dispute Resolution.
28. If the mediation under paragraph 27 is terminated in accordance with the circumstances set out in Chapter 29 Dispute Resolution and Appendix O-2, Kitsumkalum may apply to the British Columbia Supreme Court for a declaration that:
- (a) on the Effective Date, the right, as characterized by the Superior Court determination referenced in paragraph 26(a), had not yet been recognized in a Final Judgment of a Superior Court as an Aboriginal right that is recognized and affirmed under Section 35 of the *Constitution Act, 1982* as referenced in 26(b);
  - (b) the Aboriginal right relates to a matter that this Treaty is not designed to resolve; and
  - (c) Kitsumkalum has the Aboriginal right referred to in paragraph 26(a).
29. If a Superior Court finally determines that the disputed conditions under paragraph 28 have been met, the Parties will, within one year from the date of the declaratory judgment, negotiate:
- (a) the manner in which the Aboriginal right is to be exercised having regard to the factors set out in paragraph 32, and
  - (b) the form and wording of any amendment to this Treaty which may be required for inclusion of the Aboriginal right into this Treaty.
30. If the Parties are unable to reach agreement under paragraph 27(b) or paragraph 29(a) or 29(b), the matter will be finally determined by arbitration under Stage Three of Chapter 29 Dispute Resolution.
31. Kitsumkalum may exercise the Aboriginal right when this Treaty has been amended. The Treaty will be deemed to have been amended on:
- (a) the date that the agreement between the Parties under paragraph 25, 26, or 28, takes effect;
  - (b) the date that the decision of the arbitrator under paragraph 30 takes effect; or

- (c) where federal or provincial legislation is required to give effect to the amendment, the date the federal or provincial legislation is brought into force.
32. Amendments to the Treaty to incorporate the Aboriginal right will:
- (a) preserve the balance of relations between the Parties and the integrity of this Treaty;
  - (b) preserve a reasonable balance between the rights of Kitsumkalum and other societal interests; and
  - (c) take into account and have no effect on the rights and interests of third parties, including other Indigenous groups.
33. If an Aboriginal right incorporated into this Treaty includes the authority to make laws:
- (a) the Kitsumkalum law-making authority will be exercised concurrently with Federal and Provincial Law; and
  - (b) unless the Parties otherwise agree, Federal and Provincial Law will prevail to the extent of a Conflict with a Kitsumkalum Law made under the law-making authority incorporated into this Treaty.
34. Nothing in paragraphs 26 to 33, creates or implies any financial obligations or service delivery responsibilities for Canada or British Columbia.



# LANDS



## CHAPTER 3 – KITSUMKALUM LANDS

### General

1. On the Effective Date, Kitsumkalum Lands consist of approximately 46,604 hectares, shown for illustrative purposes in Appendix B-1, comprised of:
  - (a) 554.23 hectares, more or less, of Former Kitsumkalum Indian Reserves, described in Appendix B-2;
  - (b) 45,767 hectares, more or less, of former provincial Crown land, identified as “Former Provincial Crown Land” in Appendix B-3;
  - (c) 283 hectares, more or less, of Former Private Fee Simple Lands identified for illustrative purposes in Appendix B-4, Part 2 and described in Appendix B-4, Part 1, subject to Kitsumkalum meeting the conditions under paragraph 35.

### Port Essington Lands

2. Nothing in this Agreement affects:
  - (a) the statuses of the Port Essington Lands or any Party’s or person’s interests in, legal relationships with, or obligations in relation to the Port Essington Lands, as these may have existed before the Effective Date; or
  - (b) the application of Federal or Provincial Law in relation to the Port Essington Lands as these may have applied before the Effective Date.
3. For greater certainty, subject to Federal and Provincial Law, the appropriate Parties and Kitselas, may enter into management agreements in relation to the Port Essington Lands.

### Port Essington Water Lot

4. British Columbia, Kitsumkalum and Kitselas will negotiate and attempt to reach agreement on a suitable area of Submerged Lands in the Port Essington area to support the issuance of a water lot lease by British Columbia to Kitsumkalum and Kitselas for the purposes of a dock and moorage.
5. If British Columbia, Kitsumkalum and Kitselas reach agreement on an area under paragraph 4, British Columbia will grant a water lot lease in respect of the agreed to area substantially in the form set out in Appendix J Part 3.
6. The granting of a water lot lease by British Columbia under paragraph 5 is subject to British Columbia:
  - (a) obtaining the consent of any upland owner whose riparian rights of access may be affected by the water lot lease; and
  - (b) fulfilling any obligation British Columbia may have to consult other aboriginal peoples whose rights recognized and affirmed under section 35 of the *Constitution Act, 1982* may be adversely affected by the water lot lease.

7. British Columbia will not designate lands within the Port Essington water lot as a Wildlife Management Area, Provincial Protected Area, Provincial Park, conservancy or ecological reserve.

**Port Essington Foreshore Agreement**

8. British Columbia and Kitsumkalum will negotiate and attempt to reach agreement respecting a foreshore agreement providing delegated law-making authority to Kitsumkalum over foreshore in the Port Essington area addressing the following matters:
  - (a) land use, planning, zoning and development, including foreshore protection;
  - (b) the regulation of buildings and structures; and
  - (c) such other matters as British Columbia and Kitsumkalum may agree.
9. The negotiations under paragraph 8 will:
  - (a) identify the specific foreshore area where the agreement applies; and
  - (b) be subject to British Columbia fulfilling any obligation it may have to consult other aboriginal peoples whose rights recognized and affirmed under section 35 of the *Constitution Act, 1982* may be adversely affected by a foreshore agreement.
10. Before concluding an agreement in accordance with paragraph 8, British Columbia will engage with Canada regarding the proposed foreshore agreement.

**Kitsumkalum Spoksuut Park**

11. On the Effective Date, Kitsumkalum will make a Kitsumkalum Law establishing Kitsumkalum Spoksuut Park as a Kitsumkalum Park.
12. Kitsumkalum will manage Kitsumkalum Spoksuut Park for the following purposes:
  - (a) preserving and maintaining Kitsumkalum social, ceremonial, and cultural values; and
  - (b) protecting and maintaining ecological values, biological diversity and the natural environment, including:
    - (i) salmon spawning habitat;
    - (ii) coastal western hemlock, yellow cedar, sitka spruce and western red cedar tree species;
    - (iii) habitat for grizzly bear, marbled murrelet and northern goshawk; and
    - (iv) habitat for red-listed or blue-listed species, as listed in the B.C. Conservation Data Centre.
13. Upon request by British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will review the harmonization of land use planning initiatives and compatible land use within Kitsumkalum Spoksuut Park and adjacent areas within the provincial Ecstall-Spoksuut Conservancy.

14. Kitsumkalum may only:
- (a) designate Kitsumkalum Spoksuut Park as Kitsumkalum Private Lands in accordance with paragraph 3 of Chapter 7 Access; or
  - (b) alter the boundaries of Kitsumkalum Spoksuut Park,
- with reasonable notice to the public and to Canada and with the agreement of British Columbia.

**Kitsumkalum Park**

15. On the Effective Date Kitsumkalum will make a Kitsumkalum Law establishing Kitsumkalum Park as a Kitsumkalum Park.

16. Kitsumkalum will manage Kitsumkalum Park for the following purposes:

- (a) preserving and maintaining Kitsumkalum social, ceremonial, and cultural values;
- (b) protecting and maintaining the ecological values, biological diversity and the natural environment, including:
  - (i) salmon spawning habitat;
  - (ii) coastal western hemlock tree species;
  - (iii) habitat for Kermode Bear, grizzly bear and moose; and
  - (iv) habitat for red-listed or blue-listed species, as listed in the B.C. Conservation Data Centre or any successor data centre; and
- (c) providing public access for recreational purposes, including camping, picnicking, swimming, canoeing, boating, fishing, and wildlife viewing.

17. Kitsumkalum may only:

- (a) designate Kitsumkalum Park as Kitsumkalum Private Lands in accordance with paragraph 3 of Chapter 7 Access; or
- (b) alter the boundaries of Kitsumkalum Park Lands

with reasonable notice to the public and to Canada and with the agreement of British Columbia.

**Kitsumkalum Coastal Site Lands**

18. In addition to the Kitsumkalum Lands, on the Effective Date, Kitsumkalum owns the Kitsumkalum Coastal Site Lands, having an area of approximately 17.3 hectares, in fee simple in accordance with paragraph 19.

19. The Kitsumkalum Coastal Site Lands:

- (a) are subject to the exceptions and reservations under Section 50 of the *Land Act* and those interests set out in Appendix D Part 4;
- (b) do not include any Crown Corridor or any Submerged Lands;

- (c) will be registered in the Land Title Office;
  - (d) may not be transferred or disposed of by Kitsumkalum except in accordance with Kitsumkalum Law;
  - (e) may not be transferred or disposed of to any person other than a Kitsumkalum Public Institution or Kitsumkalum Member without the consent of British Columbia; and
  - (f) for greater certainty, are not Kitsumkalum Lands.
20. For greater certainty, Kitsumkalum’s fee simple ownership of the Kitsumkalum Coastal Site Lands includes the right to the exclusive use and occupation of those lands in accordance with Provincial Law.
21. Prior to the Effective Date, British Columbia will cause an Adequate Survey of the boundaries of each of the Kitsumkalum Coastal Site Lands to be prepared and submitted for filing in the Land Title Office.

**Link with *Adawx***

22. As set out in paragraphs 44 and 45 of Chapter 1 General Provisions, Canada and British Columbia recognize that Kitsumkalum has Aboriginal rights, including Aboriginal title and the inherent right to self-government, as recognized and affirmed by Section 35 of the *Constitution Act, 1982* within the Kitsumkalum traditional territory.
23. Canada and British Columbia acknowledge that they have been advised by Kitsumkalum that the Kitsumkalum Coastal Sites Lands are part of Kitsumkalum traditional territory and are part of the Kitsumkalum *Adawx* (History and Tradition ) and linked with the *Waap* (House Groups).

**Coastal Site Conservancy Lands**

24. On the Effective Date, the boundaries of the following Provincial Conservancies are deemed to be amended by removing the applicable Kitsumkalum Coastal Site Conservancy Lands from that Provincial Conservancy:
- (a) Kennedy Island Conservancy;
  - (b) Ecstall-Sparkling Conservancy;
  - (c) Gunboat Harbour Conservancy;
  - (d) Pa-aat Conservancy; and
  - (e) Ksgaxl / Stephens Islands Conservancy.
25. For greater certainty, after the Effective Date the Kitsumkalum Coastal Site Conservancy Lands do not form part of any Provincial Conservancy.
26. Kitsumkalum will manage and use the Kitsumkalum Coastal Site Conservancy Lands in a manner consistent with the protection, preservation and maintenance of ecological and cultural values applicable to a Provincial Conservancy.

27. Nothing in paragraph 26 precludes Kitsumkalum from constructing cabins, including cabins with cement foundations, and buildings, including smoke houses, on Kitsumkalum Coastal Site Conservancy Lands.

**Kitsumkalum Coastal Site Areas**

28. On the Effective Date, British Columbia will ensure that the Kitsumkalum Coastal Site Areas and the Subsurface Resources on those lands are withdrawn from disposition under Provincial Law.
29. British Columbia will not amend or revoke any withdrawal from disposition established under paragraph 28, or authorize the use or disposition of the Kitsumkalum Coastal Site Areas for any commercial purpose, without the consent of Kitsumkalum.

**Harvesting Rights on and Incidental Use of Kitsumkalum Coastal Site Areas**

30. For greater certainty, Kitsumkalum has the right to exercise the following Kitsumkalum Exercisable Section 35 Rights in accordance with this Agreement on the Kitsumkalum Coastal Site Areas:
- (a) Kitsumkalum Right to Gather Plants;
  - (b) Kitsumkalum Right to Harvest Wildlife; and
  - (c) Kitsumkalum Right to Harvest Migratory Birds.
31. For greater certainty, Kitsumkalum Members may use the resources on the Kitsumkalum Coastal Site Areas for purposes reasonably incidental to the exercise of the Kitsumkalum Exercisable Section 35 Rights referred to in paragraph 30, in accordance with this Agreement.

**Miller Bay Parcel**

32. In addition to the Kitsumkalum Lands, on the Effective Date, Kitsumkalum owns the Miller Bay Parcel in fee simple in accordance with paragraph 33.
33. The Miller Bay Parcel:
- (a) is subject to the exceptions and reservations under Section 50 of the *Land Act* and those interests set out in Appendix D Part 3;
  - (b) does not include any Crown Corridor or any Submerged Lands;
  - (c) will be registered in the Land Title Office;
  - (d) may not be transferred or disposed of by Kitsumkalum except in accordance with Kitsumkalum Law;
  - (e) may not be transferred or disposed of to any person other than a Kitsumkalum Public Institution or Kitsumkalum Member without the consent of British Columbia; and
  - (f) for greater certainty, is not Kitsumkalum Lands.

**Addition of Miller Bay Parcel to Kitsumkalum Lands**

34. The Parties acknowledge that as part of the first Periodic Renewal of this Agreement Kitsumkalum will raise the addition of the Miller Bay Parcel to Kitsumkalum Lands.

**Former Private Fee Simple Lands**

35. On the Effective Date, the lands identified as the Former Private Fee Simple Lands will be Kitsumkalum Lands subject to Kitsumkalum providing to Canada and British Columbia, on or before the Effective Date:
- (a) a certificate, in substantially the form set out in Appendix B-4 Part 3, signed by the registered owner in fee simple of each parcel of Former Private Fee Simple Lands, certifying that, on the date of the certificate, they are the registered owner in fee simple of the lands legally described in the certificate and consenting to the inclusion of those lands in Kitsumkalum Lands;
  - (b) where applicable, a certificate in substantially the form set out in Appendix B-4 Part 3, signed by the registered holder of each charge or encumbrance on title to the parcel of Former Private Fee Simple Lands certifying that, on the date of the certificate, they are the registered holder of the charge or encumbrance and consenting to the inclusion of the lands in Kitsumkalum Lands; and
  - (c) releases, in substantially the form set out Appendix B-4 Part 4, signed by the person named as the owner in fee simple releasing Canada and British Columbia, as of the Effective Date, from any claims, demands, actions or proceedings relating to or arising out of the inclusion of the lands in Kitsumkalum Lands.
36. Where Kitsumkalum does not provide the certificates or releases required under paragraphs 35 for any of the Former Private Fee Simple Lands on or before the Effective Date, those lands will:
- (a) not be Former Private Fee Simple Lands; and
  - (b) will be Pre-Approved Fee Simple Addition Lands

and Appendix B-4 Part 1 and Part 2 and Appendix F Part 5 will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.

37. Provided that Kitsumkalum or a Kitsumkalum Corporation, Kitsumkalum Institution, Kitsumkalum Public Institution, or Kitsumkalum Member is a registered owner of the estate in fee simple of a parcel of Pre-Approved Fee Simple Addition Lands, Kitsumkalum may provide notice to British Columbia and Canada that the parcel of land is to be added to Kitsumkalum Lands.
38. The notice provided by Kitsumkalum under paragraph 37 must include the certificates and releases required under paragraph 35.



39. Upon British Columbia and Canada receiving notice under paragraph 37 the parcel will be Kitsumkalum Lands and:
- (a) the applicable appendices will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment; and
  - (b) as soon as practicable, the Parties will take the steps required for the completion and registration by the Parties of any documents required to have the parcel recognised as Kitsumkalum Lands at the Land Title Office.
40. Kitsumkalum will indemnify and save harmless Canada and British Columbia from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of the inclusion of the Former Private Fee Simple Lands or the Pre-Approved Fee Simple Addition Lands in Kitsumkalum Lands

#### **Acquisition and Addition of Fee Simple Lands to Kitsumkalum Lands**

41. If Kitsumkalum, a Kitsumkalum Corporation, or Kitsumkalum Public Institution is or becomes the registered owner of the estate in fee simple in a parcel of land, or any portion thereof, identified for illustrative purposes as “Subject Lands” and legally described in Appendix F Part 1, and:
- (a) where the registered owner of the parcel is a Kitsumkalum Corporation or a Kitsumkalum Public Institution and that owner provides written consent; and
  - (b) the holder of any interest, financial charge or encumbrance registered against title to that parcel provides written consent,
- then Kitsumkalum may provide notice to British Columbia and Canada that the parcel of land is to be added to Kitsumkalum Lands.
42. After receipt of a notice under paragraph 41, British Columbia and Canada will, upon satisfactory review of the consents referred to in paragraph 41, confirm to the other Parties that the parcel is to be added to Kitsumkalum Lands.
43. Upon British Columbia and Canada confirming under paragraph 42 that a parcel is to be added to Kitsumkalum Lands that parcel will be added to Kitsumkalum Lands and Appendix B will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.

#### **Former Provincial Recreation Sites and Trails**

44. On the Effective Date, British Columbia and Kitsumkalum will enter into the Site Management Agreement that will:
- (a) identify the values for which the Former Provincial Campgrounds, Recreation Sites and Trails will be managed, including, as applicable, the continuation of public access, day-use, and camping opportunities;

- (b) include the provision of annual funding by British Columbia to Kitsumkalum for the term of the agreement for the management and operation of the Former Provincial Campgrounds, Recreation Sites and Trails;
  - (c) address liability; and
  - (d) include such other matters as Kitsumkalum and British Columbia may agree to.
45. Kitsumkalum will, during the term of and in accordance with the Site Management Agreement, manage the Former Provincial Campgrounds, Recreation Sites and Trails for the protection of the natural environment, continued public access, and continued recreational opportunities.

### **Port Edward Lots**

46. For greater certainty, on the Effective Date the Port Edward Lots are owned in fee simple by a Kitsumkalum Corporation.
47. The Port Edward Lots may only be disposed of by Kitsumkalum, a Kitsumkalum Corporation, or a Kitsumkalum Institution pursuant to a Kitsumkalum law under paragraph 45(b) in Chapter 8 Self-Government.

### **Ownership of Kitsumkalum Lands**

48. On the Effective Date, Kitsumkalum owns Kitsumkalum Lands in fee simple.
49. Fee simple ownership of Kitsumkalum Lands 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.
50. Upon Private Fee Simple Lands or Pre-Approved Fee Simple Addition Lands becoming Kitsumkalum Lands, the interests, rights, privileges and estates that were excluded or reserved by the Province or Canada from the original disposition of Crown land vest in Kitsumkalum.
51. In accordance with this Agreement, Kitsumkalum Constitution, and Kitsumkalum Law, Kitsumkalum may transfer any of its estates or interests in its Kitsumkalum Lands without the consent of Canada or British Columbia.
52. Where Kitsumkalum disposes of a fee simple estate in a parcel of Kitsumkalum Lands under an agreement with Canada, unless otherwise agreed at the time of the transfer of ownership, those lands will no longer be Kitsumkalum Lands and Appendix B will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.
53. Except as provided in paragraphs 52, 116 or paragraph 14 of Appendix I, Part 1, or in accordance with paragraph 55, a parcel of Kitsumkalum Lands does not cease to be Kitsumkalum Lands as a result of the disposition of an interest in such parcel.
54. If Kitsumkalum wishes to dispose of a fee simple estate in a parcel of Kitsumkalum Lands it will, before the disposition, register the indefeasible title to that parcel under the *Land Title Act* in accordance with this Agreement. For greater certainty, any Kitsumkalum Lands registered under the *Land Title Act* will continue to be Kitsumkalum Lands.

55. Kitsumkalum may remove a parcel of land from Kitsumkalum Lands with the consent of Canada and British Columbia.
56. In considering whether to consent to the removal of a parcel of land from Kitsumkalum Lands in accordance with a request under paragraph 55, 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 Kitsumkalum and Canada or British Columbia;
  - (d) whether the removal of the land will have any legal or financial implications for Canada or British Columbia; or
  - (e) any other matter that Canada or British Columbia considers relevant.
57. If Canada and British Columbia consent to the removal of a parcel of land from Kitsumkalum Lands then, upon receipt by Kitsumkalum of Canada and British Columbia’s written consent:
  - (a) Kitsumkalum will register the parcel of land in the Land Title Office, if it is not registered;
  - (b) the parcel will cease to be Kitsumkalum Lands; and
  - (c) Appendix B will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.
58. 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 Kitsumkalum Lands.
59. If, at any time, any parcel of Kitsumkalum Lands, or any estate or interest in a parcel of Kitsumkalum Lands, finally escheats to the Crown, the Crown will transfer, at no charge, that parcel, estate or interest to Kitsumkalum.
60. For greater certainty, Kitsumkalum Lands that escheat to the Crown remain Kitsumkalum Lands.

### **Surveys**

61. No new surveys will be required for a parcel of Kitsumkalum Lands where the Surveyor General of British Columbia determines that an Adequate Survey exists for that parcel.
62. Once a survey plan is accepted for filing in the Land Title Office or Crown Land Registry, any Appendix will be amended if required in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect any establishment or re-establishment of the boundaries identified in the Appendix, as a result of that Adequate Survey.
63. Where there is a conflict between a map contained in the Appendices and an Adequate Survey that has been accepted for filing in the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.

**Initial Surveys for Exterior Boundary of Kitsumkalum Indian Reserves**

64. Where Adequate Surveys of Former Kitsumkalum Indian Reserves do not exist, Adequate Surveys of the exterior boundaries of those lands will be completed by Canada prior to Effective Date in accordance with survey instructions issued by the Surveyor General of British Columbia.

**Initial Surveys for Exterior Boundary of Former Provincial Crown Land**

65. Where Adequate Surveys of former provincial Crown lands identified in Appendix B-5 do not exist, British Columbia will cause Adequate Surveys of the exterior boundaries of those lands to be prepared prior to Effective Date in accordance with survey instructions issued by the Surveyor General of British Columbia.
66. Where Adequate Surveys of former provincial Crown lands identified in Appendix B-3 but not identified in Appendix B-5 do not exist, British Columbia will cause Adequate Surveys of the exterior boundaries of those to be prepared in accordance with survey instructions issued by the Surveyor General of British Columbia, as soon as practicable and in accordance with the survey protocol.
67. British Columbia and Kitsumkalum will enter into agreement on a survey protocol before the Effective Date setting out: the timing, order and priority for Adequate Surveys of the lands referred to in paragraph 66 having regard to:
- (a) Kitsumkalum priorities and land use plans;
  - (b) efficiency, economy, and the availability of British Columbia Land Surveyors; and
  - (c) the necessity to clarify boundaries due to imminent development on Kitsumkalum Lands or adjacent lands.

**Costs**

68. Canada will pay the cost for the initial Adequate Surveys of the exterior boundaries of Former Kitsumkalum Indian Reserves and Port Essington Lands.
69. British Columbia will pay the cost for the initial Adequate Surveys of the exterior boundaries of the former provincial Crown lands identified in Appendix B-3, the Miller Bay Parcel, and the Kitsumkalum Coastal Site Lands.

**Interests**

70. On the Effective Date, title to Kitsumkalum Lands is free and clear of all interests, except:
- (a) interests on Former Kitsumkalum Indian Reserves to be replaced on the Effective Date as set out in Appendix G-1;
  - (b) interests on former provincial Crown land to be replaced on the Effective Date as set out in Appendix G-2;
  - (c) interests to be granted or issued on the Effective Date as set out in Appendix G-3; and
  - (d) interests to continue in accordance with Provincial Law as set out in Appendix G-5 for.

71. Subject to paragraph 70, every interest that before the Effective Date encumbered or applied to Kitsumkalum Lands ceases to exist.

**Replacement of Certificates of Possession and Other Interests in Former Kitsumkalum Indian Reserves**

72. On the Effective Date, Kitsumkalum will issue to each individual named in Appendix G-1 Part 1, an interest for the parcel of Kitsumkalum Lands ascribed to that individual and described in Appendix G-1 Part 1.
73. A person to whom Kitsumkalum issues an interest in accordance with paragraph 72 has at least the same right to possess the described parcel of Kitsumkalum Lands as the person had immediately before the Effective Date, modified to reflect the law-making authority of Kitsumkalum over such lands and ownership of such lands by Kitsumkalum in accordance with this Agreement.

**Replacement, Creation and Continuation of Interests**

74. On the Effective Date, Kitsumkalum will execute documents granting or issuing to each person named in Appendices G-1, G-2 and G-3 that person’s interest as set out in those Appendices.
75. A document executed in accordance with paragraph 74 for an interest listed in Appendix G-1, G-2 and G-3 will be substantially in the applicable form, if any, set out in Appendix G-4, and in all cases will include any modifications agreed upon in writing before the Effective Date by the Kitsumkalum Band and the person entitled to the interest.
76. Documents referred to in paragraph 74 will be deemed to have legal effect on the Effective Date as though they have been prepared, executed and delivered by the grantor and by the applicable person named in Appendix G-1, G-2 and G-3 on that date.
77. After the Effective Date, Kitsumkalum will deliver the applicable document:
- (a) To each person referred to in paragraph 74; or
  - (b) upon notice to Kitsumkalum by Canada or British Columbia before the Effective Date, to any other person identified as the person who should instead receive the replacement interest for any reason, including death, any form of transfer, error or operation of law and the applicable Appendix will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the change.
78. If, following the Effective Date, Canada or British Columbia notifies Kitsumkalum that an interest granted in accordance with paragraph 74:
- (a) is in the name of a person who was not entitled to the interest on the Effective Date; or
  - (b) contains a clerical error or a wrong description of a material fact,
- the appropriate Parties will take reasonable measures to rectify the error.

79. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by Kitsumkalum under this Agreement will be legally binding and enforceable notwithstanding that Kitsumkalum Lands to which the right of way relates may not be subject to the *Land Title Act*.
80. The interests listed in Appendix G-5 are retained by the persons who hold those interests on the Effective Date in accordance with the existing terms and conditions of the interest on the Effective Date, modified where appropriate to reflect ownership of the land by Kitsumkalum and Provincial Law. If such an interest is not renewed or replaced when it expires in accordance with its terms or Provincial Law, that interest ceases to exist.

### **Submerged Lands**

81. Subject to paragraph 85, Submerged Lands do not form part of Kitsumkalum Lands and nothing in this Agreement affects British Columbia’s ownership of Submerged Lands.
82. British Columbia will notify Kitsumkalum of any proposed disposition of an interest in, or use or occupation of, Submerged Lands that are wholly contained within Kitsumkalum Lands.
83. British Columbia will not, in respect of Submerged Lands that are wholly contained within Kitsumkalum Lands:
  - (a) grant an estate in fee simple;
  - (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 those Kitsumkalum Lands or the applicable Kitsumkalum interests described in this Agreement,
 without the consent of Kitsumkalum.
84. Paragraphs 82 and 83 do not affect the riparian rights of the upland owners of Kitsumkalum Lands adjacent to Submerged Lands.
85. Submerged Lands which are part of Former Kitsumkalum Indian Reserves form part of the Kitsumkalum Lands.
86. No transfer of Submerged Lands to Kitsumkalum in accordance with this Agreement includes the exclusive right to fish, property rights in Fish or the right to allocate Fish.

### **Accretions to First Nation Lands**

87. Lawful accretions to Kitsumkalum Lands are Kitsumkalum Lands.
88. If Kitsumkalum provides to Canada and British Columbia a certificate issued by the Surveyor General of British Columbia confirming that there has been a lawful accretion, then upon receipt of the certificate by Canada and British Columbia, Appendix B will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the lawful accretion.

### **Indemnity for Omissions and Errors**

89. British Columbia will indemnify and forever save harmless Kitsumkalum from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Kitsumkalum 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 G-2, G-3 or G-5 of the name of a person who, immediately before the Effective Date, had an interest in Kitsumkalum Lands that had been granted by British Columbia; or
  - (b) the incorrect naming of a person in Appendix G-2, G-3 or G-5 as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in Kitsumkalum Lands that had been granted by British Columbia.
90. Kitsumkalum warrants that there are no interests, arising subsequent to the coming into force of the *Kitsumkalum Land Code*, with respect to the Former Kitsumkalum Indian Reserves other than those referred to in Appendix G-1.

### **Site Remediation on Kitsumkalum Lands**

91. The transfer of Former Kitsumkalum Indian Reserves to Kitsumkalum 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 Kitsumkalum Indian Reserves.
92. British Columbia is not required to prepare and provide a Site Disclosure Statement for any lands transferred to Kitsumkalum in accordance with this Agreement.

### **Environmental Condition of Old Mining Sites and Wood Waste Site**

93. Kitsumkalum acknowledges that British Columbia has informed it that, given the current and past industrial uses of the Wood Waste Site and the historical mineral exploration and development activities occurring on the Old Mining Sites, there are:
- (a) known Contamination issues associated with the Wood Waste Site, including the potential presence of toxic, hazardous, dangerous, or potentially dangerous, substances on or under the sites, and on or under surrounding or neighbouring lands; and
  - (b) potential undetermined Contamination and safety issues associated with the Wood Waste Site and the Old Mining Sites, including the potential presence of toxic, hazardous, dangerous, or potentially dangerous, substances on or under the sites, and on or under surrounding or neighbouring lands.
94. Notwithstanding the information provided to Kitsumkalum under paragraph 93, Kitsumkalum confirms its interest in including the Old Mining Sites and the Wood Waste Site as Kitsumkalum Lands under this Agreement and agrees that it will on and after the Effective Date:

- (a) assume all liabilities relating to the environmental condition of the Old Mining Sites and the Wood Waste Site, including all liability for the cleanup of any Contamination or any other toxic, hazardous, dangerous or potentially dangerous substances on or conditions on or under the sites or migrating from the sites (including surface water and ground water) and any other costs of remediation of the sites, whether disclosed or undisclosed, known or unknown, created or existing, that arose before or after the Effective Date or arose before and continues after the Effective Date;
- (b) release British Columbia, and its agents, employees and officials, from all suits, actions, claims, proceedings or demands of whatever kind, whether known or unknown, that Kitsumkalum had, has or may have in the future, relating to or arising from any and all liabilities described in paragraph 94(a); and
- (c) indemnify and save harmless British Columbia from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that British Columbia may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of the environmental condition of the Old Mining Sites or the Wood Waste Site.

**Additions to Kitsumkalum Lands**

- 95. At any time after the Effective Date, Kitsumkalum may request the agreement of British Columbia and Canada, to add to Kitsumkalum Lands any land, including the Miller Bay West Parcel, that is:
  - (a) owned in fee simple by Kitsumkalum, a Kitsumkalum Corporation, or Kitsumkalum Institution; and
  - (b) within the Kitsumkalum Harvest Area.
- 96. For greater certainty, nothing in paragraph 95 creates any obligation on British Columbia to transfer the Miller Bay West Parcel to Kitsumkalum in fee simple or, if Kitsumkalum acquires the Miller Bay West Parcel, for Canada or British Columbia to agree to the Miller Bay West Parcel becoming Kitsumkalum Lands.
- 97. For greater certainty, it is the intention of Kitsumkalum to acquire the Miller Bay West Parcel from British Columbia and to acquire a lease of water lot DL264 adjacent to the Miller Bay West Parcel.
- 98. For greater certainty, it is the intention of Kitsumkalum to acquire the Sand Lake Parcel from British Columbia and add the Sand Lake Parcel to Kitsumkalum Lands in accordance with paragraph 95. In the interim, it is Kitsumkalum’s intention to secure a license of occupation with respect to the Sand Lake Parcel.
- 99. Canada and British Columbia acknowledge that Kitsumkalum has an interest in requesting the addition of the Skeena Sawmill Lands to Kitsumkalum Lands in accordance with paragraph 95.
- 100. For greater certainty, nothing in paragraph 99 creates an obligation for Canada or British Columbia to agree to the Skeena Sawmill Lands becoming Kitsumkalum Lands.



101. Prior to making a request under paragraph 95 for lands within a municipal boundary, Kitsumkalum will engage with that municipality to discuss areas of shared interest and any implications that may arise as a result of the addition to Kitsumkalum Lands.
102. When considering a request by Kitsumkalum under paragraph 95, Canada and British Columbia will take into account:
  - (a) potential adverse effects that adding the land to Kitsumkalum Lands might have on the rights of other aboriginal peoples recognized and affirmed under section 35 of the *Constitution Act, 1982*;
  - (b) measures that may be appropriate to avoid, mitigate or otherwise accommodate any potential adverse effects identified under paragraph 102(a); and
  - (c) any other relevant matters.
103. When considering a request by Kitsumkalum under paragraph 95, British Columbia will take into account the results of Kitsumkalum’s engagement under paragraph 101.
104. Where Canada agrees to add lands to Kitsumkalum Lands, Canada will provide notice of its agreement by order of the Governor-in-Council.
105. Where British Columbia agrees to add lands to Kitsumkalum Lands, British Columbia will provide notice of its agreement by order of the Lieutenant Governor-in-Council or by other means specified by British Columbia.
106. Nothing in paragraph 95 obligates Canada or British Columbia to pay any costs associated with the purchase or transfer of the land that is added to Kitsumkalum Lands under paragraph 95 or any other costs related to the addition of the land to Kitsumkalum Lands.
107. Kitsumkalum will own the Subsurface Resources on land that is added to Kitsumkalum Lands under paragraph 95 if:
  - (a) the fee simple title includes ownership of the Subsurface Resources; or
  - (b) British Columbia owns the Subsurface Resources and British Columbia and Kitsumkalum agree.
108. Where Kitsumkalum requests the agreement of Canada and British Columbia to add land to Kitsumkalum Lands under paragraph 95, and Canada and British Columbia provide notice of their agreement to that request in accordance with paragraphs 104 and 105 respectively, the Parties will amend Appendix B, in accordance with the process set out in paragraph 9 of Chapter 31 Amendment, to reflect the addition of the land, and the land will become Kitsumkalum Lands when the amendment takes effect.
109. Where lands are added to Kitsumkalum Lands under paragraph 108, Kitsumkalum will be responsible for the preparation of Adequate Surveys, if necessary.

**Continuation of Interests**

110. A parcel of land added to Kitsumkalum Lands continues to be subject to any interest, financial charge or encumbrance existing immediately before the parcel of land becomes Kitsumkalum Lands, unless the holder of such interest, financial charge or encumbrance otherwise agrees in writing.
111. For greater certainty, Kitsumkalum's ownership of Subsurface Resources is subject to any Subsurface Tenures existing immediately before the acquisition of the parcel of land by Kitsumkalum and those Subsurface Tenures continue to be administered by British Columbia in accordance with paragraphs 7 to 16 of Chapter 4 Subsurface.

**Limits on Provincial Expropriation of Kitsumkalum Lands**

112. British Columbia acknowledges that it is of fundamental importance to maintain the size and integrity of Kitsumkalum Lands and therefore, as a general principle, an interest or estate in Kitsumkalum Lands will not be expropriated under Provincial Law.
113. Where a Provincial Expropriating Authority has determined that it requires Kitsumkalum Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire the interest or fee simple estate by agreement with the owner.
114. For greater certainty, if a Provincial Expropriating Authority and the owner of Kitsumkalum Lands are unable to reach an agreement under paragraph 113 that Provincial Expropriating Authority may expropriate an interest or estate in Kitsumkalum Lands in accordance with Appendix I, Part 2.
115. If a Provincial Expropriating Authority expropriates an interest or estate in Kitsumkalum Lands, only the most limited interest or estate in Kitsumkalum Lands necessary will be expropriated for the shortest time required.
116. Any estate in fee simple in Kitsumkalum Lands expropriated by a Provincial Expropriating Authority will not remain Kitsumkalum Lands, unless Kitsumkalum and British Columbia otherwise agree.
117. Subject to paragraph 118, the total amount of the estate in fee simple of Kitsumkalum Lands that may be expropriated by Provincial Expropriating Authorities is an amount equal to 2.5% of the total area of Kitsumkalum Lands on the Effective Date.
118. If lands are added to Kitsumkalum Lands under paragraph 95, the total amount of the estate in fee simple of Kitsumkalum Lands that may be expropriated by Provincial Expropriating Authorities under paragraph 117 increases by 2.5% of the area of the lands added to Kitsumkalum Lands.

**Limits on Federal Expropriation of Kitsumkalum Lands**

119. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of Kitsumkalum Lands and, therefore as a general principle interests in Kitsumkalum Lands will not be expropriated under Federal Law.

120. An interest in Kitsumkalum Lands may be expropriated by a Federal Expropriating Authority in accordance with federal legislation, Appendix I, Part 1, and with the consent of the Governor-in-Council.
121. If a Federal Expropriating Authority expropriates Kitsumkalum Lands, only the most limited interest in Kitsumkalum Lands necessary and will be expropriated for the shortest time required.
122. Nothing in this Agreement affects or limits the application of the *Emergencies Act* to Kitsumkalum Lands and that Act will continue to apply on Kitsumkalum Lands.

### **Law-Making**

123. Kitsumkalum may make laws in relation to:
  - (a) the use of Kitsumkalum Lands, including:
    - (i) management;
    - (ii) land use planning, zoning and development; and
    - (iii) designation, including the designation of Kitsumkalum Private Lands;
  - (b) the creation, allocation, ownership and disposition of interests or estates in Kitsumkalum Lands including:
    - (i) fee simple estates or any lesser estate or interest;
    - (ii) mortgages;
    - (iii) leases, licences, permits, easements, and Rights of Way, including Rights of Way and covenants similar to those in Sections 218 and 219 of the *Land Title Act*;
    - (iv) tenuring of Subsurface Resources; and
    - (v) any conditions or restrictions, including restrictions on alienation, exceptions or reservations on such estates or interests;
  - (c) the establishment and operation of a Kitsumkalum land title or land registry system for Kitsumkalum Lands that are not registered in the Land Title Office; and
  - (d) expropriation for public purposes and public works by the Kitsumkalum Government of interests or estates in Kitsumkalum Lands where Kitsumkalum provides fair compensation to the owner of the estate or interest and the expropriation is of the smallest estate or interest necessary for the public purpose or public work.
124. Notwithstanding paragraph 123(d) Kitsumkalum may not expropriate:
  - (a) interests or estates, granted or continued on the Effective Date, or thereafter replaced in accordance with this Agreement, unless specifically provided for in this Agreement;
  - (b) interests or estates expropriated or otherwise acquired after Effective Date by a Federal Expropriating Authority or a Provincial Expropriating Authority; and
  - (c) any other interests upon which the Parties have agreed to in this Agreement.

125. For the purposes of paragraph 123(b), Kitsumkalum may make laws with respect to estates or interests in Kitsumkalum Lands that are:
- (a) not recognized under Federal or Provincial Law; or
  - (b) recognized under Federal or Provincial Law provided that they are consistent with Federal or Provincial Law with respect to those estates or interests.
126. For greater certainty, a Kitsumkalum Law under paragraph 123(b)(v) in respect of an interest issued under paragraphs 72 and 73 is not inconsistent with common law principles.
127. Kitsumkalum Law under paragraph 123 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Aerodrome Engagement**

128. Before authorizing any use of or activity on Kitsumkalum Lands within a 15 kilometer radius of the Aerodrome Reference Point of a Registered Aerodrome or a Certified Aerodrome that may interfere with:
- (a) the operation of a Registered Aerodrome or a Certified Aerodrome due to the height of an obstacle, including the placement, erection, or construction of buildings or other structures;
  - (b) any signal or communication to and from an aircraft or to and from any facility used to provide services relating to aviation; or
  - (c) the operation of a Registered Aerodrome or a Certified Aerodrome by attracting wildlife or permitting excessively tall growth of natural vegetation,

Kitsumkalum will, where appropriate, engage with representatives of the Registered Aerodrome or Certified Aerodrome and representatives of NAV CANADA in order to identify and address any aviation safety and security concerns.

### **Kitsumkalum Agricultural Lands**

129. The *Agricultural Land Commission Act* does not apply to Kitsumkalum Lands.
130. On the Effective Date, Kitsumkalum will enact a Kitsumkalum Law under paragraph 123 that:
- (a) designates Kitsumkalum Lands described in Appendix B-6 as Kitsumkalum Agricultural Lands; and
  - (b) establishes:
    - (i) farm uses and limitations on non-farm uses for Kitsumkalum Agricultural Lands;
    - (ii) processes and authorities for authorizing requests for non-farm uses;
    - (iii) processes and authorities for authorizing requests to remove agricultural designations; and

- (iv) processes for reviewing requests to designate additional Kitsumkalum Lands as agricultural.
131. The Kitsumkalum law enacted under paragraph 130 will:
- (a) prioritize the preservation of high capability agricultural lands for agricultural and other food harvesting uses;
  - (b) define farm and non-farm uses comparable to the *Agricultural Land Commission Act* regulations; and
  - (c) provide for engagement with adjacent landowners and British Columbia in processes set out in 130(b).
132. Future additions to Kitsumkalum Lands that are designated as agricultural land reserve under the *Agricultural Land Commission Act* immediately prior to their addition to Kitsumkalum Lands will be designated as Kitsumkalum Agricultural Lands.

### **Commercial Recreation Tenure Opportunities**

133. At the request of Kitsumkalum, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement respecting commercial recreation tenure opportunities for Kitsumkalum within the provincial Crown lands identified as “Kitsumkalum Co-Management Areas” in Appendix J, Part 1.
134. Unless otherwise agreed to by the Parties, any commercial recreation tenures issued in accordance with paragraph 133 are subject to existing provincial policy and legislation.

### **Potential Additions to Reserves Prior to Effective Date**

135. If, prior to the Effective Date, any lands, including the Billabong Lands, have been set apart as Indian Reserve for the exclusive use and benefit of the Kitsumkalum Band, then this Agreement will be updated, as necessary, to reflect that those additional Indian Reserve lands form part of Former Kitsumkalum Indian Reserves.
136. For greater certainty, nothing in paragraph 135 alters the application of the ATR Policy to the Kitsumkalum Band, the Billabong Lands, or any other lands the Kitsumkalum Band may seek to have set apart for their use and benefit prior to the Effective Date.



## CHAPTER 4 – SUBSURFACE

### General

1. Kitsumkalum owns Subsurface Resources on or under Kitsumkalum Lands where those Subsurface Resources were owned by British Columbia or Canada immediately prior to becoming Kitsumkalum Lands.
2. Kitsumkalum ownership of Subsurface Resources is subject to the Subsurface Tenures listed in Appendix G-5, Part 1.
3. Subject to paragraph 12, Kitsumkalum, as owner of Subsurface Resources, has authority to set fees, rents, royalties and other charges, except taxes, for exploration, development, extraction and production of Subsurface Resources owned by Kitsumkalum.
4. Nothing in this Agreement confers authority on Kitsumkalum to make laws in relation to the exploration for, development, production, use and application of nuclear energy and atomic energy and the production, possession and use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment and prescribed information.
5. Nothing in this Agreement confers authority on Kitsumkalum to make laws in respect of:
  - (a) spacing and target areas related to Petroleum and Natural Gas and Geothermal Resources, and conservation and allocation of Petroleum and Natural Gas and Geothermal Resources among parties having interests in the same reservoir; and
  - (b) Subsurface Tenures listed in Appendix G-5, Part 1 and related Tenured Subsurface Resources.
6. Notwithstanding paragraph 127 of Chapter 3 Kitsumkalum Lands, Federal or Provincial Law in respect of Subsurface Resources prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 123 of Chapter 3 Kitsumkalum Lands.

### Tenured Subsurface Resources

7. Subject to paragraph 11, Subsurface Tenures:
  - (a) continue in accordance with Provincial Law and this Agreement; and
  - (b) will be administered by British Columbia in accordance with Provincial Law and this Agreement.
8. Provincial Law applies to any exploration, development, extraction and production of Tenured Subsurface Resources as if the Tenured Subsurface Resources were owned by British Columbia.
9. In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia may grant, as necessary, any related extensions, renewals, continuations, replacements or issue any further rights as the Tenured Subsurface Resources are developed.

10. In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia will notify the Kitsumkalum Government before changing or eliminating any rents or royalties applicable to the Tenured Subsurface Resources.
11. British Columbia will:
  - (a) ensure that any rents and royalties applicable to Tenured Subsurface Resources that British Columbia would be 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 Kitsumkalum; and
  - (b) retain for administrative purposes any fees, charges or other payments applicable to Subsurface Tenures and Tenured Subsurface Resources under Provincial Law.
12. Kitsumkalum 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.
13. Kitsumkalum Lands will be treated as private lands under Provincial Law relating to Subsurface Resources for the purposes of resolving any access issues and compensation rights associated with any proposed entrance, occupation or use of Kitsumkalum Lands by holders of Subsurface Tenures.
14. Any dispute under paragraph 13 may be resolved under Provincial Law relating to access and compensation disputes involving Subsurface Resources.
15. For greater certainty, a Subsurface Tenure holder must not begin a mining activity on a Subsurface Tenure without first serving notice on Kitsumkalum in accordance with Provincial Law.
16. Where a Subsurface Tenure is forfeited, cancelled or expires and is not restored under Provincial Law, Kitsumkalum Lands will no longer be subject to that Subsurface Tenure.



## CHAPTER 5 – LAND TITLE

### Federal Title Registration

1. Federal land title and land registry laws, other than laws with respect to the survey and recording of interests or estates that are owned by Canada and are in Kitsumkalum Lands, do not apply to any parcel of Kitsumkalum Lands.

### Land Title System

2. The *Land Title Act* applies to:
  - (a) all parcels of Kitsumkalum Lands registered in the Land Title Office, and
  - (b) all applications in respect of Kitsumkalum Lands made under the *Land Title Act*.

### Application for Registration of Indefeasible Title

3. Only Kitsumkalum, and no other person, may apply under the *Land Title Act* for the initial registration of an indefeasible title to a parcel of Kitsumkalum Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of Kitsumkalum or on behalf of another person.
4. On the Effective Date, the following 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*:
  - (a) an indefeasible title in the name of Kitsumkalum to those parcels of Kitsumkalum Lands identified as:
    - (i) Former Kitsumkalum Indian Reserves in Appendix B-2; and
    - (ii) former provincial Crown land in Appendix B-5;
  - (b) subject to paragraph 35 of Chapter 3 Kitsumkalum Lands, an indefeasible title to those parcels of Kitsumkalum Lands identified as Former Private Fee Simple Lands in Appendix B-4;
  - (c) an indefeasible title in the name of Kitsumkalum to Kitsumkalum Coastal Site Lands and the Miller Bay Lands described in Appendix D;
  - (d) if applicable, the interests referred to in Appendix G-1 Part 1 issued in accordance with paragraphs 72 and 73 of Chapter 3 Kitsumkalum Lands;
  - (e) if applicable, the interests referred to in Appendix G-1 Part 2 and Part 3 granted or issued in accordance with paragraph 74 of Chapter 3 Kitsumkalum Lands;
  - (f) if applicable, the interests referred to in Appendix G-2 and Appendix G-3 granted or issued in accordance with paragraph 74 of Chapter 3 Kitsumkalum Lands;
  - (g) if applicable, the interests on Kitsumkalum Coastal Site Lands and the Miller Bay Lands;

- (h) any other interests in Kitsumkalum Lands already registered in the Land Title Office;  
and
  - (i) any other interests agreed to by the Parties.
5. Subject to this Agreement, to the extent that the following instruments are applicable to a parcel of land registered under paragraph 4, the Parties will make application for registration for the following instruments in the following order of priority:
- (a) any Right of Way in favour of Kitsumkalum;
  - (b) any distribution/transmission Rights of Way in favour of British Columbia Hydro and Power Authority;
  - (c) any distribution Rights of Way in favour of Telus Communications Inc;
  - (d) any Rights of Way in favour of other Public Utilities; and
  - (e) any other instruments.

#### **Survey Fees and Land Title Fees**

6. Notwithstanding any requirement of the *Land Title Act*, *Land Act*, bylaws of the Land Title and Survey Authority, or any other Provincial Law, no fee is payable by:
- (a) Canada, Kitsumkalum, or any other person in relation to:
    - (i) the first registration in the Land Title Office of indefeasible title to a parcel of Kitsumkalum Lands in the name of Kitsumkalum, a Kitsumkalum Corporation, or a Kitsumkalum Public Institution on or after the Effective Date;
    - (ii) the first registration in the Land Title Office of an instrument granting an estate or interest in Kitsumkalum Lands if the estate or interest is required under this Agreement to be registered in the Land Title Office;
    - (iii) the deposit of any plan, or a certificate as required under the *Land Title Act* in relation to a matter referred to in paragraph (i) or (ii);
    - (iv) the issuance of a State of Title Certificate under the *Land Title Act* in relation to a matter referred to in paragraph (i) or (ii);
    - (v) the filing of a certificate in relation to a registered parcel that is to become Kitsumkalum Lands on the Effective Date in accordance with this Agreement, the indefeasible title of which is to be registered on the Effective Date in the name of a person other than Kitsumkalum;
    - (vi) the first registration in the Land Title Office of indefeasible title to the Coastal Site Lands and the Miller Bay Parcel; or
  - (b) Canada or Kitsumkalum for any services provided under the *Land Act* by the Surveyor General, or persons under the Surveyor General's direction, in respect of a survey required by or for the purposes of this Agreement.

**Registration of Indefeasible Title**

7. The Registrar is entitled to rely on, and is not required to make any inquiries with respect to, the matters certified in the Kitsumkalum Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation, in or to a parcel of Kitsumkalum Lands as a result of the reliance by the Registrar on the Kitsumkalum Certificate, and the issuance by the Registrar of an indefeasible title based on the Kitsumkalum Certificate, will have no recourse, at law or in equity, against the Registrar, the Assurance Fund, British Columbia or Canada.
8. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Kitsumkalum Lands 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 with respect to Kitsumkalum Lands.
9. Notwithstanding paragraph 127 of Chapter 3 Kitsumkalum Lands, where the *Land Title Act* applies to a parcel of Kitsumkalum Lands, that prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 123 of Chapter 3 Kitsumkalum Lands in respect of that parcel.

**Cancellation of Indefeasible Title**

10. Kitsumkalum, 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 Kitsumkalum Lands.



## CHAPTER 6 – CROWN CORRIDORS, ROADS AND RIGHTS OF WAY

### **Kitsumkalum Roads, Crown Corridors and Railway Corridors**

1. Kitsumkalum Roads are part of Kitsumkalum Lands.
2. For greater certainty, Crown Corridors set out in Appendix H Part 1 are not part of Kitsumkalum Lands and are owned by British Columbia.
3. The width of Crown Corridors is 30 metres unless otherwise specified in Appendix H Part 1.
4. For greater certainty, Railway Corridors are not part of Kitsumkalum Lands.
5. British Columbia will engage with Kitsumkalum regarding new uses or major road construction within Crown Corridors adjacent to Kitsumkalum Lands.

### **Crown Corridors No Longer Required**

6. If British Columbia no longer requires any portion of a Crown Corridor, it will:
  - (a) notify Kitsumkalum; and
  - (b) subject to paragraph 7, transfer the estate in fee simple to that Crown Corridor, including Subsurface Resources, at no cost to Kitsumkalum.
7. The transfer of any Crown Corridor under paragraph 6 is subject to British Columbia and Kitsumkalum:
  - (a) reaching agreement on the applicable terms and conditions of the transfer, other than the cost of the land, including terms and conditions related to acceptance of the environmental condition of the land, access to and use of the land, and any applicable replacement or continuing interests; and
  - (b) each obtaining required internal approvals.
8. The Parties agree that any Crown Corridor transferred to Kitsumkalum in accordance with paragraphs 6 and 7 will be added to Kitsumkalum Lands and, upon the effective date of such transfer, Appendix B will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.

### **Realignment of Crown Corridors**

9. British Columbia may request that a portion of a Crown Corridor be realigned onto Kitsumkalum Lands and if:
  - (a) the proposed new alignment is reasonably suitable for use as a Crown Corridor;
  - (b) British Columbia and Kitsumkalum reach agreement on the value of the land exchange; and

- (c) British Columbia pays all reasonable costs associated with decommissioning that portion of the Crown Corridor,

Kitsumkalum will not unreasonably refuse to provide its consent to the realignment.

10. If Kitsumkalum requires a portion of a Crown Corridor for another purpose, Kitsumkalum may request that a portion of that Crown Corridor be realigned, and if:
  - (a) the proposed new alignment is reasonably suitable for use as a Crown Corridor of a comparable standard considering construction, maintenance, operation, and costs;
  - (b) British Columbia and Kitsumkalum reach agreement on the value of the land exchange; and
  - (c) Kitsumkalum pays all reasonable costs, including costs of design, planning, supervision, land, and construction,

British Columbia will not unreasonably refuse to undertake the realignment.

11. If a Crown Corridor is realigned as a result of a consent provided by Kitsumkalum or British Columbia in accordance with paragraphs 9 or 10:
  - (a) any portion of a Crown Corridor transferred to Kitsumkalum will cease to be a Crown Corridor and will become Kitsumkalum Lands; and
  - (b) any Kitsumkalum Lands transferred to British Columbia will cease to be Kitsumkalum Lands and will become a Crown Corridor,

and, upon any such transfer, the Parties will amend Appendices B and H Part 1 in accordance with paragraph 9 in Chapter 31 Amendment to reflect the relocation of the Crown Corridor, and the change in the status of the lands will occur when the amendment takes effect.

### **Entry on Kitsumkalum Lands**

12. In addition to the provisions of Chapter 7 Access, British Columbia, a Local Government, a Railway or a Public Utility, and their employees, agents, contractors, subcontractors, or representatives will have access to Kitsumkalum Lands, including Kitsumkalum Roads, at no cost for the purpose of undertaking works, including:
  - (a) constructing drainage works;
  - (b) carrying out normal repairs;
  - (c) maintaining slope stability;
  - (d) removing dangerous Timber or other hazards;
  - (e) carrying out emergency repairs; or

(f) carrying out vegetation management,

where the access is necessary for constructing, realigning, operating, maintaining, repairing, replacing, removing or protecting Crown Corridors, Municipal Roads, Rights of Way, Public Utility works or other works located on Crown Corridors, Municipal Roads, or Rights of Way that are on or adjacent to Kitsumkalum Lands.

13. Paragraph 12 and the terms and conditions set out in paragraphs 15 and 16, do not apply to the exercise of rights by British Columbia, a Railway, a Public Utility, or a Local Government pursuant to the authority set out in a valid grant, tenure, or other form of agreement, if the valid grant, tenure or other form of agreement may reasonably be interpreted as authorizing works described in paragraph 12.
14. Unless otherwise agreed to by Kitsumkalum, Timber removed from Kitsumkalum Lands in accordance with paragraph 12 remains the property of Kitsumkalum.

### **Work Plan**

15. British Columbia, a Local Government, a Railway or a Public Utility will, before commencing work pursuant to the authority set out in paragraph 12, notify Kitsumkalum, and will, at Kitsumkalum's request, deliver a workplan to Kitsumkalum describing the effect and extent of the proposed work on Kitsumkalum Lands for the approval of Kitsumkalum which will not be unreasonably withheld.
16. If Kitsumkalum does not approve the work plan submitted by British Columbia under paragraph 15 within 30 days of receipt by Kitsumkalum, the dispute will be finally determined by arbitration under Chapter 29 Dispute Resolution without having to proceed through Stages One and Two.

### **Undertaking Works**

17. Unless otherwise provided for in a valid grant, tenure, or other form of agreement, a person undertaking works referred to in paragraph 12 will:
  - (a) minimize the damage to and time spent on Kitsumkalum Lands;
  - (b) pay fair compensation for any interference with or damage to Kitsumkalum Lands resulting from the works; and
  - (c) perform such works or undertakings in a manner consistent with public health and safety.
18. Where there is disagreement on compensation under paragraph 17(b), in respect to works undertaken, the dispute will be finally determined by arbitration under Chapter 29 Dispute Resolution.

**Emergency Works**

- 19. Notwithstanding any other provision of this Agreement, British Columbia, a Local Government, a Railway or a Public Utility may access Kitsumkalum Lands and undertake works and take steps on Kitsumkalum Lands that are urgently required in order to protect works constructed on Crown Corridors, Rights of Way, or Municipal Roads, or to protect individuals or vehicles using Crown Corridors, Rights of Way or Municipal Roads.
- 20. British Columbia, a Local Government, a Railway or a Public Utility, as applicable, will, if possible, notify Kitsumkalum in advance of undertaking such work, and if advance notice is not possible, the entity undertaking such work will notify Kitsumkalum that it has undertaken works on Kitsumkalum Lands under paragraphs 19.

**Public Utilities**

- 21. For greater certainty, Kitsumkalum will grant or issue the Public Utility Rights of Way identified in Appendix G-1 Part 2 and Appendix G-2 Part 1 and Part 2 on Kitsumkalum Lands, as provided for in paragraphs 74 to 80 of Chapter 3 Kitsumkalum Lands.
- 22. A Public Utility may extend, install, operate and maintain electrical distribution or telecommunications works on Kitsumkalum Lands on substantially the same terms and conditions contained in Appendix G-43, or on such other terms and conditions as may be agreed by Kitsumkalum and the Public Utility.
- 23. With the prior written consent of Kitsumkalum, a Public Utility may extend new transmission works on Kitsumkalum Lands outside of the existing transmission Rights of Way held by the Public Utility, on substantially the same terms and conditions as contained in Documents 1 and 2 of Appendix G-4 Part 2, as applicable, or on such other terms and conditions as may be agreed by Kitsumkalum and the Public Utility.

Under review by the Parties

- 24. Kitsumkalum Laws will not apply to the regulation of the business or undertaking of a Public Utility.
- 25. Without limiting the generality of paragraph 24, Kitsumkalum will not, directly or indirectly through Kitsumkalum Laws or Kitsumkalum’s use or occupation of Kitsumkalum Lands, frustrate, unreasonably delay, place conditions on, limit or impair a Public Utility’s authorized use of Kitsumkalum Lands.

**Engagement Regarding Traffic Regulation**

- 26. Upon request of Kitsumkalum, British Columbia will engage with Kitsumkalum with respect to existing regulation by British Columbia of traffic and transportation on a Crown Corridor that is adjacent to a settled area on Kitsumkalum Lands.



### Access and Safety Regulation

27. British Columbia retains the authority to regulate all matters relating to:
  - (a) the location and design of intersecting roads giving access to Crown Corridors from Kitsumkalum Lands, including:
    - (i) regulating or requiring signs, signals, or other traffic control devices on Crown Corridors;
    - (ii) regulating or requiring merging lanes, on ramps and off ramps; or
    - (iii) requiring contributions to the cost of the matters referred to in paragraphs 27(a)(i) and 27(a)(ii); and
  - (b) the height and location of structures on Kitsumkalum Lands immediately adjacent to Crown Corridors, only to the extent reasonably required to protect the safety of the users of Crown Corridors.
28. Subject to provincial requirements, including those set out in paragraph 27, British Columbia will not unreasonably deny Kitsumkalum access to a Provincial Road from Kitsumkalum Lands.
29. British Columbia will provide Kitsumkalum with any licence, permit or approval required under Provincial Law to join or intersect a Provincial Road with a Kitsumkalum Road if:
  - (a) the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and
  - (b) the joining or intersecting Kitsumkalum Road complies with standards established under Provincial Law for equivalent Provincial Roads.
30. Kitsumkalum will engage with British Columbia on any access or public safety issue associated with land use decisions relating to the development of Kitsumkalum Lands adjacent to Crown Corridors.

### Roads

31. Kitsumkalum is responsible for the maintenance and repair of Kitsumkalum Roads.
32. Kitsumkalum Roads are open to the public, unless designated otherwise by Kitsumkalum.
33. Kitsumkalum may temporarily close Kitsumkalum Roads for safety, public order or cultural reasons.
34. Kitsumkalum may permanently close a Kitsumkalum Road.
35. Before Kitsumkalum permanently closes a Kitsumkalum Road, Kitsumkalum will:
  - (a) provide public notice and an opportunity for affected persons to make representations to Kitsumkalum; and
  - (b) notify the operators of Public Utilities whose facilities or works may be affected.
36. British Columbia is responsible for the maintenance and repair of Provincial Roads.

## Gravel

### **Kitsumkalum Access to Gravel on Provincial Crown Gravel Land**

37. Subject to paragraphs 39, 40 and 41, Kitsumkalum may enter onto Provincial Crown Gravel Lands and extract, refine and transport, without charge, sufficient quantities of Gravel from Gravel pits existing on the Effective Date to fulfil any responsibilities it may have to construct, maintain, repair and upgrade Kitsumkalum Roads and rights of way on Kitsumkalum Lands.
38. Subject to paragraph 41, Kitsumkalum may enter onto Provincial Crown Gravel Lands to locate, extract, refine and transport, without charge, sufficient quantities of Gravel from natural deposits as may exist on Provincial Crown Gravel Lands for use by Kitsumkalum to fulfil any responsibilities it may have to construct, maintain, repair and upgrade Kitsumkalum Roads and rights of way on Kitsumkalum Lands.
39. Without preparing a Gravel Pit Development Plan, Kitsumkalum may enter onto Provincial Crown Gravel Lands and extract and transport, without charge, Gravel from a Gravel pit that, before the Effective Date, Kitsumkalum had been using intermittently as a source of Gravel to maintain Kitsumkalum Roads and rights of way on Kitsumkalum Lands.
40. Before materially increasing the rate of extraction of Gravel from any Gravel pit Kitsumkalum may use in accordance with paragraph 37, Kitsumkalum will prepare a Gravel Pit Development Plan for that pit in accordance with Provincial Law.
41. For greater certainty, entry onto Provincial Crown Gravel Lands and the location, development, extraction, refinement and transportation of Gravel on Provincial Crown Gravel Lands by Kitsumkalum will be in accordance with Provincial Law.
42. British Columbia will not unreasonably withhold approval for any Gravel Pit Development Plan prepared and submitted by Kitsumkalum.

### **British Columbia Access to Gravel on Kitsumkalum Lands**

43. On the Effective Date, Kitsumkalum will grant to British Columbia, as represented by the Minister of Transportation and Infrastructure, an interest in those Kitsumkalum Lands identified in Appendix G-3 Part 3 substantially in the form set out in Appendix G-4 Part 3 to enable the Province to extract, refine and transport Gravel from those lands to maintain, repair and upgrade Provincial Highways and public rights of way in the vicinity of Kitsumkalum Lands.
44. In addition to the rights provided under paragraph 43, British Columbia and its employees, agents, contractors or representatives may enter onto Kitsumkalum Lands and extract, refine and transport, without charge, sufficient quantities of Gravel from Gravel pits existing on the Effective Date to fulfil any responsibilities British Columbia may have to construct, maintain, repair or upgrade Resource Roads and public rights of way in the vicinity of Kitsumkalum Lands.
45. Subject to paragraph 47, where a Gravel Pit Development Plan does not exist for a Gravel pit on Kitsumkalum Lands, before commencing any extraction, refinement or transportation of Gravel in that Gravel pit, British Columbia will prepare a Gravel Pit Development Plan for that Gravel pit and submit it to Kitsumkalum for approval, which approval will not be unreasonably withheld.

46. Without preparing a Gravel Pit Development Plan, British Columbia and its employees, agents, contractors, or representatives may continue to enter onto Kitsumkalum Lands and extract and transport, without charge, Gravel from a Gravel pit which before the Effective Date British Columbia had been using intermittently as a source of Gravel to maintain Resource Roads and public rights of way in the vicinity of Kitsumkalum Lands.
47. Before materially increasing the rate of extraction of Gravel from any Gravel pit British Columbia may use in accordance with paragraph 44, British Columbia will prepare a Gravel Pit Development Plan for that pit.
48. Subject to paragraphs 49 and 51, British Columbia and its employees, agents, contractors, or representatives may enter onto Kitsumkalum Lands to locate, extract, refine and transport, without charge, sufficient quantities of Gravel from natural deposits as may exist on Kitsumkalum Lands for use by British Columbia to fulfil any responsibilities it may have to construct, maintain, repair and upgrade Resource Roads and public rights of way in the vicinity of Kitsumkalum Land.

### **Exploration**

49. Before undertaking any excavation for Gravel samples or other exploration work on Kitsumkalum Lands in accordance with paragraph 48, British Columbia will prepare an exploration plan, indicating generally the proposed location of exploration and the method and extent of proposed work, for approval by Kitsumkalum, which approval will not be unreasonably withheld.
50. In preparing an exploration plan under paragraph 49:
  - (a) British Columbia will select a proposed location to explore for a Gravel pit, taking into account the effect of a development at that proposed location on:
    - (i) the lands adjacent to the proposed location;
    - (ii) any unique attributes of the lands at the proposed location and adjacent lands;  
and
  - (b) in considering whether to approve that plan, Kitsumkalum will take account of the cost efficiencies of the proposed location in relation to alternate locations.
51. Before commencing any extraction, refinement or transportation of Gravel from any Gravel pit identified in an exploration plan approved by Kitsumkalum in accordance with paragraph 49, British Columbia will prepare a Gravel Pit Development Plan for that Gravel pit and submit it to the applicable Kitsumkalum for approval which approval will not be unreasonably withheld.
52. British Columbia and Kitsumkalum will comply with the provisions of an approved Gravel Pit Development Plan

**Pesticides and Herbicides**

53. British Columbia will Consult with a view to acquiring free, prior and informed consent of Kitsumkalum prior to confirmation of any Pesticide Use Notice under the *Integrated Pest Management Act* that will authorize the use of a pesticide, including herbicides, in the Kitsumkalum Harvest Area which may adversely affect the Kitsumkalum Exercisable Section 35 Rights.
54. For greater certainty, as part of satisfying its obligation to Consult under paragraph 53, British Columbia may rely on engagement and consultation on Pest Management Plans with Kitsumkalum carried out by applicants seeking to use a pesticide, including herbicides.

## CHAPTER 7 – ACCESS

### General

1. Except as modified by this Agreement:
  - (a) Kitsumkalum, as owner of Kitsumkalum Lands, has the same rights and obligations with respect to public access to Kitsumkalum Lands as other owners of estates in fee simple have with respect to public access to their land; and
  - (b) with respect to unoccupied Kitsumkalum Lands, other than Kitsumkalum Private Lands, Kitsumkalum has liabilities and limitations on liabilities comparable to those of the provincial Crown with respect to unoccupied provincial Crown land.

### Designation of Kitsumkalum Private Lands

2. On the Effective Date, the Former Kitsumkalum Indian Reserves and the Former Private Fee Simple Lands are designated as Kitsumkalum Private Lands.
3. After the Effective Date, Kitsumkalum may designate portions of Kitsumkalum Lands as Kitsumkalum Private Lands where Kitsumkalum authorizes a use or disposition of those portions of Kitsumkalum Lands that are incompatible with public access.
4. Before making a designation under paragraph 3, or changing the boundaries of Kitsumkalum Private Lands, Kitsumkalum will:
  - (a) provide reasonable notice to British Columbia, Canada and the public of the proposed designation; and
  - (b) consider any views advanced by British Columbia, Canada or the public in respect of the proposed designation.
5. If the designation of Kitsumkalum Lands as Kitsumkalum Private Lands has the effect of preventing public access to an area or location to which there is a public right of access under Federal or Provincial Law, such as navigable waters or Provincial Roads, Kitsumkalum will provide reasonable alternative means of public access to that area or location.
6. For greater certainty, paragraph 5 will not apply where British Columbia and Kitsumkalum agree that a reasonable alternative means of public access to an area or location, to which there is a public right of access under Federal or Provincial Law, across provincial Crown land already exists.

### Public Access on Kitsumkalum Lands

7. Kitsumkalum will allow reasonable public access on Kitsumkalum Lands, other than Kitsumkalum Private Lands, for temporary recreational uses and temporary non-commercial purposes, including reasonable opportunities for the public to hunt and fish on Kitsumkalum Lands, but public access does not include:

- (a) harvesting or extracting resources unless authorized by Kitsumkalum or as in accordance with this Agreement;
  - (b) causing damage to Kitsumkalum Lands or resources on Kitsumkalum Lands;
  - (c) causing a nuisance; or
  - (d) interfering with other uses authorized by Kitsumkalum or interfering with the ability of Kitsumkalum to authorize uses or dispose of its Kitsumkalum Lands.
8. For greater certainty, public access contemplated by paragraph 7 will be in accordance with Kitsumkalum Law regulating public access to Kitsumkalum Lands.
  9. Kitsumkalum will take reasonable measures to notify the public of the terms and conditions respecting public access to Kitsumkalum Lands other than Kitsumkalum Private Lands.

#### **Kitsumkalum Public Access Permits**

10. For the purpose of monitoring and regulating public access under paragraph 7, Kitsumkalum may require persons other than Kitsumkalum Members to obtain a permit or licence or to sign a waiver.
11. Kitsumkalum will make any permits, licences or waivers which may be required under paragraph 10 reasonably available at a reasonable fee taking into account the administrative and other costs of monitoring and regulating public access.

#### **Access to Interests on or Adjacent to Kitsumkalum Lands**

12. Kitsumkalum will allow reasonable access across Kitsumkalum Lands, at no cost, to the interests on or beneath Kitsumkalum Lands, listed in Appendix G, consistent with the terms and conditions of those interests.
13. If no other reasonable access exists across Crown land, Kitsumkalum will allow reasonable access, at no cost, across Kitsumkalum Lands to any interests on or beneath lands adjacent or in close proximity to Kitsumkalum Lands, consistent with the terms and conditions of those interests.

#### **Access to Estates in Fee Simple and Dispute Resolution**

14. Kitsumkalum will allow reasonable access, at least as favourable as that which exists immediately before the Effective Date, across its Kitsumkalum Lands, at no cost, to the estates in fee simple as set out in Appendix M.
15. If the owner of a parcel of land identified in Appendix M Part 2 requires a right of access to that parcel other than that access provided in accordance with paragraph 14, Kitsumkalum will not withhold its consent to that right of access if:
  - (a) the owner of the parcel offers fair compensation; and
  - (b) the owner of the parcel and Kitsumkalum agree on the terms of access.
16. British Columbia or Kitsumkalum may refer any Disagreement in respect of paragraphs 12 to 15, to be finally determined by arbitration under Chapter 29 Dispute Resolution.

17. For greater certainty, nothing in paragraphs 12 to 15 obligates Kitsumkalum to pay any costs associated with access to a tenure or fee simple estate referred to in those paragraphs.

### **Law-Making**

18. Kitsumkalum may make laws regulating public access on Kitsumkalum Lands for the purposes of:
  - (a) public safety;
  - (b) prevention of harvesting or extracting of resources owned by Kitsumkalum;
  - (c) prevention of nuisance or damage, including forest fire prevention; and
  - (d) protection of sensitive habitat.
19. Kitsumkalum Law made under paragraph 18(b) prevails to the extent of a Conflict with Federal or Provincial Law.
20. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law made under paragraphs 18(a), 18(c) and 18(d).
21. Kitsumkalum will notify British Columbia and Canada in respect of a Kitsumkalum Law proposed by it that would significantly affect public access on Kitsumkalum Lands other than Kitsumkalum Private Lands.

### **Access to Kitsumkalum Lands**

22. Agents, employees, contractors, subcontractors and other representatives of Canada, British Columbia, Local Government, Public Utilities, Railways and NAV CANADA, or any other successor entity, and Canadian Armed Forces personnel and members of foreign armed forces, authorized by Canada and working with the Canadian Armed Forces, or peace officers appointed under Federal or Provincial Law, may, in accordance with Federal or Provincial Law, enter, cross and stay temporarily on Kitsumkalum Lands at no cost to:
  - (a) deliver and manage programs and services;
  - (b) carry out inspections;
  - (c) enforce law;
  - (d) carry out the terms of this Agreement;
  - (e) respond to emergencies and natural disasters; and
  - (f) carry out other duties under Federal and Provincial Law.
23. This Agreement does not affect the ability of persons acting in an official capacity pursuant to lawful authority to have access to Kitsumkalum Lands.

24. This Agreement does not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security on Kitsumkalum Lands, without payment of any fees or other charges to Kitsumkalum except as provided for under Federal Law.
25. The Department of National Defence and the Canadian Armed Forces and members of foreign armed forces, authorized by Canada and working with the Canadian Armed Forces, will have access, at no cost, to Kitsumkalum Lands for military exercises with the agreement of the Kitsumkalum Government. Failing agreement on conditions for the exercise of that access, the Minister of National Defence may refer the dispute for resolution under Chapter 29 Dispute Resolution, but that Department and those Forces may not exercise that access until the dispute has been resolved.
26. Unless otherwise agreed, Canada or British Columbia will provide reasonable notice of entry to Kitsumkalum Lands by Canada and British Columbia under paragraph 22 to Kitsumkalum:
  - (a) before the entry if it is practicable to do so; or
  - (b) as soon as practicable after the entry.
27. The requirement to provide reasonable notice under paragraph 26 does not apply to peace officers, investigators or federal and provincial law enforcement officers carrying out duties under Federal and Provincial Law.
28. Any person exercising a right of access in accordance with paragraph 22 will act in accordance with Federal or Provincial Law, including the payment of compensation for any damage to Kitsumkalum Lands if required by Federal or Provincial Law.

#### **Kitsumkalum Access to Crown Lands**

29. Agents, employees, contractors, subcontractors and other representatives of Kitsumkalum may, in accordance with Federal and Provincial Law and the terms of any uses authorized by the Crown, enter, cross and stay temporarily on Crown land, at no cost to:
  - (a) deliver and manage programs and services;
  - (b) carry out inspections;
  - (c) respond to emergencies and natural disasters;
  - (d) enforce Kitsumkalum Law;
  - (e) carry out the terms of this Agreement; and
  - (f) carry out other duties under Kitsumkalum Law.
30. Unless otherwise agreed, Kitsumkalum will provide reasonable notice of entry onto Crown land under paragraph 29 to Canada or British Columbia as the case may be:
  - (a) before the entry if it is practicable to do so; or
  - (b) as soon as practicable after the entry.



31. Any person exercising a right of access in accordance with paragraph 29 will act in accordance with Federal or Provincial Law, including the payment of compensation for any damage if required by Federal or Provincial Law.
32. If an authorized use or disposition of provincial Crown land would deny Kitsumkalum reasonable access to Kitsumkalum Lands, British Columbia will provide Kitsumkalum with reasonable alternative means of access to Kitsumkalum Lands.



# GOVERNANCE



## CHAPTER 8 – SELF-GOVERNMENT

### General

1. Kitsumkalum has the right to self-government, and the authority to make laws, as set out in this Agreement.
2. For greater certainty, the authority of Kitsumkalum 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.
3. Kitsumkalum may adopt Federal or Provincial Law in respect of matters within Kitsumkalum's law-making authority set out in this Agreement.
4. The exercise of Kitsumkalum jurisdiction and authority as set out in this Agreement will evolve over time.

### Legal Status and Capacity

5. Kitsumkalum 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 any interest in property, and sell or dispose of that property or interest;
  - (c) raise, invest, expend and borrow money;
  - (d) sue and be sued; and
  - (e) do other things ancillary to the exercise of its rights, powers and privileges.
6. The rights, powers, and privileges of Kitsumkalum will be exercised in accordance with:
  - (a) this Agreement; and
  - (b) Kitsumkalum Law, including the Kitsumkalum Constitution.
7. Kitsumkalum will act through the Kitsumkalum Government in exercising its rights, powers, privileges and authorities, and in carrying out its duties, functions and obligations.

### Delegation

8. Any law-making authority of Kitsumkalum under this Agreement may be delegated by a Kitsumkalum Law to:
  - (a) a Kitsumkalum Public Institution;

- (b) another First Nation Government in British Columbia or a public institution established by one or more First Nation Governments in British Columbia;
- (c) a First Nation with a self-government agreement negotiated with British Columbia and Canada that provides for receiving delegated authority;
- (d) Canada, British Columbia or a Local Government; or
- (e) 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 Kitsumkalum Constitution.

9. Any authority of Kitsumkalum under this Agreement other than a law-making authority may be delegated by a Kitsumkalum Law to:

- (a) any body set out in paragraph 8; 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 Kitsumkalum Constitution.

10. Any delegation under paragraph 8 or paragraph 9 requires the written consent of the delegate.

11. Kitsumkalum may enter into agreements to receive authorities, including law-making authority, by delegation.

### **Structure**

12. The Kitsumkalum Government, as provided for under the Kitsumkalum Constitution and this Agreement, is the government of Kitsumkalum.

### **Kitsumkalum Constitution**

13. Kitsumkalum will have a Kitsumkalum Constitution, consistent with this Agreement, which will provide:

- (a) criteria respecting who is eligible for enrolment under this Agreement which, on the Effective Date, will be the same as paragraph 1 of Chapter 26 Eligibility and Enrolment;
- (b) for the components set out in paragraph 4 of Chapter 26 Eligibility and Enrolment;
- (c) for a democratic Kitsumkalum Government, including its duties, composition and membership;
- (d) that the majority of the members of the legislative branches of the Kitsumkalum Government will be elected;
- (e) that this Agreement sets out the authority of Kitsumkalum to make laws;

- (f) for the process for the enactment of laws by Kitsumkalum acting through the Kitsumkalum Government;
  - (g) for a process for challenging the validity of Kitsumkalum Law;
  - (h) for the establishment of Kitsumkalum Public Institutions;
  - (i) that in the event of a conflict between the Kitsumkalum Constitution and the provisions of any Kitsumkalum Law, the Kitsumkalum Law is, to the extent of the conflict, of no force or effect;
  - (j) that the Kitsumkalum Government will be democratically accountable to the Kitsumkalum Members with elections at least every five years;
  - (k) for a system of financial administration comparable to standards generally acceptable for governments in Canada, through which the Kitsumkalum Government will be financially accountable to the Kitsumkalum Members;
  - (l) for conflict of interest rules that are comparable to generally accepted conflict of interest rules for governments of similar size in Canada;
  - (m) for conditions under which Kitsumkalum may dispose of land or interests in lands;
  - (n) for recognition and protection of rights and freedoms of Kitsumkalum Members;
  - (o) that every person who is enrolled under this Agreement is entitled to be a Kitsumkalum Member,
  - (p) for a transitional Kitsumkalum Government from the Effective Date until the first elected Kitsumkalum Government takes office;
  - (q) for a process for the amendment of the Kitsumkalum Constitution; and
  - (r) for the inclusion of the Kitsumkalum *Adawx* (History and Tradition), including as set out in Kitsumkalum’s *Binder 1, March 2024*, as updated from time to time; and
  - (s) other provisions as determined by Kitsumkalum.
14. At the discretion of Kitsumkalum, the Kitsumkalum Constitution may provide for:
- (a) the appointment of Hereditary Leadership into the Kitsumkalum Government structure;
  - (b) the process for appointment of Hereditary Leadership;
  - (c) the duties of the Hereditary Leadership;
  - (d) the Kitsumkalum *Adawx* (History and Tradition) and *Waap* (House group); and
  - (e) other related matters.

15. The Kitsumkalum Constitution, once ratified in accordance with this Agreement, will come into force on the Effective Date.

### **Challenges to Validity of Kitsumkalum Laws**

16. The Provincial Court of British Columbia, the Kitsumkalum Court, or the Supreme Court of British Columbia, as the case may be, has jurisdiction to hear applications challenging the validity of Kitsumkalum Laws.

### **Appeal and Review of Administrative Decisions**

17. The Kitsumkalum Government will establish processes for appeal or review of administrative decisions made by Kitsumkalum Institutions and if those processes provide for a right of appeal to a court, the Supreme Court of British Columbia will have jurisdiction to hear those appeals.
18. The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by Kitsumkalum Institutions under Kitsumkalum Law, provided no application for judicial review of those decisions may be brought until all procedures for appeal or review provided by the Kitsumkalum Government and applicable to that decision have been exhausted.
19. The *Judicial Review Procedure Act* applies to an application for judicial review under paragraph 18 as if the Kitsumkalum Law were an “enactment” within the meaning of that *Act*.

### **Registry of Laws**

20. Kitsumkalum will:
  - (a) maintain a public registry of Kitsumkalum Law in the English language which will be the authoritative version and, at the discretion of the Kitsumkalum Government, in the Sm’algyax language;
  - (b) provide British Columbia, and upon request, Canada, with copies of Kitsumkalum Law as soon as practicable after they are enacted; and
  - (c) establish procedures for the coming into force and publication of Kitsumkalum Law.

### **Notification of Provincial Legislation**

21. Subject to paragraph 27, or an agreement under paragraph 24, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council, British Columbia will notify Kitsumkalum if:
  - (a) this Agreement provides Kitsumkalum 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 and rights referred to in paragraphs 144 to 145; or



- (c) the legislation or regulation may affect:
  - (i) the rights, powers, duties, obligations; or
  - (ii) the protections, immunities or limitations in respect of liability, referred to in paragraph 51 relating to emergency preparedness, except where this cannot be done for reasons of emergency or confidentiality.
- 22. If British Columbia does not notify Kitsumkalum under paragraph 21 for reasons of emergency or confidentiality, British Columbia will notify Kitsumkalum that the legislation has been introduced in the Legislative Assembly, or the regulation, as the case may be, has been deposited with the registrar of regulations.
- 23. Notifications under paragraphs 21 and 22 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.
- 24. Kitsumkalum and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 21 to 23 and 25.
- 25. Subject to paragraphs 26 and 27, or an agreement under paragraph 24, if, within 30 days after notice is given under paragraphs 21 or 22 or by agreement under paragraph 24, Kitsumkalum makes a written request to British Columbia, then British Columbia and Kitsumkalum will discuss the effect of the legislation or regulation, if any, on:
  - (a) a Kitsumkalum Law; or
  - (b) a matter referred to in paragraphs 21(b) or 21(c).
- 26. If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in paragraph 25:
  - (a) Kitsumkalum will be invited to participate in that process; and
  - (b) the process will be deemed to satisfy British Columbia’s obligation for discussion in respect of a particular matter under paragraph 25.
- 27. If Kitsumkalum is a member of a representative body, and with the consent of Kitsumkalum, British Columbia and that body have entered into an agreement providing for consultation in respect of matters under paragraphs 21, 22 and 25, then consultations in respect of a particular matter will be deemed to satisfy British Columbia’s obligations for notification under paragraph 21, and 22 and discussion under paragraph 25.

28. Unless British Columbia agrees otherwise, Kitsumkalum will retain the information provided under paragraphs 21 to 27 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.
29. The Parties acknowledge that nothing in paragraphs 21 to 27 is intended to interfere with British Columbia’s legislative process.
30. Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in paragraph 21 affects the validity of a Kitsumkalum Law, the Kitsumkalum Law will be deemed to be valid for a period of six months after the coming into force of the provincial legislation or regulation.

### **Kitsumkalum Government**

31. Kitsumkalum may make laws in respect of the administration, management and operation of the Kitsumkalum Government, including:
  - (a) the establishment of Kitsumkalum Public Institutions, including their respective powers, duties, composition and membership but the registration or incorporation of a Kitsumkalum Public Institution must be under Federal or Provincial Law;
  - (b) the powers, duties, responsibilities, remuneration and indemnification of members, officials and appointees of Kitsumkalum Institutions;
  - (c) the establishment of Kitsumkalum Corporations, but the registration or incorporation of Kitsumkalum Corporations must be under Federal or Provincial Law;
  - (d) financial administration of Kitsumkalum and Kitsumkalum Institutions; and
  - (e) Kitsumkalum elections, by-elections and referenda.
32. Kitsumkalum will make laws that provide for reasonable access to information in the custody or control of a Kitsumkalum Institution by:
  - (a) Kitsumkalum Members;
  - (b) Non-Member Residents; and
  - (c) persons who receive services and programs from a Kitsumkalum Institution.
33. Subject to paragraph 34, Kitsumkalum Law under paragraphs 31 or 32 prevails to the extent of a Conflict with Federal or Provincial Law
34. Federal or Provincial Law in respect of the protection of personal information prevails to the extent of a Conflict with Kitsumkalum Law under paragraphs 31 or 32.

### **Citizenship**

35. Kitsumkalum may make laws in respect of Kitsumkalum citizenship.

36. Kitsumkalum citizenship does 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) impose any obligation on British Columbia or Canada to provide rights or benefits, except as set out in this Agreement or in any Federal or Provincial Law.
37. A Kitsumkalum Law under paragraph 35 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Devolution of Cultural Property**

38. In paragraphs 39 to 44, “cultural property” means:
- (a) ceremonial regalia and similar personal property associated with a Kitsumkalum chief or clan; and
  - (b) other personal property which has cultural significance to Kitsumkalum.
39. Kitsumkalum may make laws for the devolution of cultural property of a Kitsumkalum Member who dies without a valid will.
40. Kitsumkalum Law under paragraph 39 prevails to the extent of a Conflict with Federal or Provincial Law.
41. Kitsumkalum has standing in any judicial proceeding in which:
- (a) the validity of a will of a Kitsumkalum Member; or
  - (b) the devolution of cultural property of a Kitsumkalum Member,
- is at issue, including any proceedings under wills variation legislation.
42. Kitsumkalum may commence an action under provincial wills variation legislation with respect to cultural property addressed by the will of a Kitsumkalum Member that provides for a devolution of cultural property.
43. In proceedings to which paragraphs 41 or 42 applies, a court will consider, among other matters, any evidence and representations in respect of Kitsumkalum Law and customs relating to the devolution of cultural property.
44. The participation of Kitsumkalum in proceedings pursuant to paragraphs 41 or 42 will be in accordance with the applicable rules of court and will not affect the court’s ability to control its process.

**Kitsumkalum Assets**

45. Kitsumkalum may make laws in respect of the use, possession, disposition and management of assets of Kitsumkalum, a Kitsumkalum Corporation or a Kitsumkalum Public Institution located:
  - (a) on Kitsumkalum Lands; and
  - (b) off Kitsumkalum Lands.
46. Kitsumkalum Law under paragraph 45(a) prevails to the extent of a Conflict with Federal or Provincial Law.
47. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 45(b).
48. For greater certainty, the law making authority under paragraph 45 does not include authority to make laws regarding creditors' rights and remedies.

**Peace, Order, and Public Safety**

49. Kitsumkalum may make laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Kitsumkalum Lands that constitute, or may constitute, a nuisance, a trespass, a threat to public order, peace or safety or a danger to public health.
50. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 49.

**Emergency Preparedness**

51. Kitsumkalum has:
  - (a) the rights, powers, duties, and obligations; and
  - (b) the 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 Kitsumkalum Lands.
52. Kitsumkalum may make laws in respect of its rights, powers, duties, and obligations under paragraph 51.
53. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 52.
54. For greater certainty, the Kitsumkalum 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 under Federal and Provincial Law.

55. 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.
56. Kitsumkalum may access emergency management support programs in the same manner that local authorities access such programs from Canada and British Columbia.

### **Regulation of Business**

57. Kitsumkalum may make laws in respect of the regulation, licensing and prohibition of business on Kitsumkalum Lands, including the imposition of licence fees or other fees.
58. Unless otherwise provided in this Agreement, Kitsumkalum law-making authority under paragraph 57 does not include the authority to make laws in respect of the accreditation, certification or professional conduct of individuals engaged in professions and trades.
59. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 57.

### **Buildings and Structures**

60. Kitsumkalum may make laws in respect of the design, construction, maintenance, repair and demolition of public works, buildings and structures on Kitsumkalum Lands.
61. Kitsumkalum Law may only establish standards that are different than or additional to the *British Columbia Building Code* pursuant to an agreement with British Columbia under paragraph 62.
62. At the request of Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach an agreement to enable Kitsumkalum to establish standards for buildings or structures which are additional to or different from the standards established by the *British Columbia Building Code*.
63. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 60.
64. Kitsumkalum is responsible for the enforcement of the *British Columbia Building Code* on Kitsumkalum Lands.

### **Public Works**

65. Kitsumkalum may make laws in respect of public works and related services on Kitsumkalum Lands.
66. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 65.

**Traffic, Parking, Transportation, and Highways**

67. Kitsumkalum may make laws in respect of parking, traffic, transportation and highways on Kitsumkalum Lands to the same extent as municipalities in British Columbia.
68. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 67.

**Health**

69. Kitsumkalum may make laws in respect of health services on Kitsumkalum Lands:
  - (a) for Kitsumkalum Members; or
  - (b) provided by a Kitsumkalum Institution.
70. Kitsumkalum Law under paragraph 69 will take into account the protection, improvement and promotion of public and individual health and safety.
71. Kitsumkalum Law under paragraph 69 does not apply to health services provided by a provincially-funded health institution, agency or body, other than an institution, agency or body established by Kitsumkalum.
72. At the request of any Party, the Parties will negotiate and attempt to reach agreement on the delivery and administration of federal and provincial health services and programs by a Kitsumkalum Institution for individuals residing on Kitsumkalum Lands
73. Where agreed to by the Parties, the Parties will enter into discussions regarding the delivery and administration of federal and provincial health services and programs by a Kitsumkalum Institution for individuals residing off Kitsumkalum Lands.
74. Subject to paragraph 75, Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 69.
75. Kitsumkalum Law under paragraph 69 in respect of the organization and structure of a Kitsumkalum Institution used to deliver health services on Kitsumkalum Lands prevails to the extent of a Conflict with Federal or Provincial Law.

**Aboriginal Healers**

76. Kitsumkalum may make laws in respect of authorization, licensing and regulation of persons to practice as aboriginal healers within Kitsumkalum Lands.
77. The authority to make laws under paragraph 76 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.

78. Any Kitsumkalum Law under paragraph 76 will include 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.
79. Kitsumkalum Law under paragraph 76 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Family and Social Services**

80. Kitsumkalum may make laws in respect of family and social services, including income assistance, social development, housing and family and community services, provided by a Kitsumkalum Institution.
81. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 80.
82. Kitsumkalum law-making authority under paragraph 80 does not include the authority to make laws in respect of the licensing and regulation of facility-based services off Kitsumkalum Lands.
83. If Kitsumkalum makes laws under paragraph 80, at the request of any Party, the Parties will negotiate and attempt to reach agreements in respect of exchange of information with regards to avoidance of double payments, and related matters.
84. At the request of any Party, the Parties will negotiate and attempt to reach agreements for administration and delivery by a Kitsumkalum Institution of federal or provincial social services and programs for all individuals residing on Kitsumkalum Lands.

### **Child and Family Services**

85. Kitsumkalum may make laws in relation to Child and Family Services:
- (a) for Children of Kitsumkalum Families; and
  - (b) if an agreement is reached under paragraph 92(b) and subject to that agreement, for Children who are not members of Kitsumkalum Families.
86. Kitsumkalum Law under paragraph 85 will:
- (a) expressly provide that those laws will be interpreted and administered such that the best interests of the Child are the paramount considerations;
  - (b) not preclude the reporting, under any applicable law, of a Child in need of protection; and
  - (c) provide for the collection, use, disclosure and security of Child and Family Services information.

87. Kitsumkalum Law under paragraph 85 must be consistent with any minimum standards set out in Federal Law that are applicable, on a national level, to the provision of Child and Family Services in relation to Indigenous children.
88. If Kitsumkalum makes laws under paragraph 85, Kitsumkalum will establish and maintain a system for the management, storage and disposal of Child and Family Services records and the safeguarding of personal Child and Family Services information.
89. Notwithstanding any laws under paragraph 85, if there is an emergency in which a Kitsumkalum Child is in need of protection, and Kitsumkalum has not responded or is unable to respond in a timely manner, British Columbia may act to protect the Kitsumkalum Child and, unless British Columbia and Kitsumkalum otherwise agree in writing, British Columbia will refer the matter to Kitsumkalum after the emergency.
90. If Kitsumkalum has made a law under paragraph 85, and there is an emergency in which the Child under British Columbia's authority is a child in need of protection, Kitsumkalum may act to protect the Child and unless British Columbia and Kitsumkalum otherwise agree in writing, Kitsumkalum will refer the matter to British Columbia after the emergency.
91. Kitsumkalum Law under paragraph 85 prevails to the extent of a Conflict with Federal or Provincial Law.
92. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement in respect of Child and Family Services for:
  - (a) Children of Kitsumkalum Families who reside on or off Kitsumkalum Lands; or
  - (b) Children who are not members of Kitsumkalum Families and who reside on Kitsumkalum Lands.
93. Where the Director becomes the guardian of a Kitsumkalum Child, the Director will contact Kitsumkalum and will make reasonable efforts to include Kitsumkalum in planning for the Kitsumkalum Child, including adoption planning.
94. Kitsumkalum and the Minister or a Director designated under the *Child, Family and Community Service Act* may enter into an agreement, in accordance with Provincial Law, that has the effect of:
  - (a) imposing specific duties or restrictions on a Director; or
  - (b) requiring that specific services be provided or not provided by a Director.

### **Guardianship**

95. Kitsumkalum will have standing in any judicial proceedings in British Columbia in which guardianship of a Kitsumkalum Child is in dispute, and the court will consider, among other matters, any evidence and representations concerning Kitsumkalum Law and customs.
96. The participation of Kitsumkalum pursuant to paragraph 95 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.



**Adoption**

97. Kitsumkalum may make laws in respect of adoptions in British Columbia for:
- (a) Kitsumkalum Children; and
  - (b) Children who reside on Kitsumkalum Lands to be adopted by Kitsumkalum Members.
98. Kitsumkalum Law under paragraph 97 will:
- (a) expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place;
  - (b) provide for the consent of individuals whose consent to a Child’s adoption is required under Provincial Law, subject to the power of a court to dispense with such consent;
  - (c) provide for the collection, use, disclosure and security of information; and
  - (d) not preclude an adoption under Provincial Law or limit a court’s power to dispense with consent to an adoption under Provincial Law.
99. If Kitsumkalum makes laws under paragraph 97, Kitsumkalum will provide British Columbia and Canada with a record of all adoptions occurring under Kitsumkalum Law.
100. The Parties will negotiate and attempt to reach agreement on the information that will be included in the record provided under paragraph 99.
101. Kitsumkalum Law under paragraph 97 prevails to the extent of a Conflict with Federal or Provincial Law.
102. If a Director designated under Provincial Law becomes the guardian of a Kitsumkalum Child, the Director will:
- (a) provide notice to Kitsumkalum that the Director is the guardian of the Kitsumkalum Child;
  - (b) provide notice to Kitsumkalum when the Director applies for continuing custody order;
  - (c) provide Kitsumkalum with a copy of the continuing custody order once the order is made and make reasonable efforts to involve Kitsumkalum in planning for the Kitsumkalum Child;
  - (d) if requested by Kitsumkalum, consent to the application of Kitsumkalum Law to the adoption of that Kitsumkalum Child, provided that it is in the best interests of the Kitsumkalum Child; and
  - (e) in determining the best interests of the Kitsumkalum Child under paragraph 102(d), consider the importance of preserving the Kitsumkalum Child’s cultural identity.

103. Before placing a Kitsumkalum Child for adoption, a Director or an adoption agency under the *Adoption Act* must:
- (a) make all reasonable efforts to obtain information about the Kitsumkalum Child’s cultural identity and preserve the information for the child, and
  - (b) discuss and collaborate about the Kitsumkalum Child’s placement with a designated representative of Kitsumkalum.

### **Child Care**

104. Kitsumkalum may make laws in respect of Child Care services on Kitsumkalum Lands.
105. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law made under paragraph 104.

### **Language and Culture Education**

106. Kitsumkalum may make laws applicable on Kitsumkalum Lands in respect of education in Sm’algyax language and Tsimshian culture provided by a Kitsumkalum Institution, including:
- (a) the certification and accreditation of teachers of Sm’algyax language and Tsimshian culture;
  - (b) the development and teaching of Sm’algyax language and Tsimshian culture curriculum.
107. Kitsumkalum Law under paragraph 106 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Kindergarten to Grade 12 Education**

108. Kitsumkalum may make laws in respect of kindergarten to grade 12 education provided by a Kitsumkalum Institution on Kitsumkalum Lands.
109. Kitsumkalum Law under paragraph 108 will:
- (a) establish curriculum, examination and other standards that permit the transfer 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, other than for the teaching of Sm’algyax language and Tsimshian culture, of teachers by a Kitsumkalum Institution, or a body recognized by British Columbia in accordance with standards comparable to standards under Provincial Law applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
110. Kitsumkalum may make laws in respect of kindergarten to grade 12 home education of Kitsumkalum Members on Kitsumkalum Lands.

111. Kitsumkalum Law under paragraphs 108 and 110 prevails to the extent of a Conflict with Federal or Provincial Law.
112. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach an agreement concerning the provision of kindergarten to grade 12 education by a Kitsumkalum Institution to:
  - (a) individuals other than Kitsumkalum Members residing on Kitsumkalum Lands; or
  - (b) Kitsumkalum Members residing off Kitsumkalum Lands.

### **Post Secondary Education**

113. Kitsumkalum may make laws in respect of post-secondary education provided by a Kitsumkalum Institution on Kitsumkalum Lands, including:
  - (a) the establishment of post-secondary institutions with the ability to grant degrees, diplomas or certificates;
  - (b) the determination of the curriculum for post-secondary education institutions established by Kitsumkalum; and
  - (c) the provision for and coordination of adult education programs.
114. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 113

### **Solemnization of Marriages**

115. Kitsumkalum may make laws in respect of:
  - (a) the marriage rites and ceremonies of the Kitsumkalum culture; and
  - (b) the designation of Kitsumkalum Members to solemnize marriages.
116. Nothing in the *Marriage Act* will be construed as in any way preventing Kitsumkalum from solemnizing, according to the rites and ceremonies of the Kitsumkalum 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 Kitsumkalum Members.
117. A marriage may not be solemnized under Kitsumkalum Law unless the individuals intending to marry possess a valid marriage licence.

118. For the purposes of paragraph 117, marriage licences may only be issued by Kitsumkalum where:
- (a) Kitsumkalum 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*.
119. Immediately after the solemnization of the marriage, a representative designated under paragraph 115(b) 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 Kitsumkalum for that purpose; and
  - (b) by providing the original registration to the chief executive officer under the *Vital Statistics Act*.
120. 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 Kitsumkalum and compare it with the registrations returned by Kitsumkalum under paragraph 119(b).
121. The record under paragraph 119(a) must be signed:
- (a) by each of the parties to the marriage;
  - (b) by two witnesses; and
  - (c) by a representative designated under paragraph 115(b).
122. A representative designated under paragraph 115(b) 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.
123. Subject to paragraphs 116 to 122, a Kitsumkalum Law under paragraph 115 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Liquor Control**

124. Kitsumkalum may make laws in respect of prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on Kitsumkalum Lands.
125. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 124.
126. British Columbia will approve all applications made by or with the consent of Kitsumkalum for a licences, permit or other authority to sell liquor on Kitsumkalum Lands, where the proposed sale complies with applicable Provincial Law.

127. British Columbia will not issue a licence, permit or other authority to sell liquor on Kitsumkalum Lands without the consent of Kitsumkalum.
128. A person with a licence, permit, or other authority to sell liquor on Kitsumkalum Lands must purchase liquor from the British Columbia Liquor Distribution Branch or from any person authorized to sell liquor by the British Columbia Liquor Distribution Branch, in accordance with Federal and Provincial Law.
129. British Columbia will, in accordance with Provincial Law, authorize persons designated by Kitsumkalum to approve or deny applications for special occasion licences to sell liquor on Kitsumkalum Lands.

### **Access to Long Term Debt Financing**

130. Despite any other provision in this Agreement, if Kitsumkalum becomes a borrowing member pursuant to the *First Nations Fiscal Management Act* and regulations made under it, as adapted by regulations made under section 141 of that Act (the “Adapted FNFMA”),
  - (a) provisions of the Adapted FNFMA relating to
    - (i) obligations of borrowing members of the First Nations Finance Authority (the “Authority”);
    - (ii) rights of the Authority as a creditor; and
    - (iii) powers and authorities of the First Nations Financial Management Board (the “Board”) relating to co-management or third-party management,prevail to the extent of any inconsistency or conflict with a provision of this Agreement, or with Kitsumkalum Law;
  - (b) for greater certainty, provisions of this Agreement and Kitsumkalum Law which restrict or impose a condition precedent on any obligation, right, power or authority referenced in paragraph (a) do not apply;
  - (c) notwithstanding paragraph (a), the Authority and the Board may not cause the disposition of real property of Kitsumkalum without the prior written approval of Kitsumkalum; and
  - (d) for greater certainty, nothing in paragraph 130(a) precludes British Columbia from establishing in a Provincial Law or in an agreement between British Columbia and Kitsumkalum, terms, conditions or limitations on Kitsumkalum as to the expenditure of funds that British Columbia provides to Kitsumkalum or restricts the application of such terms, conditions or limitations to Kitsumkalum or the Board to the extent that the Board is acting in place of Kitsumkalum.

**Limitations on Creditor Remedies**

131. No creditor will have any remedy against an estate, interest, reservation or exception in any parcel of Kitsumkalum Land held by Kitsumkalum or a Kitsumkalum Public Institution if the land has not been registered in the provincial Land Title Office or a Kitsumkalum land registry system under paragraph 123(c) of Chapter 3 Kitsumkalum Lands.
132. Before granting a security instrument in an estate, interest, reservation or exception in a parcel of unregistered Kitsumkalum Land held by Kitsumkalum or a Kitsumkalum Public Institution, Kitsumkalum will:
  - (a) enact a law authorizing the granting of security interests; and
  - (b) register the indefeasible title to the parcel under the *Land Title Act* or a Kitsumkalum land registry system under paragraph 123(c) of Chapter 3 Kitsumkalum Lands in accordance with this Agreement.
133. Only for the purposes of the *Land Title Act*, the registration of a security instrument against registered Kitsumkalum Land held by Kitsumkalum or a Kitsumkalum Public Institution will be conclusively deemed to be properly executed where it meets the requirements under Schedule 1 of the *Land Title Act*.
134. Subject to paragraph 135, no unsecured creditor will have a remedy against Essential Personal Property, and no unsecured creditor will have a remedy against a parcel of registered land held by Kitsumkalum or a Kitsumkalum Public Institution, unless the Supreme Court of British Columbia makes an order granting the creditor a remedy against such property at a time and on any such conditions as the court consider proper.
135. The court will consider the following factors in determining whether to grant an unsecured creditor under paragraph 134 an application for a remedy against a parcel of registered Kitsumkalum Land or Essential Personal Property
  - (a) whether granting the application is likely to result in the insolvency of Kitsumkalum or a Kitsumkalum Public Institution, as applicable;
  - (b) the effect of granting the application on the delivery of programs or services provided by Kitsumkalum or a Kitsumkalum Public Institution at the time of the application; and
  - (c) whether the creditor has exhausted all other reasonable remedies, including obtaining a court order to realize on personal property, other than Essential Personal Property, of Kitsumkalum or of a Kitsumkalum Public Institution, as applicable.
136. Notwithstanding paragraph 134, no creditor will have any remedy against a Kitsumkalum Artifact held by Kitsumkalum, a Kitsumkalum Public Institution or a Kitsumkalum Member provided that the Kitsumkalum Artifact is not offered for sale.

**Kitsumkalum Government Liability*****Members of Kitsumkalum Government***

137. No action for damages lies or may be instituted against a member or former member of the executive or legislative branches of the Kitsumkalum Government for:
- (a) anything said or done, or omitted to be said or done, by or on behalf of Kitsumkalum or the Kitsumkalum Government by somebody other than that individual while that individual 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 Kitsumkalum or the Kitsumkalum 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 that individual's duty or the exercise of that 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.
138. Paragraphs 137(c) and 137. (d) 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.
139. Paragraphs 137(c) and 137(d) do not absolve Kitsumkalum from vicarious liability arising out of a tort committed by a member or former member of the Kitsumkalum Government for which Kitsumkalum would have been liable had those paragraphs not been in effect.

***Kitsumkalum Public Officers***

140. No action for damages lies or may be instituted against a Kitsumkalum Public Officer or former Kitsumkalum 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.
141. Paragraph 140 does not provide a defence if:
- (a) the Kitsumkalum 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.
142. Paragraph 140 does not absolve any of the corporations or bodies referred to in the definition of Kitsumkalum Public Officer from vicarious liability arising out of a tort committed by a Kitsumkalum Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.
143. Notwithstanding paragraph 140, except as may be otherwise provided under Federal or Provincial Law, a Kitsumkalum Public Officer does not have protections, immunities or limitations in respect of liability in respect of the provision of a service, if no persons delivering reasonably similar programs or services under Federal or Provincial Law have protections, immunities or limitations in respect of liability and rights under Federal or Provincial Law.

#### ***Kitsumkalum and the Kitsumkalum Government***

144. Kitsumkalum and the Kitsumkalum Government have the protections, immunities, limitations in respect of liability and remedies over provided to a municipality and its municipal council under provincial legislation in respect of the provision of comparable programs and services.
145. Subject to paragraph 1(b) of Chapter 7 Access, Kitsumkalum 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 Kitsumkalum Lands used by the public, or by industrial or resource users, if Kitsumkalum is the occupier of that road.

#### **Non-Member Resident Representation**

146. Kitsumkalum Institutions will engage with Non-Member Residents in decisions of Kitsumkalum Institutions that directly and significantly affect those Non-Member Residents.
147. Kitsumkalum will provide Non-Member Residents with access to the appeal and review procedures that may be established under paragraph 17 in respect of administrative decisions that directly and significantly affect Non-Member Residents.

#### **Transitional Provisions**

##### ***Kitsumkalum Government***

148. The chief councillor and councillors of the Kitsumkalum Band under the *Indian Act* on the day immediately before the Effective Date are deemed the elected members of the Kitsumkalum Government from the Effective Date until the office holders elected in the first election take office.
149. The first election for the officers of the Kitsumkalum Government will be initiated no later than six months after the Effective Date and the office holders elected in the election will take office no later than one year after the Effective Date.



***Law-making by Kitsumkalum***

150. Before Kitsumkalum makes a Kitsumkalum Law in respect of adoption, Child and Family Services, health services, family and social services, Child Care, or kindergarten to grade 12 education, Kitsumkalum will give at least six months written notice of its intention to exercise the law-making authority to Canada and British Columbia.
151. Upon agreement by the Parties, Kitsumkalum may exercise a law-making authority before the expiration of the six month notice period required in accordance with paragraph 150.
152. At the written request of Canada or British Columbia made within three months of receiving notice under paragraph 150, the relevant Parties will discuss:
  - (a) options to address the interests of Kitsumkalum through methods other than the exercise of law-making authority;
  - (b) immunity of individuals providing services or exercising authority under Kitsumkalum Law;
  - (c) co-ordination between individuals providing services or exercising authority under Kitsumkalum Laws and other service providers;
  - (d) any transfer of cases and related documentation from federal or provincial institutions to Kitsumkalum Institutions, including any confidentiality and privacy considerations;
  - (e) any transfer of assets from Federal or Provincial institutions to Kitsumkalum Institutions;
  - (f) any appropriate amendments to Federal or Provincial Law, including amendments to address duplicate licensing requirements;
  - (g) the relationship of Kitsumkalum Law with other Indigenous law; and
  - (h) other matters agreed to by the Parties.
153. The Parties may enter into agreements regarding any of the matters set out in paragraph 151 or 152, but an agreement under this paragraph is not a condition precedent to the exercise of law-making authority by Kitsumkalum, and such authority may be exercised immediately following the six-month notice period, or the notice period agreed upon in accordance with paragraph 151.



## CHAPTER 9 – ADMINISTRATION OF JUSTICE

### PART 1 - POLICING AND ENFORCEMENT OF FEDERAL LAW AND PROVINCIAL

#### LAW1(a) - Policing and Enforcement of Federal Law and Provincial Law by Police Service

##### Policing and Enforcement Services on Kitsumkalum Lands

1. As set out in the *Police Act*, the Minister must ensure that an adequate and effective level of policing and law enforcement is maintained on Kitsumkalum Lands.
2. British Columbia must provide policing and law enforcement services on Kitsumkalum Lands as if they were a rural area of the Province under the *Police Act*, unless Kitsumkalum has, in accordance with the *Police Act*:
  - (a) established a Police Service; or
  - (b) entered into an agreement for equivalent policing and law enforcement services.
3. At the request of Kitsumkalum and after the applicable local government and police board have agreed to participate in negotiations, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement regarding the policing and law enforcement services referred to in paragraph 2(b).
4. Canada will be a party to the negotiations referred to in paragraph 3 where necessary to facilitate an orderly transition between Police Services and, in any other case, after following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 3.
5. Kitsumkalum may develop and provide a cultural training program, specific to the needs of Kitsumkalum and supplemental to provincial or federal requirements, for officers of the Police Service responsible for providing policing and law enforcement on Kitsumkalum Lands as part of their regular duties.
6. Kitsumkalum and the Chief of Police will discuss objectives and operational matters that may affect the scope, content and delivery of the cultural training program to the applicable Police Service prior to finalizing the cultural training program developed under paragraph 5.
7. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement regarding the delivery of the cultural training program developed by Kitsumkalum under paragraph 5, including the timing, duration, frequency and delivery method of the cultural training program.
8. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 7.
9. At the request of Kitsumkalum, the Chief of Police will engage with Kitsumkalum on the development of priorities, goals and objectives for the delivery of policing and law enforcement services on Kitsumkalum Lands.

10. After engaging with the Chief of Police, Kitsumkalum may, every two years, set priorities, goals and objectives for the delivery of policing and law enforcement services on Kitsumkalum Lands, taking into account the priorities, goals and objectives for policing and law enforcement in British Columbia established by the Minister.
11. Kitsumkalum will provide a copy of any priorities, goals and objectives set under paragraph 10 to the Minister and the Chief of Police.
12. The Chief of Police will:
  - (a) take into account the priorities, goals and objectives provided under paragraph 11 for the purpose of providing policing and law enforcement services on Kitsumkalum Lands; and
  - (b) unless the Chief of Police and Kitsumkalum otherwise agree, provide a written report to Kitsumkalum each year on the implementation of the priorities, goals and objectives provided under paragraph 11.

#### **Additional Policing and Enforcement Services on Kitsumkalum Lands**

13. For greater certainty, nothing in this Agreement affects or limits Kitsumkalum from participating in or benefiting from federal or provincial programs in relation to policing and law enforcement services in accordance with criteria established for those programs from time to time.

#### **1(b) - Enforcement of Federal Law and Provincial Law by Kitsumkalum Enforcement Officers**

##### **Enforcement of Federal Law respecting Fisheries**

14. The enforcement of Federal Law respecting fisheries by Kitsumkalum Enforcement Officers is set out in paragraphs 150 and 151 of Chapter 21 Fish.

##### **Enforcement of Federal Law respecting Species at Risk, Migratory Birds and Environment**

15. Canada and Kitsumkalum may negotiate an agreement for the enforcement of Federal Law respecting Species at Risk, Migratory Birds or the environment.

##### **Enforcement of Provincial Law respecting Natural Resources**

16. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on an agreement for Kitsumkalum Enforcement Officers to enforce Provincial Laws respecting natural resources within the Impact Assessment Area.
17. The agreement referred to in paragraph 16 may address the following matters:
  - (a) training programs for Kitsumkalum Enforcement Officers;
  - (b) cooperation between British Columbia and Kitsumkalum in enforcement efforts;

- (c) training and qualifications required in order for the Minister to consider granting Kitsumkalum Enforcement Officers authority to enforce Provincial Law;
  - (d) scope of authority of Kitsumkalum Enforcement Officers if the Minister grants those officers authority to enforce Provincial Law;
  - (e) responsibilities of Kitsumkalum as the employer of Kitsumkalum Enforcement Officers in the enforcement of Provincial Law; and
  - (f) any other matter to which British Columbia and Kitsumkalum may agree.
18. For greater certainty, nothing in this Agreement or the agreement referred to in paragraph 16 affects or limits the discretion of the Minister with respect to authorizing individuals to enforce Provincial Law or removes any requirement under Provincial Law for Ministerial authorization of individuals to enforce Provincial Law.

## **PART 2 - ENFORCEMENT OF KITSUMKALUM LAW**

### **2(a) - General**

#### **Responsibility for Enforcement of Kitsumkalum Law**

19. Kitsumkalum is responsible for the enforcement of Kitsumkalum Law.
20. Kitsumkalum may make laws for the enforcement of Kitsumkalum Law.
21. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 20.

#### **Enforcement of Kitsumkalum Laws by Police Service**

22. Notwithstanding paragraph 19 and unless otherwise specified by Kitsumkalum Law, a Police Service has the authority to, and may in its discretion, enforce Kitsumkalum Law.
23. Notwithstanding paragraph 21, Kitsumkalum Law under paragraph 22 prevails to the extent of a Conflict with Federal or Provincial Law.
24. At the request of Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement regarding the enforcement of Kitsumkalum Law by a Police Service or other Provincial enforcement service, taking into account the enforcement authorities and capabilities of the different types of enforcement officers and the nature of Kitsumkalum Laws that will be the subject of enforcement.
25. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 24.

#### **Enforcement of Kitsumkalum Laws by Kitsumkalum Enforcement Officers**

26. Kitsumkalum may make laws that provide for the appointment of Kitsumkalum Enforcement Officers to enforce Kitsumkalum Law.

27. A Kitsumkalum Law under paragraph 26:
  - (a) will set out the powers and duties of Kitsumkalum Enforcement Officers;
  - (b) may designate Kitsumkalum Enforcement Officers as peace officers for the purposes of carrying out the duties set out under Kitsumkalum Law; and
  - (c) may provide Kitsumkalum Enforcement Officers with protections and immunities.
28. Kitsumkalum Enforcement Officers are not peace officers for the purposes of administering or enforcing Federal or Provincial Law, except in accordance with an agreement under paragraph 15 or 16 or paragraph 150 of Chapter 21 Fish.
29. The powers, protections and immunities referred to in paragraph 27 will not exceed those provided by Federal or Provincial Law for persons enforcing similar laws or performing similar duties in British Columbia.
30. The Parties agree as a general principle that Kitsumkalum be in a position to support the safety of Kitsumkalum Enforcement Officers, having regard for federal and provincial legal frameworks with respect to non-restricted firearms, restricted firearms, prohibited firearms and prohibited weapons, in a manner that is comparable to federal and provincial enforcement officers enforcing similar laws or performing similar duties in British Columbia.
31. Prior to the Effective Date, the appropriate Parties will explore measures and mechanisms, with a view to implementation, that are necessary to support the safety of Kitsumkalum Enforcement Officers in relation to paragraph 30.
32. Kitsumkalum law-making authority under paragraph 26 does not include the authority to establish a police force, but nothing in this Agreement prevents Kitsumkalum from establishing a Police Service under Provincial Law.
33. If Kitsumkalum appoints Kitsumkalum Enforcement Officers in accordance with a Kitsumkalum Law under paragraph 26, Kitsumkalum will:
  - (a) ensure that those officers are adequately trained to carry out their duties, having regard to training requirements for provincial or federal enforcement officers carrying out similar duties in British Columbia;
  - (b) establish accountability standards similar to those established by Canada and British Columbia for its enforcement officials enforcing similar laws; and,
  - (c) establish and implement procedures for responding to complaints against those officers.
34. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 26.
35. For greater certainty, Kitsumkalum may, by a proceeding brought in the Supreme Court of British Columbia, seek injunctive or other relief to prevent or restrain the contravention of a Kitsumkalum Law.

**Enforcement of Kitsumkalum Fisheries Laws by Fishery Officers and Fishery Guardians**

36. The enforcement of Kitsumkalum Fisheries Laws by Fishery Officers and Fishery Guardians is set out in paragraphs 144 to 149 of Chapter 21 Fish.

**Enforcement of Kitsumkalum Law Respecting Species at Risk, Migratory Birds, and the Environment**

37. Canada and Kitsumkalum may negotiate an agreement for the enforcement of Kitsumkalum Law respecting Species at Risk, Migratory Birds or the environment.
38. The powers and protections that a federal enforcement officer has under any Act of Parliament, including the powers and protections of a peace officer under the *Criminal Code*, apply to a federal enforcement officer enforcing Kitsumkalum Laws.

**Enforcement of Kitsumkalum Laws Respecting Lands and Natural Resources by Provincial Enforcement Officers**

39. Notwithstanding paragraph 19, Provincial Enforcement Officers have the authority to, and may in their discretion, enforce Kitsumkalum Law respecting lands and natural resources.
40. Kitsumkalum may make laws to limit the authority of Provincial Enforcement Officers under paragraph 39.
41. Notwithstanding paragraph 21, Kitsumkalum Law under paragraph 40 prevails to the extent of a Conflict with Federal or Provincial Law.
42. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement regarding the enforcement of one or more Kitsumkalum Laws respecting lands and natural resources by Provincial Enforcement Officers, taking into account the enforcement authorities and capabilities of those officers.
43. The agreement referred to in paragraph 42 may address the following matters:
- (a) cultural training of Provincial Enforcement Officers;
  - (b) opportunities to develop the capacity of Kitsumkalum Enforcement Officers;
  - (c) operational matters, including enforcement procedures and cultural protocols; and
  - (d) any other matter to which the Parties may agree.

**Enforcement of Kitsumkalum Laws by other External Enforcement Agencies**

44. Canada or British Columbia and Kitsumkalum may negotiate an agreement, other than those referred to in paragraphs 24, 37 and 42 and paragraph 147 of Chapter 21 Fish, for the enforcement of Kitsumkalum Law by a federal or provincial enforcement agency.

**2(b) – Administrative Sanctions**

45. Kitsumkalum law-making authority under paragraph 20 includes the power to:
- (a) establish administrative requirements, including rules, standards or conditions; and
  - (b) provide for the imposition of administrative sanctions for the violation of administrative requirements, including:
    - (i) a monetary penalty not exceeding:
      - 1. the general limit for offences under section 787(1) of the *Criminal Code*; or
      - 2. that which may be imposed for comparable violations of administrative requirements under Federal or Provincial Law;
 whichever is greater;
    - (ii) suspension, restriction or revocation of a licence or other authorization;
    - (iii) seizure of personal property;
    - (iv) suspension of or restriction on access to or use of real property on Kitsumkalum Lands;
    - (v) suspension of a service; or
    - (vi) other administrative sanctions.

**2(c) - Offences**

**Offences**

46. Kitsumkalum law-making authority under paragraph 20 includes the power to:
- (a) establish offences punishable on summary conviction; and
  - (b) provide for penalties or alternative measures in respect of those offences, including:
    - (i) a fine of not more than
      - 1. the general limit for offences under section 787(1) of the *Criminal Code*, or
      - 2. that which may be imposed for comparable offences punishable by way of summary conviction under Federal or Provincial Law,
 whichever is greater;
    - (ii) a term of imprisonment of not more than two years less a day



- (iii) restorative justice measures;
  - (iv) community service;
  - (v) restitution; or
  - (vi) other penalties or alternative measures.
47. Notwithstanding paragraph 46, a Kitsumkalum Law with respect to taxation may provide for:
- (a) a fine that exceeds the limit set out in paragraph 46(b)(i); or
  - (b) a term of imprisonment that exceeds the limit set out in paragraph 46(b)(ii),
- where there is an agreement to that effect as contemplated under Chapter 24 Tax.

### **PART 3 – ADJUDICATION AND JUDICIAL MATTERS**

#### ***3(a) – Adjudicative Bodies***

##### **Establishment of Adjudicative Bodies**

48. Kitsumkalum may make laws that provide for:
- (a) the constitution, maintenance and organization of Adjudicative Bodies for the effective administration of Kitsumkalum Law;
  - (b) the appointment, authorization or designation of Adjudicators to hear:
    - (i) disputes of administrative sanctions issued under Kitsumkalum Law; or
    - (ii) other internal appeals or reviews of decisions made under Kitsumkalum Law; and
  - c) rules of procedure that apply to proceedings before Adjudicators and Adjudicative Bodies.
49. Kitsumkalum Law under paragraph 48 prevails to the extent of a Conflict with Federal or Provincial Law.

##### **Powers of Adjudicators**

50. An Adjudicator has all the powers necessary to perform their duties and functions.
51. Notwithstanding paragraph 50, an Adjudicator does not have the power to:
- (a) hear offences established under Kitsumkalum Law; or
  - (b) perform the functions enumerated in paragraphs 85 and 86.

**Judicial Review and Statutory Appeal in respect of Determinations of Adjudicators**

52. The Supreme Court of British Columbia has jurisdiction to hear:
- (a) statutory appeals; and
  - (b) applications for judicial review,
- in respect of determinations of Adjudicators and Adjudicative Bodies.
53. A statutory appeal or an application for judicial review under paragraph 52 may not be brought until all applicable internal processes for appeal or review established by Kitsumkalum have been exhausted.
54. For greater certainty, if Kitsumkalum has established applicable internal processes for appeal or review of an administrative sanction, the reviewable determination under paragraph 53 is that of the Adjudicator person or Adjudicative Body hearing the final internal appeal or review.
55. A Kitsumkalum Law may:
- (a) limit the grounds of statutory appeal;
  - (b) include a privative clause; or
  - (c) prescribe the standard of review
- in respect of determinations of Adjudicators or Adjudicative Bodies on any matters within its jurisdiction.
56. Kitsumkalum Law under paragraph 55 prevails to the extent of a Conflict with Federal or Provincial Law.

***3(b) – Prosecution of offences*****Prosecution**

57. Kitsumkalum is responsible for the prosecution of offences established under Kitsumkalum Law, including any related appeals.
58. Kitsumkalum may make laws that provide for the appointment, functions and responsibilities of Kitsumkalum Prosecutors to prosecute offences under Kitsumkalum Laws in:
- (a) Kitsumkalum Court; or
  - (b) Provincial Court in accordance with Provincial Law.
59. Prosecution of an offence established under Kitsumkalum Law will be conducted:
- (a) if Kitsumkalum has established a Kitsumkalum Court with the jurisdiction to hear that offence, in Kitsumkalum Court in accordance with Kitsumkalum Law; or

- (b) if Kitsumkalum has not established a Kitsumkalum Court with the jurisdiction to hear that offence, in the Provincial Court of British Columbia in accordance with the *Offence Act*.
60. For greater certainty, where a prosecution is conducted under paragraph 59(b), the Provincial Court of British Columbia has jurisdiction to hear that offence.
61. Kitsumkalum will make laws to ensure that prosecutions of offences established under Kitsumkalum Law and on behalf of Kitsumkalum are conducted in a manner that is consistent with the principle of prosecutorial independence.
62. Kitsumkalum Law under paragraph 58(a) prevails to the extent of a Conflict with Federal or Provincial Law.
63. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraphs 58(b) and 61.

#### **Prosecution in Kitsumkalum Court**

64. Where prosecutions are to be conducted on behalf of Kitsumkalum under paragraph 59(a), Kitsumkalum will appoint Kitsumkalum Prosecutors or retain prosecutors to carry out such prosecutions and any related appeals or proceedings.
65. Subject to Kitsumkalum Law, prosecutions under paragraph 59(a) may be commenced on behalf of Kitsumkalum by the laying of an information in Kitsumkalum Court by:
- (a) a Kitsumkalum Enforcement Officer who has been designated as a peace officer under Kitsumkalum Law; or
  - (b) any other peace officer.

#### **Prosecution in Provincial Court**

66. Where prosecutions are to be conducted under paragraph 59(b), Kitsumkalum will
- (a) appoint Kitsumkalum Prosecutors or retain prosecutors or,
  - (b) where Kitsumkalum has entered into an agreement with Canada or British Columbia under paragraph 73, authorize those prosecutors as agreed,
- to carry out such prosecutions and any related appeals or proceedings.
67. Prosecutions under paragraph 59(b) may be commenced on behalf of Kitsumkalum by the laying of an information in Provincial Court by:
- (a) a Kitsumkalum Enforcement Officer who has been designated as a peace officer under Kitsumkalum Law; or

(b) any other peace officer,

in the same manner as an information is laid in the Provincial Court of British Columbia by a peace officer in respect of an offence under a Provincial Law.

68. The Attorney General of British Columbia or the Attorney General of Canada will not take carriage of or stay a proceeding conducted by a prosecutor appointed or retained by Kitsumkalum under paragraph 66(a).
69. At the request of Kitsumkalum, British Columbia and Kitsumkalum will collaborate to identify matters associated with the prosecution of offences under paragraph 59(b), including:
- (a) considerations and constraints under Provincial Law or policy;
  - (b) potential amendments to Provincial Law or policy that may support the prosecution of offences under paragraph 59(b); and
  - (c) operational matters, including:
    - (i) use of court registry services or administrative services; or
    - (ii) any other matter necessary for the effective prosecution of offences under paragraph 59(b).
70. Within 18 months of receiving a request under paragraph 69, British Columbia and Kitsumkalum will negotiate any matters identified through the collaborative process under paragraph 69 and, if applicable, appropriate mechanisms to address those matters identified under paragraph 69(c).
71. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 70.
72. Any Party participating in negotiations under paragraph 70 may request an extension of an additional 18 months, and a Party receiving the request will not unreasonably withhold consent to the extension.

### **Prosecution Services Agreement**

73. At the request of Kitsumkalum and where prosecutions of offences under Kitsumkalum Law are to be conducted in Provincial Court under paragraph 59(b), the applicable Parties:
- (a) will negotiate and attempt to reach agreement regarding the use of provincial prosecution services for those prosecutions, which will be conducted on behalf of the provincial Attorney General in accordance with the principle of prosecutorial independence; or
  - (b) may negotiate and attempt to reach agreement regarding the use of federal prosecution services for those prosecutions, which will be conducted on behalf of the federal Attorney General in accordance with the principle of prosecutorial independence; or

- (c) may negotiate and attempt to reach agreement regarding the use of other prosecution services.
74. Prior to making a request under paragraph 73, the appropriate Parties will engage to discuss:
- (a) the Parties' goals for negotiations under paragraph 73;
  - (b) the respective roles of the Parties;
  - (c) any operational impacts or other obligations that may be created; and
  - (d) other relevant considerations.

### **Appeal in respect of Offences**

75. An appeal in respect of a determination under paragraph 59(a) or 59(b) lies to the Supreme Court of British Columbia or to the Court of Appeal for British Columbia in the manner in which an appeal lies under the *Offence Act*, and the provisions of that Act relating to appeals apply to appeals under this paragraph.

### **3(c) – Disputes and Other Matters**

#### **Disputes and Other Matters**

76. Disputes between persons under Kitsumkalum Law and other matters, including the internal appeal or review of administrative decisions made by Kitsumkalum Institutions, arising under Kitsumkalum Law will be heard:
- (a) if Kitsumkalum has established a Kitsumkalum Court or Adjudicative Body with the jurisdiction to hear that dispute or other matter, in the Kitsumkalum Court or other Adjudicative Body; or
  - (b) if Kitsumkalum has not established a Kitsumkalum Court or Adjudicative Body with the jurisdiction to hear that dispute or other matter,
    - (i) in the Provincial Court of British Columbia; or
    - (ii) if the Provincial Court of British Columbia does not have jurisdiction under Provincial Law, in respect of the dispute or other matter, in the Supreme Court of British Columbia.
77. For greater certainty, where a dispute or other matter will be heard in the Provincial Court of British Columbia or the Supreme Court of British Columbia under paragraph 76(b), that court has jurisdiction to hear that dispute or other matter.
78. Notwithstanding paragraph 76, British Columbia and Kitsumkalum may negotiate agreements providing for disputes between persons under Kitsumkalum Law or other matters arising under Kitsumkalum Law to be heard by courts or other administrative bodies or tribunals under Provincial Law.

79. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 78.
80. An appeal in respect of a determination under paragraph 76(a) or 76(b) lies to the Supreme Court of British Columbia or to the Court of Appeal for British Columbia in the same manner in which an appeal would lie if the dispute or other matter arose under Provincial Law.

***3(d) - Kitsumkalum Court and Agreements for the Effective Administration of Kitsumkalum Laws***

**Kitsumkalum Court**

81. Kitsumkalum may make laws that provide for:
- (a) the constitution, maintenance, and organization of a Kitsumkalum Court for the effective administration of Kitsumkalum Laws; and
  - (b) the appointment of Kitsumkalum Court Judges to the Kitsumkalum Court.
82. Kitsumkalum Law under paragraph 81 prevails to the extent of a Conflict with Federal or Provincial Law.
83. A Kitsumkalum Law made under paragraph 81 will:
- (a) provide a process for the appointment of Kitsumkalum Court Judges;
  - (b) confer jurisdiction on Kitsumkalum Court Judges to hear matters arising under Kitsumkalum Law, including:
    - (i) offences established under Kitsumkalum Law;
    - (ii) disputes between persons under Kitsumkalum Laws; or
    - (iii) other matters arising under Kitsumkalum Laws;
  - (c) provide for judicial independence, including security of tenure, financial security and administrative independence;
  - (d) provide for standards of judicial competence and behaviour, including fairness and impartiality; and
  - (e) provide for processes to address judicial misconduct or incapacity.
84. Kitsumkalum may appoint a Kitsumkalum Court Judge:
- (a) on a part-time basis; or
  - (b) who acts in another judicial or adjudicative capacity.

85. Subject to paragraph 86, a Kitsumkalum Court Judge has all the powers necessary to perform their duties and functions, including to:
- (a) exercise all the powers and perform all the duties that could be exercised or performed by a Provincial Court Judge as if the matter arose under Provincial or Federal Law, which for greater certainty includes:
    - (i) committing for contempt of court;
    - (ii) hearing a challenge to the validity, applicability or operability of any Kitsumkalum Law;
    - (iii) hearing a matter arising under the *Canadian Charter of Rights and Freedoms*, including requests for remedies under section 24 of the *Canadian Charter of Rights and Freedoms*; and
    - (iv) presiding over the trial of a person charged with an offence established under Kitsumkalum Law for which, on conviction, the person is liable to be sentenced to a term of imprisonment; and
  - (b) make orders of possession with respect to Kitsumkalum Lands, where such power is conferred under Kitsumkalum Law.
86. A Kitsumkalum Court Judge does not have jurisdiction to make a determination of aboriginal or treaty rights of individuals who are not enrolled under this Agreement.

#### **Agreement Related to Concurrent Appointments, Joint Appointments or other Matters**

87. Notwithstanding any provision in this Chapter other than paragraph 95, British Columbia and Kitsumkalum may negotiate an agreement regarding:
- (a) the appointment by Kitsumkalum of judges of the Provincial Court of British Columbia as Kitsumkalum Court Judges in accordance with Provincial Law and Kitsumkalum Law;
  - (b) the appointment by British Columbia of Kitsumkalum Court Judges or other individuals recommended by Kitsumkalum as judges of the Provincial Court of British Columbia in accordance with Provincial Law;
  - (c) the appointment of individuals as judges of the Provincial Court of British Columbia in accordance with this Agreement and Provincial Law;
  - (d) the concurrent appointment of individuals as judges of the Provincial Court of British Columbia and Kitsumkalum Court in accordance with this Agreement and Provincial Law and Kitsumkalum Law; or
  - (e) any other appointment or matter necessary for the effective administration of Kitsumkalum Laws in the Provincial Court of British Columbia or the Kitsumkalum Court.

88. British Columbia and Kitsumkalum will collaborate to identify any potential amendments to Provincial Law or policy that may be necessary to support the implementation of the agreement referred to in paragraph 87.
89. An agreement entered into under paragraph 87 will be negotiated and implemented in a manner that respects judicial independence, including administrative independence.

### **Kitsumkalum Court Coordination Agreement**

90. Before Kitsumkalum enacts or amends a Kitsumkalum Law in respect of matters under paragraph 81, Kitsumkalum will provide notice to Canada and British Columbia of its intention to exercise the law-making authority.
91. Upon receipt of a notice under paragraph 90, British Columbia and Kitsumkalum will collaborate to identify matters under paragraph 81, including:
- (a) considerations and constraints under Provincial Law or policy;
  - (b) potential amendments to Provincial Law or policy that may support the implementation of Kitsumkalum Law; and
  - (c) operational matters, including:
    - (i) security measures;
    - (ii) use of provincial facilities;
    - (iii) use of court registry services or administrative services; or
    - (iv) matters necessary for the effective enforcement of orders made by the Kitsumkalum Court Judge.
92. Within 18 months of receiving a notice under paragraph 90, British Columbia and Kitsumkalum will negotiate any matters identified through the collaborative process under paragraph 91 and, if applicable, appropriate mechanisms for the Parties to address those matters identified under paragraph 91(c).
93. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 92.
94. A Party may, in participating in negotiations under paragraph 92, request an extension of an additional 18 months, and a Party receiving the request will not unreasonably withhold consent to the extension.
95. Any agreements entered into under paragraph 92 will be negotiated and implemented in a manner that respects judicial independence, including administrative independence.
96. For greater certainty, paragraphs 107 and 108 of Chapter 1 General Provisions apply to proceedings brought before a Kitsumkalum Court, Adjudicator or Adjudicative Body.



**3(e) – Regional Aggregate Mechanisms**

97. At the request of any Party, the applicable Parties will discuss opportunities to:
- (a) utilize available resources and lower cost alternatives that would reasonably address the Parties' interests; or
  - (b) achieve regional efficiencies or economies of scale
- with respect to a Kitsumkalum Court or other matters related to the administration of justice.
98. A Kitsumkalum Law may provide for Kitsumkalum to participate in regional aggregation in relation to the subject matters set out in this Chapter.

**3(f) – Orders, Debt Certificates and Payments to Kitsumkalum****Orders**

99. An order made or imposed under Kitsumkalum Law, from which no internal review or appeal under Kitsumkalum Law is available, may be filed in:
- (a) the Provincial Court of British Columbia; or
  - (b) if the Provincial Court of British Columbia does not have jurisdiction in respect of the remedy provided for in the order under Provincial Law, the Supreme Court of British Columbia.
100. An order filed under paragraph 99 has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court in which the order was filed.

**Debt Certificates**

101. Without limiting the generality of paragraph 99, a Debt Certificate signed by a Designated Person may be filed in:
- (a) the Provincial Court of British Columbia; or
  - (b) if the principal amount of the Debt set out in the Debt Certificate is not within the monetary limit for claims under the *Small Claims Act*, the Supreme Court of British Columbia.
102. A Debt Certificate filed under paragraph 101:
- (a) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court in which it was filed for the recovery of the Debt; and
  - (b) is admissible in any proceedings to recover the Debt without proof of the signature or authority of the person appearing to have signed the Debt Certificate, and is proof of the facts.

**Payments to Kitsumkalum**

103. British Columbia will pay to Kitsumkalum any amounts collected on behalf of Kitsumkalum in accordance with an agreement under paragraph 106.

**Agreements related to Orders, Debt Certificates or Payments**

104. Notwithstanding paragraphs 99 to 102, British Columbia and Kitsumkalum may negotiate an agreement recognizing authority for Kitsumkalum to file or register, in a registry or other place established under Provincial Law:
- (a) an order made or imposed under Kitsumkalum Law from which no internal review or appeal under Kitsumkalum Law is available; or
  - (b) a Debt Certificate signed by a Designated Person.
105. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement regarding operational matters related to the enforcement of:
- (a) an order under paragraph 99; or
  - (b) a Debt Certificate under paragraph 101.
106. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement, which will come into effect within 18 months of the request, respecting the payments referred to in paragraph 103 and any related matters.
107. British Columbia or Kitsumkalum may, in participating in negotiations under paragraph 106, request an extension of an additional 18 months, and the Party receiving the request will not unreasonably withhold consent to the extension.

**PART 4 - CORRECTIONAL SERVICES****Places of Confinement**

108. Subject to paragraph 109, this Agreement does not authorize Kitsumkalum to establish or maintain places of confinement.
109. Canada and Kitsumkalum may negotiate an agreement for Kitsumkalum to establish or maintain places of confinement or processes for the care and custody for individuals sentenced to a term of imprisonment in a federal penitentiary.
110. The Parties and the Police Service providing policing and law enforcement on Kitsumkalum Lands may negotiate an agreement regarding:
- (a) procedures for how individuals arrested by Kitsumkalum Enforcement Officers may be transferred into the custody of that Police Service for confinement; and
  - (b) the corresponding rights and obligations of the Parties and that Police Service.

**Community Correctional Services**

111. Kitsumkalum may provide Community Correctional Services, in accordance with Kitsumkalum Law, for adults and youth convicted under or otherwise in conflict with Kitsumkalum Law.
112. At the request of Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement for British Columbia to provide Community Correctional Services for adults and youth convicted under or otherwise in conflict with Kitsumkalum Law:
  - (a) before a prosecution is commenced; or
  - (b) after a prosecution is commenced,in Kitsumkalum Court or Provincial Court.
113. At the request of Kitsumkalum, the appropriate Parties will negotiate and attempt to reach agreement for Kitsumkalum to provide one or more Community Correctional Services on Kitsumkalum Lands, for Kitsumkalum Members or individuals residing on Kitsumkalum Lands convicted under or otherwise in conflict with Federal or Provincial Law.
114. At the request of Kitsumkalum, the appropriate Parties will negotiate and attempt to reach agreement for Kitsumkalum to provide within British Columbia one or more Community Correctional Services off Kitsumkalum Lands for Kitsumkalum Members who are convicted under or otherwise in conflict with Federal or Provincial Law.
115. Prior to making a request under paragraph 113 or 114 the appropriate Parties will engage to discuss:
  - (a) the Parties' goals for the provision of Community Correctional Services under paragraph 113 or 114;
  - (b) the respective roles of the Parties;
  - (c) any operational impacts or other obligations that may be created; and
  - (d) other relevant considerations.

**PART 5 - GENERAL**

116. Where a provision in this Chapter provides that “the Parties will determine whether Canada will be a party to the negotiations” and British Columbia or Kitsumkalum identify a matter that may not be able to be resolved without Canada for operational or legal reasons, including:
  - (a) considerations and constraints under Federal or Provincial Law or policy;
  - (b) potential amendments to Federal or Provincial Law or policy that may support the implementation of Kitsumkalum Law;
  - (c) operational matters; and

(d) other relevant matters,

British Columbia and Kitsumkalum will give notice to Canada and the Parties will discuss that matter to determine whether Canada's participation in the negotiations is necessary to resolve that matter. For greater certainty, a request for federal financial support from British Columbia or Kitsumkalum cannot be the sole basis for requesting Canada's participation under this paragraph.

117. Canada will become a party to negotiations where it has been determined under paragraph 116 that a matter cannot be resolved without Canada's participation for operational or legal reasons.
118. Anytime Canada is a party to negotiations under this Chapter, the initial step in that negotiation will be to develop an agreed upon list of interests and principles, including the matters set out in paragraph 97, that will guide the negotiations.
119. For greater certainty, while the Parties are required to participate in discussions under paragraph 116, all Parties must agree to Canada's participation in the future negotiations.
120. Any fiscal matters proposed by any Party regarding the implementation of this Chapter will be addressed through the development of Fiscal Provisions or Fiscal Arrangements referred to in Chapter 25 Fiscal, unless otherwise agreed to by the affected Parties.

## CHAPTER 10 – LOCAL GOVERNMENT

### General

1. Kitsumkalum Lands do not form part of any municipality or regional district electoral area, and do not form part of any regional district, unless Kitsumkalum becomes a member of the regional district in accordance with paragraph 8.
2. On the Effective Date, Kitsumkalum is responsible for managing its intergovernmental relations with Local Government.
3. Nothing in this Agreement will limit the ability of British Columbia to restructure regional districts or to amend or divide the boundaries of a regional district, municipality or electoral area in accordance with Provincial Law.
4. British Columbia will Consult with Kitsumkalum on any changes to the boundaries of a regional district or municipality that directly and significantly affect Kitsumkalum.

### Intergovernmental Agreements

5. Kitsumkalum may enter into agreements with Local Government with respect to the provision and delivery of:
  - (a) Local Government services to Kitsumkalum Lands; and
  - (b) Kitsumkalum's services for lands under the jurisdiction of Local Government.
6. Kitsumkalum agrees that any service agreement between the Kitsumkalum Band and a Local Government in effect on the Effective Date will remain in effect until such time as it is renegotiated or is terminated under the terms of the service agreement.
7. Kitsumkalum and Local Governments may establish and maintain agreements that set out principles, procedures and guidelines for the management of their relationship. The matters that may be governed by such agreements include, but are not limited to the following:
  - (a) protection of culture and heritage interests;
  - (b) coordination and harmonization of land use and planning, water use and watershed planning, including regulating land use, enforcement of regulations and development;
  - (c) coordination and harmonization of property tax structures;
  - (d) coordination and harmonization of the development of infrastructure, including transportation;
  - (e) cooperative economic development including recreation and tourism;
  - (f) adjacent land use;
  - (g) environmental protection; and
  - (h) dispute resolution.

**Regional District Membership**

8. Kitsumkalum may become a member of a regional district as set out in Provincial Law.
9. If Kitsumkalum becomes a member of a regional district, Kitsumkalum will appoint an elected member of Kitsumkalum’s governing body to sit as a director on the board of the regional district in accordance with Provincial Law.
10. The Kitsumkalum director will have the powers, duties, functions, obligations and liability protections of a municipal director of the regional district board as is provided to a “treaty first nation director” under Provincial Law.
11. If Kitsumkalum is a member of the regional district and a dispute arises, Kitsumkalum and the regional district may be required to use a dispute resolution process set out in Provincial Law.

**Coast Mountain School District 82**

12. At the request of Kitsumkalum, British Columbia will meet with Kitsumkalum to discuss Kitsumkalum’s interests with respect to the provision of educational programs and services to Kitsumkalum Members by a board of education as defined in the *School Act*, with a view to improving Kitsumkalum Members achievement.
13. At the request of Kitsumkalum, British Columbia will request representatives of the board of education to attend any discussions that take place under paragraph 12.

**Regional Hospital District Membership**

14. Kitsumkalum Lands form part of the North West Regional Hospital District.
15. On the Effective Date, Kitsumkalum will be a member of the North West Regional Hospital District and will appoint an elected member of Kitsumkalum’s governing body to sit as a director on the board of the North West Regional Hospital District in accordance with Provincial Law.
16. The Kitsumkalum director will have the functions, powers, duties, obligations and liability protections of a municipal director of the regional district hospital board as is provided to a “treaty first nation director” under Provincial Law.
17. Where Kitsumkalum becomes a member of a regional district under paragraph 8, Kitsumkalum’s membership in the North West Regional Hospital District under paragraph 15 will be replaced through regional district membership.

# **RESOURCE MANAGEMENT**





## CHAPTER 11 – CULTURE AND HERITAGE

### General

1. Kitsumkalum has the right to practice Tsimshian culture, and to use the Sm'algayax language, in a manner consistent with this Agreement.
2. For greater certainty, nothing in paragraph 1 creates or implies any financial obligation or service delivery responsibilities on the part of Canada or British Columbia.
3. The Parties recognize the integral role of Kitsumkalum Artifacts in the continuation of Kitsumkalum culture, values and traditions, whether those Kitsumkalum Artifacts are held by Kitsumkalum, a Kitsumkalum Public Institution, a Kitsumkalum Corporation, a Kitsumkalum Member, Parks Canada, the Canadian Museum of History or the Royal British Columbia Museum.

### Law-Making

4. Kitsumkalum may make laws applicable on Kitsumkalum Lands in relation to:
  - (a) the preservation, promotion and development of Tsimshian culture and Sm'algayax language;
  - (b) the preservation, protection and sharing of the Kitsumkalum *Adawx* (History and Tradition);
  - (c) the conservation, protection and management of Heritage Sites, including public access to Heritage Sites;
  - (d) Kitsumkalum Artifacts owned by Kitsumkalum; and
  - (e) the cremation or interment of Archaeological Human Remains found on Kitsumkalum Lands or returned to Kitsumkalum by Canada, British Columbia or any other party.
5. Kitsumkalum Law under paragraph 4(b) will:
  - (a) establish standards and processes for the conservation and protection of Heritage Sites; and
  - (b) ensure that the Minister is provided with information in relation to:
    - (i) the location of Heritage Sites; and
    - (ii) any materials recovered from Heritage Sites.
6. Information provided by Kitsumkalum to British Columbia under paragraph 5(b) will not be subject to public disclosure without the consent of Kitsumkalum.
7. If Kitsumkalum makes a law under paragraph 4, Provincial Law respecting heritage inspections, heritage investigations and the alteration of Heritage Sites will not apply to Kitsumkalum Lands.

8. British Columbia will not designate any Kitsumkalum Lands as a Heritage Site under Provincial Law without the consent of Kitsumkalum.
9. Kitsumkalum Law under paragraph 4 prevails to the extent of a Conflict with Federal or Provincial Law.

**Kitsumkalum Artifacts**

10. Kitsumkalum owns any artifact discovered on or after the Effective Date within an archaeological context on Kitsumkalum Lands, unless another person establishes ownership of that artifact.
11. At the request of Kitsumkalum, the Canadian Museum of History or Parks Canada, as applicable, will loan or transfer any Kitsumkalum Artifact in the permanent possession of the Canadian Museum of History or Parks Canada in accordance with an agreement negotiated between Kitsumkalum and the Canadian Museum of History or Parks Canada.
12. At the request of Kitsumkalum and subject to funds available for this purpose, the Canadian Museum of History or Parks Canada, as applicable, will loan, at no cost to Kitsumkalum, any Tsimshian Artifact in the permanent possession of the Canadian Museum of History or Parks Canada in accordance with an agreement negotiated between Kitsumkalum and the Canadian Museum of History or Parks Canada.
13. At the request of Kitsumkalum, the Royal British Columbia Museum will loan or transfer any Kitsumkalum Artifact in the permanent possession of the Royal British Columbia Museum in accordance with an agreement negotiated between Kitsumkalum and the Royal British Columbia Museum.
14. At the request of Kitsumkalum and subject to funds available for this purpose, the Royal British Columbia Museum will loan, at no cost to Kitsumkalum, any Tsimshian Artifact in the permanent possession of the Royal British Columbia Museum in accordance with an agreement negotiated between Kitsumkalum and the Royal British Columbia Museum.
15. At the request of Kitsumkalum or British Columbia, Kitsumkalum and the Royal British Columbia Museum may enter into an agreement on custodial arrangements with respect to the Tsimshian Artifacts that remain in the collection of the Royal British Columbia Museum.
16. At the request of Kitsumkalum, the Royal British Columbia Museum will provide a list of all artifacts in its permanent collection that are identified as Kitsumkalum Artifacts.
17. At the request of Kitsumkalum, Canada or British Columbia, as applicable, will make reasonable efforts to facilitate Kitsumkalum’s access to Kitsumkalum Artifacts, Kitsumkalum Archaeological Human Remains, in other public collections in Canada.

**Kitsumkalum Archaeological Human Remains**

18. At the request of Kitsumkalum, Canada or British Columbia, as applicable, will return any Kitsumkalum Archaeological Human Remains or associated burial objects held by Canada or British Columbia as of the Effective Date in accordance with Federal and Provincial Law and federal policy.

19. If, on or after the Effective Date, any Kitsumkalum Archaeological Human Remains or associated burial objects come into the possession or under the control of Canada or British Columbia, at the request of Kitsumkalum, Canada or British Columbia, as applicable, will transfer the Kitsumkalum Archaeological Human Remains and associated burial objects to Kitsumkalum in accordance with Federal and Provincial Law and federal policy.
20. In the event of competing claims with another aboriginal group as to whether Archaeological Human Remains or associated burial objects are Kitsumkalum Archaeological Human Remains or associated burial objects, Kitsumkalum will provide to Canada or British Columbia, as applicable, written confirmation that the dispute has been resolved in favour of Kitsumkalum before further negotiations of the transfer of the Kitsumkalum Archaeological Human Remains or associated burial objects.

### **Heritage Sites**

21. Before the Effective Date, British Columbia and Kitsumkalum will endeavour to agree on a list of key sites of cultural and historic significance outside Kitsumkalum Lands to be protected through provincial heritage site designation or through other measures agreed to by British Columbia and Kitsumkalum.
22. If, before the Effective Date, British Columbia and Kitsumkalum agree in writing on a list of key sites to be protected through provincial heritage site designation or through other measures agreed to in accordance with paragraph 21, on the Effective Date this Agreement will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment by adding such list as an Appendix.

### **Place Names**

23. On or after the Effective Date, Kitsumkalum may propose that British Columbia name or rename other geographic features with traditional names, and British Columbia will consider those proposals in accordance with Provincial Law and provincial policy and procedures.
24. At the request of Kitsumkalum, British Columbia will record for inclusion in the British Columbia Geographic Names data base traditional names and historic background information submitted by Kitsumkalum for the geographic features that are set out in this Agreement, in accordance with Provincial Law and provincial policy and procedures.



## CHAPTER 12 – ENVIRONMENTAL MANAGEMENT

### Environmental Assessment

1. Notwithstanding any decision made by Canada or British Columbia in respect of a Federal or Provincial Project, no Federal or Provincial Project on Kitsumkalum Lands will proceed without the consent of Kitsumkalum unless:
  - (a) the Kitsumkalum Lands, or any interest in Kitsumkalum Lands, required for the Federal or Provincial Project has been expropriated in accordance with Chapter 3 Kitsumkalum Lands; or
  - (b) the Federal or Provincial Project is within the rights granted under an interest described in Appendix G-2 Part 1.
2. If a Federal or Provincial Project is to be located within the Impact Assessment Area, or may reasonably be expected to adversely affect the Impact Assessment Area, the residents on Kitsumkalum Lands, Kitsumkalum Heritage Sites, or the Kitsumkalum Exercisable Section 35 Rights, then Canada or British Columbia, as applicable, will seek to secure the free, prior and informed consent of the Kitsumkalum through:
  - (a) any Specific Consultation Process established pursuant to paragraphs 3 to 11; or
  - (b) a Specific Consultation Process set out in an agreement between Kitsumkalum and British Columbia in accordance with paragraph 64 of Chapter 1 General Provisions.
3. Canada or British Columbia will inform Kitsumkalum of any potential Federal or Provincial Project within the Impact Assessment Area as soon as reasonably possible, and where possible within 7 days, after the federal or provincial government is notified of the potential Federal or Provincial Project in accordance with impact assessment legislation or environmental assessment legislation.
4. Kitsumkalum and Canada or British Columbia, as applicable, will collaborate during an Impact Assessment process or Environmental Assessment process, up to the final project decision, including seeking to achieve consensus regarding:
  - (a) planning for the conduct of the assessment, including any early decisions about whether or not to proceed with the assessment, identifying information, study, and procedural requirements, and where applicable, timeline requirements;
  - (b) the sufficiency of information to inform the assessment of effects including, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitsumkalum Lands, Kitsumkalum Heritage Sites and the Kitsumkalum Exercisable Section 35 Rights;
  - (c) the assessment of effects in relation to, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitsumkalum Lands, Kitsumkalum Heritage Sites or the Kitsumkalum Exercisable Section 35 Rights;

- (d) the identification of appropriate mitigation and accommodation measures and incorporation into potential conditions relating to, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitsumkalum Lands, Kitsumkalum Heritage Sites or the Kitsumkalum Exercisable Section 35 Rights, which may include Kitsumkalum involvement in the design and implementation of monitoring programs;
  - (e) conclusions related to the seriousness of impacts including, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitsumkalum Lands, Kitsumkalum Heritage Sites or the Kitsumkalum Exercisable Section 35 Rights; and,
  - (f) any recommendations made to Provincial Environmental Assessment Decision Makers about whether or not to approve the Provincial Project.
5. Prior to referring a Provincial Project to Provincial Environmental Assessment Decision Makers, Kitsumkalum will be provided with the opportunity to review the materials that will be referred to Provincial Environmental Assessment Decision Makers, subject to the requirements of Provincial Law, and to provide notice to British Columbia with written reasons regarding its consent or lack of consent to the Provincial Project.
  6. If the recommendation to Provincial Environmental Assessment Decision Makers referenced under paragraph 4(f) is contrary to the notification of consent or lack of consent provided by Kitsumkalum under paragraph 5, the Provincial Environmental Assessment Decision Makers must, before making a decision, offer to meet with Kitsumkalum to seek consensus.
  7. Environmental Assessment and Impact Assessment processes will give full and fair consideration to:
    - (a) Kitsumkalum Laws and Indigenous knowledge provided by Kitsumkalum; and
    - (b) studies completed according to the outcomes of consensus seeking under paragraph 4(a). Nothing in this Agreement precludes Kitsumkalum from providing additional information, including studies, to decision makers for Canada and British Columbia.
  8. If, notwithstanding the Parties' efforts under paragraph 4, Kitsumkalum and Canada or British Columbia, as applicable, are unable to achieve consensus with respect to a substantive matter contemplated in paragraphs 4(a) to 4(e), Canada or British Columbia, as applicable, and Kitsumkalum may agree to retain a technical expert or mediator, as appropriate, to assist them in achieving consensus on any outstanding matter.
  9. If a Federal or Provincial Project is referred to a panel during an Impact Assessment or Environmental Assessment and may reasonably be expected to adversely affect Kitsumkalum Lands or the Kitsumkalum Exercisable Section 35 Rights, Canada or British Columbia will provide Kitsumkalum with:
    - (a) the opportunity to propose to Canada or British Columbia a list of names, that Canada or British Columbia may consider for appointment to the panel in accordance with Federal or Provincial Law, unless Kitsumkalum is a proponent of the Federal or Provincial Project;

- (b) an opportunity to participate in the development of terms of reference of the panel; and
  - (c) an opportunity to appear before or make a submission to the panel.
10. If a Federal or Provincial Project is referred to a panel during an Impact Assessment or Environmental Assessment and will be located on Kitsumkalum Lands, Canada or British Columbia will provide Kitsumkalum with:
- (a) the opportunity to propose to Canada or British Columbia a list of names from which Canada or British Columbia will appoint one member in accordance with the requirements of federal impact assessment legislation or provincial environmental assessment legislation, unless Kitsumkalum is a proponent of the Federal or Provincial Project;
  - (b) an opportunity to participate in the development of the terms of reference of the panel; and
  - (c) an opportunity to appear before or make a submission to the panel.
11. If a Provincial Project is referred to a commission during an Environmental Assessment, Kitsumkalum may appear before and make written or oral submissions to the commission.
12. Application of a Specific Consultation Process in accordance with paragraph 2(a) or (b) does not preclude Kitsumkalum from participating in any additional opportunities including funding opportunities, available under federal impact assessment policy and legislation, or provincial environmental assessment policy and legislation, but not addressed in that Specific Consultation Process.
13. Where a Federal Project proceeds within the Impact Assessment Area pursuant to a federal decision statement, or where a Provincial Project proceeds under an Environmental Assessment Certificate, Canada or British Columbia will assign a primary contact responsible for working with Kitsumkalum in relation to some or all of the following, where feasible:
- (a) engaging with Kitsumkalum as required to identify compliance concerns;
  - (b) communicating with Kitsumkalum, in a timely way, about compliance and enforcement activities;
  - (c) identifying and facilitating training and mentorship opportunities to support Kitsumkalum’s participation in compliance and enforcement; and
  - (d) including Kitsumkalum on Federal or Provincial Project inspections.
14. Kitsumkalum and Canada, or British Columbia, may seek to strengthen collaboration through the exploration of agreements regarding Kitsumkalum’s participation in compliance and enforcement, which for British Columbia may include:
- (a) appointment of compliance and enforcement officers;
  - (b) granting of investigative powers; or
  - (c) orders to cease, prevent or remedy activities in contravention of provincial legislation.

15. If the holder of an Environmental Assessment Certificate, or federal decision statement, proposes a change to that Federal or Provincial Project which is located within the Impact Assessment Area, or which may reasonably be expected to adversely affect the Impact Assessment Area, the residents on Kitsumkalum Lands, Kitsumkalum Heritage Sites, or the Kitsumkalum Exercisable Section 35 Rights, then before making a decision on the proposed amendment, British Columbia, or Canada, will collaborate through a process agreed to by the Parties, and seek to achieve, with respect to the amendment, consensus with Kitsumkalum.

### **Law-Making**

16. Kitsumkalum may make laws applicable on Kitsumkalum Lands in respect of:
  - (a) environmental assessments for Kitsumkalum Projects;
  - (b) environmental management relating to the protection, preservation and conservation of the Environment, including:
    - (i) prevention, mitigation and remediation of pollution and degradation of the Environment;
    - (ii) waste management, including solid and liquid waste;
    - (iii) protection of local air and water quality; and
    - (iv) Environmental Emergency response.
17. Kitsumkalum will ensure that any environmental assessment process established under Kitsumkalum Law under paragraph 16(a) for Kitsumkalum Projects that are also Federal Projects will maintain, or exceed, the requirements of the federal impact assessment legislation.
18. Where Kitsumkalum exercises law-making authority under paragraph 16(a), Canada and Kitsumkalum will work collaboratively to promote a timely and efficient review through:
  - (a) coordinating the respective impact assessment and environmental assessment requirements; and
  - (b) avoiding duplication where the Kitsumkalum Project is also a Federal Project.
19. Federal or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law, under paragraph 16.

### **Canada's Participation in Kitsumkalum Environmental Assessments**

20. Where a Kitsumkalum Project may reasonably be expected to have adverse effects on federal lands or may require a federal authority to exercise a power or perform any duty or function that could permit the Kitsumkalum Project to be carried out, Kitsumkalum will ensure that Canada is consulted and provided with an opportunity to participate in the environmental assessment of the applicable Kitsumkalum Project.
21. During the course of the environmental assessment of the Kitsumkalum Project, Kitsumkalum will give full and fair consideration to any comments provided by Canada, and will respond to the comments, before taking any decision that would have the effect of allowing the Kitsumkalum Project to proceed in whole or in part.



**Environmental Emergencies**

22. Kitsumkalum may enter into agreements with Canada, British Columbia, Local Government, other aboriginal groups or other entities for the prevention of, preparedness for, response to and recovery from Environmental Emergencies occurring on Kitsumkalum Lands or on land or waters adjacent to Kitsumkalum Lands.

**Community Watershed Lands**

23. Kitsumkalum acknowledges that, on the Effective Date, Kitsumkalum 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.
24. Kitsumkalum will manage, use and develop Kitsumkalum 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.
25. British Columbia will engage with Kitsumkalum before discontinuing a community watershed designation that applies to Kitsumkalum Community Watershed Land.
26. If British Columbia determines that any part of Kitsumkalum Community Watershed Land is no longer required for the purpose of protecting water being diverted for human consumption, British Columbia will notify Kitsumkalum and the obligation to manage, use and develop those lands in accordance with paragraph 24 will terminate.
27. For greater certainty, nothing in this Agreement limits the application of the *Drinking Water Protection Act* to Kitsumkalum Community Watershed Land.



## CHAPTER 13 – PARKS AND PLANNING

### Public Planning Processes

1. Kitsumkalum has the right to participate in any Public Planning Process that may be established by British Columbia for an area either wholly or partly within the Kitsumkalum Harvest Area in accordance with procedures established by British Columbia for that Public Planning Process.
2. Kitsumkalum may make proposals to British Columbia to establish a Public Planning Process for an area wholly or partly within the Kitsumkalum Harvest Area.
3. Nothing in this Agreement will obligate British Columbia to establish a Public Planning Process within the Kitsumkalum Harvest Area.
4. Kitsumkalum has the right to participate in the development of the terms of reference of any Public Planning Process under paragraphs 1 or 2.
5. In participating in any Public Planning Process referred to in paragraphs 1 or 2 Kitsumkalum may bring forward any matters it considers relevant, including any rights set out in this Agreement.
6. British Columbia will review and take into consideration any matters brought forward under paragraph 5.
7. British Columbia will provide Kitsumkalum with the draft plan resulting from any Public Planning Process referred to in paragraphs 1 or 2, and Kitsumkalum may provide written recommendations to the Minister on the draft plan which may be made public by British Columbia.
8. After considering any written recommendations received from Kitsumkalum and any matters the Minister considers appropriate, the Minister will provide written reasons for any Kitsumkalum recommendations that are not accepted.
9. At the request of Kitsumkalum, the Minister will meet with Kitsumkalum to discuss any concerns that Kitsumkalum has with the Minister's response under paragraph 8.
10. British Columbia may proceed with any Public Planning Process even if Kitsumkalum does not participate in the process.

### Parks and Protected Areas

11. Kitsumkalum may make proposals to British Columbia to establish a Provincial Protected Area within the Kitsumkalum Harvest Area.
12. Nothing in this Agreement will obligate British Columbia to establish a Provincial Protected Area within the Kitsumkalum Harvest Area.
13. Any Provincial Protected Area established after the Effective Date will not include Kitsumkalum Lands without the consent of Kitsumkalum.

14. For greater certainty, Kitsumkalum Members may exercise the Kitsumkalum Right to Gather Plants, the Kitsumkalum Right to Harvest Migratory Birds, and the Kitsumkalum Right to Harvest Wildlife within Provincial Protected Areas, in accordance with this Agreement.
15. British Columbia will Consult with Kitsumkalum in respect of:
  - (a) the establishment of new Provincial Protected Areas or Wildlife Management Areas;
  - (b) the preparation or modification of any management plan for a Provincial Protected Area wholly or partly within the Kitsumkalum Harvest Area;
  - (c) the disposition of or modification of boundaries of existing Provincial Protected Areas or Wildlife Management Areas; and
  - (d) changes in the use or designation of existing Provincial Protected Areas or Wildlife Management Areas,

that may affect the Kitsumkalum Right to Gather Plants, the Kitsumkalum Right to Harvest Wildlife or the Kitsumkalum Right to Harvest Migratory Birds.

#### **Parks and Protected Areas Management Planning Processes**

16. Where a public management planning process is established for a Provincial Protected Area that is wholly or partly within the Kitsumkalum Harvest Area, Kitsumkalum may participate in the planning process in accordance with procedures established by British Columbia for that process.
17. British Columbia may proceed with any process contemplated by paragraph 16 even if Kitsumkalum does not participate in that process.
18. Nothing in this Agreement obligates British Columbia to establish a public management planning process respecting any Provincial Protected Area.
19. British Columbia will provide Kitsumkalum with any draft public management plan for a Provincial Protected Area that is wholly or partly within the Kitsumkalum Harvest Area.
20. Kitsumkalum may provide written recommendations on a draft management plan received under paragraph 19 and any recommendation provided may be made public by British Columbia.

#### **National Parks and National Marine Conservation Areas and National Historic Sites**

21. Canada will Consult Kitsumkalum prior to:
  - (a) the establishment or changes to the boundaries of any National Park or National Marine Conservation Area;
  - (b) the designation as a National Historic Site of lands under the administration and control of Parks Canada;
  - (c) transfer of administration of a national historic site to the Parks Canada Agency; or

- (d) changes to the boundaries of a National Historic Site, wholly or partly within the Kitsumkalum Migratory Birds Harvest Area.
22. Prior to establishing any National Park, National Marine Conservation Area or National Historic Site that is wholly or partly within the Kitsumkalum Migratory Birds Harvest Area, Kitsumkalum and Canada will negotiate and attempt to reach agreement regarding Kitsumkalum's participation in a cooperative planning and management process to provide advice to the Minister for that National Park, National Marine Conservation Area or National Historic Site.

**Harvesting and Other Cultural Activities**

23. Kitsumkalum has the right to harvest Renewable Resources for Domestic Purposes in the portion of:
- (a) any National Park or National Marine Conservation Area wholly or partly within the Kitsumkalum Migratory Birds Harvest Area; and
  - (b) any National Historic Site wholly or partly within the Kitsumkalum Migratory Birds Harvest Area where an opportunity to harvest Renewable Resources exists,
- in accordance with this Agreement.
24. The Kitsumkalum Right to Harvest Renewable Resources is limited by duly authorized measures necessary for conservation, public health, or public safety.
25. The Kitsumkalum Right to Harvest Renewable Resources is a communal right held by Kitsumkalum and cannot be alienated.
26. If any National Park or National Marine Conservation Area is established wholly or partly within the Kitsumkalum Migratory Birds Harvest Area, or where there is a Kitsumkalum Right to Harvest Renewable Resources in a National Historic Site, at the request of Kitsumkalum or Canada, Kitsumkalum and Canada will negotiate and attempt to reach agreement on terms and conditions for the exercise of:
- (a) the Kitsumkalum Right to Harvest Renewable Resources;
  - (b) the Kitsumkalum Fishing Right; and
  - (c) other Kitsumkalum cultural activities,
- in that National Park, National Marine Conservation Area or National Historic Site.
27. For greater certainty, in the absence of an agreement on the terms and conditions for the exercise of the Kitsumkalum Right to Harvest Renewable Resources, Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Renewable Resources.
28. After Consultation with Kitsumkalum, the Minister may close areas in any National Park, National Marine Conservation Area or National Historic Site to harvesting for the purposes of public health, public safety or conservation.

**General**

29. The Minister retains authority for the management, administration, and control of National Parks, National Marine Conservation Areas, and National Historic Sites on lands and waters owned by Canada and administered by the Parks Canada Agency, and, for those matters set out in this Agreement, will exercise that authority consistent with the Agreement.

## CHAPTER 14 – WATER RESOURCES

### Water Reservation

1. On the Effective Date, British Columbia will establish a water reservation under the *Water Sustainability Act* in favour of Kitsumkalum of 50,004,509 cubic meters of water per year from Streams set out in Schedule 1 for all purposes under the *Water Sustainability Act* including domestic, agricultural and industrial uses, but excluding those purposes set out in paragraph 31.
2. Any Water Licences issued from a water reservation established in paragraph 1 will have a date of precedence of December 12, 2017.

### Water Licences

3. A person seeking a Water Licence for volumes of water to be applied against the Kitsumkalum water reservation must obtain written consent from Kitsumkalum before submitting that application to British Columbia.
4. If a person applies to British Columbia for a Water Licence under paragraph 3 and:
  - (a) the application conforms to provincial regulatory requirements;
  - (b) the application is for a volume of flow that does not exceed the Available Flow for that Stream; and
  - (c) where required, the application includes provisions for storage where the monthly Available Flow is insufficient to meet proposed demand,then British Columbia will approve the application and issue the Water Licence.
5. A Water Licence issued to a person for use on Kitsumkalum Lands under paragraph 4 will not be subject to any rentals, fees, or other charges, except taxes, by British Columbia.
6. For greater certainty, a person may apply for Water Licences under paragraph 4 for use of water off of Kitsumkalum Lands.
7. The volume of flow approved in a Water Licence issued under paragraph 4 will be deducted from the unrecorded volume of flow in the Kitsumkalum water reservation established under paragraph 1.
8. If a Water Licence issued pursuant to paragraph 4 is cancelled, expires or otherwise terminates, the volume of flow in that Water Licence will be added back to the unrecorded volume of flow in Kitsumkalum's water reservation established under paragraph 1.
9. For greater certainty, nothing in this Agreement precludes Kitsumkalum, a Kitsumkalum Public Institution, a Kitsumkalum Corporation or a Kitsumkalum Member from applying for additional Water Licences under Provincial Law not provided for under the water reservation established under paragraph 1.

10. After the Effective Date, British Columbia will Consult with Kitsumkalum prior to granting or amending any Water Licences or applications for Water Licences made after the Effective Date where the applicant may reasonably require access across or an interest in Kitsumkalum Lands.

11. If a person other than Kitsumkalum, a Kitsumkalum Public Institution, a Kitsumkalum Corporation or a Kitsumkalum Member:

- (a) has a Water Licence;
- (b) reasonably requires access across, or an interest in, Kitsumkalum Lands for the construction, maintenance, improvement or operation of works authorized under the Water Licence; and
- (c) offers fair compensation to the owner of the estate or interest affected,

Kitsumkalum will not unreasonably withhold consent and will take reasonable steps to ensure that access or the granting of that interest.

12. If Kitsumkalum, a Kitsumkalum Public Institution, a Kitsumkalum Corporation or a Kitsumkalum Member:

- (a) has a Water Licence approved under paragraph 4; and
- (b) reasonably requires access across, or an interest in, Crown land for the construction, maintenance, improvement or operation of work authorized under the Water Licence,

British Columbia will grant the access or interest on reasonable terms in accordance with Federal or Provincial Law.

13. British Columbia or Kitsumkalum may refer a dispute arising under paragraph 11 to be finally determined by arbitration in accordance with Chapter 29 Dispute Resolution, and, for the purposes of this paragraph, British Columbia will act on behalf of the third party on such terms and conditions as they may agree.

14. Sections 32, 33, 34 and 35 of the *Water Sustainability Act* respecting a licensee’s right to expropriate land do not apply on Kitsumkalum Lands.

15. For greater certainty, paragraph 11 does not apply to works, or access to works, on Kitsumkalum Lands that:

- (a) are authorized under the associated Water Licences referred to in Appendix G-2 Part 3; and
- (b) continue as provincial permits of occupation under Provincial Law under paragraph 80 of Chapter 3 Kitsumkalum Lands or are replaced by Kitsumkalum under paragraph 74 of Chapter 3 Kitsumkalum Lands.

16. In addition to any consent required under paragraph 11, where Kitsumkalum has disposed of an estate or interest in Kitsumkalum Lands, Kitsumkalum will take reasonable steps to ensure the granting of the access across or the interest in Kitsumkalum Lands for the construction, maintenance, improvement, or operation of works authorized under a Water Licence.



17. For greater certainty, the provisions of the *Water Sustainability Act* regarding access for the construction, maintenance, improvement or operation of works across fee simple lands off Kitsumkalum Lands apply with respect to Water Licences issued under paragraph 4.
18. Subject to paragraph 19, storage, diversion, extraction or use of water will be in accordance with Federal and Provincial Law.
19. The *Water Utility Act* does not apply to Kitsumkalum, a Kitsumkalum Public Institution, or a Kitsumkalum Corporation for the provision of services on Kitsumkalum Lands.

**Law-Making**

20. Kitsumkalum may make laws in relation to:
  - (a) the consent of Kitsumkalum provided under paragraph 3 to applications; and
  - (b) the supply and use of water from a Water Licence issued under paragraph 4.
21. Kitsumkalum Law under paragraph 20(a) prevails to the extent of a Conflict with Federal or Provincial Law.
22. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 20(b).

**Other**

23. If Federal or Provincial Law permits the sale of water, Kitsumkalum may sell water in accordance with Federal and Provincial Law.
24. Nothing in this Agreement alters Federal or Provincial Law in relation to property in water.
25. If Groundwater is reasonably available, then at the request of Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on the amount of Groundwater that may be extracted and used by Kitsumkalum for all purposes under the *Water Sustainability Act*, including domestic, agricultural and industrial purposes, but excluding those purposes set out in paragraph 30.
26. For the purposes of paragraph 25, British Columbia and Kitsumkalum will:
  - (a) determine the amount of Groundwater which can reasonably be withdrawn from the aquifer under consideration while maintaining the sustainability and quality of the Groundwater from the aquifer;
  - (b) determine the existing and reasonable future needs for Groundwater of Kitsumkalum and Kitsumkalum Members on Kitsumkalum Lands, as well as existing and reasonable future needs of other users in the area;
  - (c) consider any future economic development opportunities for Kitsumkalum or Kitsumkalum Members;
  - (d) consider any water reservations that could potentially affect that aquifer;
  - (e) consider the Kitsumkalum water reservation under paragraph 1; and

- (f) ensure that any agreement under paragraph 25 complies with any applicable requirement under Federal or Provincial Law.
- 27. If British Columbia and Kitsumkalum are unable to reach agreement under paragraph 25 on the amount of Groundwater that may be extracted and used by Kitsumkalum, British Columbia or Kitsumkalum may refer the matter to be finally determined by arbitration in accordance with Chapter 29 Dispute Resolution.
- 28. A Water Licence issued to a person for use on Kitsumkalum Lands in accordance with an agreement under paragraph 25 will not be subject to any rentals, fees, or other charges, except taxes, by British Columbia.
- 29. Access to Kitsumkalum Lands to extract Groundwater on Kitsumkalum Land requires the consent of Kitsumkalum.

### **Hydro Power Reservation**

- 30. At the request of Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on water reservations of the unrecorded waters of the Mayo Creek, Nelson River, Little Cedar Creek, Cunningham Lake and Kitsumkalum River to enable Kitsumkalum to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.

### **Clean Energy**

- 31. British Columbia acknowledges Kitsumkalum’s goal of achieving energy self-sufficiency and that Kitsumkalum has strategic goals to:
  - (a) participate in the development of energy resources in the Kitsumkalum Harvest Area as an independent power producer, through projects that may include run-of-the-river hydro, wind energy, geothermal, and solar energy;
  - (b) develop energy self-sufficient communities on Kitsumkalum Lands; and
  - (c) receive economic benefits from the development of energy resources and projects in the Kitsumkalum Harvest Area.
- 32. If Kitsumkalum develops an energy project in accordance with Provincial Law and at the request of Kitsumkalum, Kitsumkalum and British Columbia will discuss, subject to provincial procurement processes, Kitsumkalum’s interests regarding clean energy.

### **Water Management**

- 33. Kitsumkalum may participate in water planning processes in the Kitsumkalum Harvest Area.
- 34. With respect to the management of water within the Kitsumkalum Harvest Area, Kitsumkalum and Canada or British Columbia may negotiate agreements to:
  - (a) define respective roles and responsibilities of the Parties;
  - (b) coordinate activities related to:
    - (i) flood response and public safety;

- (ii) protection of water quality;
  - (iii) water conservation;
  - (iv) Groundwater management and regulation;
  - (v) resource inventory;
  - (vi) monitoring of water quality and quantity;
  - (vii) management of and access to information;
  - (viii) water management objectives and planning;
  - (ix) other matters agreed to by the Parties; and
- (c) identify watersheds that require water management planning.
35. If a watershed includes both Kitsumkalum Lands and provincial Crown land, and if Kitsumkalum or British Columbia considers that the watershed is an important source of drinking water, British Columbia and Kitsumkalum may negotiate agreements in relation to the protection of drinking water in the area.

**Schedule 1: Kitsumkalum Water Volumes**

<b>Water Source</b>	<b>Water Volume (m<sup>3</sup>)</b>
Alice Creek	114,720
Douglas Creek	77,933
Erlandsen Creek	2,315,254
Hadenschild Creek	179,970
Leanto Creek	110,490
Little Cedar River	8,438
Mayo Creek	302,830
Molybdenum Creek	45,630
Clear Creek	241,931
Zymagotitz (Zimacord) River	23,487,000
Nelson River	798,077
Star Creek	121,836
Kitsumkalum River	13,042,000
Skeena River	9,158,400
<b>Total</b>	<b>50,004,509</b>

## CHAPTER 15 – FOREST RESOURCES

### Forest Resources on Kitsumkalum Lands

1. Kitsumkalum owns the Forest Resources and Range Resources on Kitsumkalum Lands.
2. Kitsumkalum Lands will be treated as Private Lands for the purposes of Provincial Law in relation to Forest Resources, Range Resources, Forest Practices and Range Practices.
3. Kitsumkalum, as owner of Kitsumkalum Lands, has the exclusive authority to determine, collect and administer any fees, rents, stumpage or other charges, except taxes, relating to the harvesting of Forest Resources and Range Resources on Kitsumkalum Lands.

### Law-Making

4. Kitsumkalum may make laws in respect of Forest Resources, Range Resources, Forest Practices and Range Practices on Kitsumkalum Lands.
5. Federal or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 4.

### Timber Marking and Scaling

6. Nothing in this Agreement confers authority on Kitsumkalum to make laws applicable to Timber marks, Timber marking or Timber scaling.
7. For greater certainty, Provincial Law in relation to Timber marks, Timber marking and Timber scaling applies to Timber harvested on Kitsumkalum Lands and transported off of Kitsumkalum Lands.

### Manufacture and Export of Timber Resources

8. Timber harvested from Kitsumkalum Lands will not be subject to any requirement under Provincial Law for use or manufacturing in British Columbia.
9. Kitsumkalum, or a person authorized by Kitsumkalum, may export Logs harvested from Kitsumkalum Lands in accordance with Federal Law and federal policy.

### Forest and Range Health

10. Kitsumkalum is responsible for the control of insects, diseases, invasive plants, animals or abiotic factors on Kitsumkalum Lands that may affect the health of Forest Resources on Kitsumkalum Lands.
11. If Canada or British Columbia becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Crown lands that may threaten the health of Forest Resources or Range Resources on adjacent Kitsumkalum Lands, Canada or British Columbia, as applicable, will notify Kitsumkalum.

12. If Kitsumkalum becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Kitsumkalum Lands that may threaten Forest Resources or Range Resources on adjacent federal or provincial Crown lands, Kitsumkalum will notify Canada or British Columbia, as applicable.
13. Following notification under paragraphs 11 and 12, Kitsumkalum and British Columbia will develop an appropriate and reasonable co-operative response to minimize the impacts of such insects, diseases, invasive plants, animals or abiotic factors.
14. Nothing in paragraphs 11, 12 or 13 limits the application of Federal and Provincial Law in relation to the health of Forest Resources or Range Resources.

### **Wildfire Suppression and Control**

15. Subject to the Wildfire Suppression Agreement and paragraphs 17 and 21, Provincial Law in relation to the protection of resources from wildfire and for wildfire prevention and control applies to Kitsumkalum Lands as Private Lands.
16. 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 Kitsumkalum Lands for wildfires that originate on Kitsumkalum Lands will be shared by British Columbia, Canada and Kitsumkalum.
17. Subject to paragraphs 18 and 19 and the limitations on the scope of Kitsumkalum's responsibility to pay wildfire control costs under the Wildfire Suppression Agreement, Kitsumkalum is responsible for one third of the costs incurred by British Columbia for wildfire control on Kitsumkalum Lands for wildfires that originate on Kitsumkalum Lands.
18. If Kitsumkalum caused or contributed to the start or spread of any wildfire due to its own willful misconduct, Kitsumkalum's responsibility for costs is not limited by paragraph 17.
19. Kitsumkalum will not be responsible under paragraph 17 for wildfire control costs incurred by British Columbia on Kitsumkalum Lands if British Columbia or Canada caused or contributed to the start or spread of that wildfire due to the wilful misconduct of British Columbia or Canada.
20. For greater certainty, the responsibility of Kitsumkalum under paragraph 17 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off of Kitsumkalum Lands.
21. British Columbia will respond to a wildfire originating on Kitsumkalum Lands on the same priority basis as for provincial Crown land and in accordance with any priorities set by the Minister.
22. For the purposes of paragraph 16:
  - (a) unless terminated at the written request of Kitsumkalum, the Wildfire Suppression Agreement remains in effect between Kitsumkalum and British Columbia, on the same terms, subject to those terms that Kitsumkalum 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 ten years commencing on the Effective Date.
23. 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 ten year period referred to in paragraph 22(b).
24. Nothing in paragraphs 16 or 17 limits the ability of any Party to pursue legal action against third parties.
25. At the request of Kitsumkalum, or in accordance with Provincial Law, British Columbia may enter on Kitsumkalum Lands and assist in the provision of, or carry out, wildfire control.

#### **Obligations Existing Before the Effective Date**

26. Unless otherwise requested by Kitsumkalum, British Columbia will ensure that any obligation that applies on Kitsumkalum Lands in respect of Forest Practices and Range Practices will be fulfilled in accordance with Provincial Law.
27. British Columbia will ensure that the roads identified in Appendix H Part 2 will be deactivated in accordance with Provincial Law, or as agreed to by the Parties.
28. Kitsumkalum will provide access to Kitsumkalum Lands at no cost to British Columbia and to any tenure holder whose rights to Forest Resources and Range Resources under paragraph 29 cease to be valid, and to their respective employees, agents, contractors, successors or assigns, so that they may fulfill the obligations under paragraph 26.

#### **Timber Harvesting Rights Existing Before the Effective Date**

29. British Columbia will ensure that on the Effective Date, of the provisions of any:
- (a) agreement under the *Forest Act* or *Range Act*; and
  - (b) plan, permit or authorization associated with any agreement under the *Forest Act* or *Range Act*,
- that apply on Kitsumkalum Lands cease to be valid.

#### **Forest Research Plots**

30. On the Effective Date, Kitsumkalum will grant to British Columbia licences in the applicable form in Appendix G-4, to enter onto Kitsumkalum Lands for the purpose of conducting forestry related studies, tests and experiments, for those research installations and growth and yield sites respectively identified for illustrative purposes as “Growth and Yield Plots” and “Research Installations” in Appendix G-3 Part 5.

**Information Sharing**

31. British Columbia and Kitsumkalum agree to share information in relation to Forest Practices on Kitsumkalum Lands and on provincial Crown land immediately adjacent to Kitsumkalum Lands from time to time.



## CHAPTER 16 – CO-MANAGEMENT

### Principles

1. The development of a Co-Management Agreement in accordance with this Chapter will be based upon:
  - (a) implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, including seeking the free, prior and informed consent of the Kitsumkalum for land and resource decisions within the Kitsumkalum Harvest Area;
  - (b) the Kitsumkalum Exercisable Section 35 Rights; and
  - (c) recognition of Kitsumkalum’s aboriginal rights and title, including the inherent right to self-government, within Kitsumkalum’s traditional territory in accordance with this Agreement.

### Development of a Framework for Co-Management Agreement Negotiations

2. Any Party may propose to the other applicable Parties that they collaboratively develop a framework respecting a Co-Management Agreement to address lands and resources management and decision making within the Kitsumkalum Harvest Area in respect of any of following subject areas:
  - (a) forestry;
  - (b) energy and mines;
  - (c) environmental management;
  - (d) lands and land-use planning;
  - (e) parks and protected areas;
  - (f) wildlife;
  - (g) fish;
  - (h) water;
  - (i) submerged lands and foreshore areas;
  - (j) oceans protection and management;
  - (k) archaeological, historic or cultural sites; and
  - (l) other matters by agreement of the Parties.
3. Upon receipt of a proposal under paragraph 2, the applicable Parties, in good faith, will make efforts to collaborate on the development of, a framework respecting the matters to be addressed in the Co-Management Agreement, which may include:
  - (a) the purpose of the proposed agreement;

- (b) the geographic extent and location of the proposed agreement;
  - (c) the decisions or matters to be addressed under the proposed agreement;
  - (d) coordination with existing collaborative governance structures or processes already established through this Agreement to address lands and resource management and decision making;
  - (e) the nature of the decision making process to be established under the proposed agreement;
  - (f) identification of the potential adverse impacts of the proposed agreement on the Kitsumkalum Exercisable Section 35 Rights and measures to ensure that such impacts are avoided, mitigated or otherwise accommodated;
  - (g) identification of Other Indigenous Nations potentially affected by the proposed agreement, and where potential impacts are identified, if applicable, the need for appropriate mechanisms for the Parties to resolve any impacts;
  - (h) identification of considerations and constraints under Federal or Provincial Law, including policy frameworks and authorities, and, if applicable, appropriate mechanisms for the Parties to address those considerations and constraints;
  - (i) identification of potential amendments to Federal or Provincial Law that may be required to implement the proposed agreement; and
  - (j) such other matters as any Party may reasonably identify such as implementation and resource considerations.
4. As an initial step in collaborating on the development of a framework respecting a proposed Co-Management Agreement, the participating Parties will develop an agreed upon list of interests and principles that will guide them in developing and evaluating a proposed framework.
5. As part of collaborating on the development of a framework respecting the matters to be addressed in a Co-Management Agreement, the applicable Parties will also consider and identify:
- (a) a workplan and proposed timeframe to complete the Co-Management Agreement;
  - (b) their respective requirements to approve and bring the Co-Management Agreement into force and effect; and
  - (c) the resources reasonably required by Kitsumkalum to negotiate and attempt to reach agreement on the Co-Management Agreement.
6. Where the subject matter of a proposal relates to federal or provincial land and resource decisions, the discussions may be conducted between Kitsumkalum and Canada or British Columbia, as applicable.
7. Good faith obligations under paragraphs 3 and 8 require the Parties to, among other things:
- (a) enter into the development of the framework or negotiations, as applicable, with the goal of reaching a mutually acceptable outcome;

- (b) provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter;
- (c) respond appropriately, and in a timely manner to bargaining positions;
- (d) not unreasonably reject a position of the other party; and
- (e) act consistently with the standard of good faith as articulated in the common law.

### **Negotiation of Co-Management Agreements**

8. If the applicable Parties reach an agreement on a framework respecting the matters to be addressed in a Co-Management Agreement, they will negotiate and attempt to reach agreement on a Co-Management Agreement in accordance with the agreed to framework and this Chapter.
9. A decision-making process to be established under a Co-Management Agreement may include:
  - (a) collaborative management processes or boards;
  - (b) consensus recommendations to a decision maker;
  - (c) replacement of an existing decision maker with an agreed to joint body or joint decision makers;
  - (d) delegation of decisions;
  - (e) consent-based decision-making;
  - (f) agreements on policies, procedures and standards or best practices to be applied; or
  - (g) any other arrangements agreed to by the parties.
10. The Parties confirm their intention that, unless the context for or subject matter of a Co-Management Agreement requires otherwise, a Co-Management Agreement will constitute a Specific Consultation Process for the Contemplated Crown Conduct addressed in the agreement and agree that a Co-Management Agreement will specify whether it is a Specific Consultation Process in respect of those matters.
11. Any decision-making process that may be established under a Co-Management Agreement will ensure that principles of transparency, accountability, administrative fairness, and due process are addressed.

### **Shared Territory Matters**

12. A Co-Management Agreement will not abrogate or derogate from the rights of any Other Indigenous Nation recognized and affirmed by Section 35 of the *Constitution Act, 1982*.
13. If any Party, acting reasonably, determines that a Co-Management Agreement may adversely affect the exercise of the established or asserted rights of an Other Indigenous Nation recognized and affirmed under Section 35 of the *Constitution Act, 1982*, the Parties negotiating that Co-Management Agreement will use all reasonable efforts to:
  - (a) address the shared territorial issues; and

- (b) if appropriate, support British Columbia and Canada’s obligation to consult in accordance with the common law.
14. Finalization of a Co-Management Agreement is subject to Canada and British Columbia, each acting reasonably, determining that any obligation they may have to consult in accordance with the common law in respect of a Co-Management Agreement has been fulfilled.

### **Good Faith Arbitration and Costs**

15. Within sixty days of the conclusion of efforts to collaboratively develop a framework pursuant to paragraph 3 or to negotiate and attempt to reach agreement on a Co-Management Agreement under paragraph 8, any Party may refer the question of whether a Party has failed to participate in those processes in good faith to be finally determined by arbitration on notice to all Parties as required under Appendix O-5 without having to go through Stage 1 or Stage 2.

### **Specific Co-Management Framework Collaboration**

16. On the Effective Date, the applicable Parties will commence collaborative development of a framework, pursuant to paragraphs 2 to 7, respecting co-management within the following areas:
- (a) a portion of the Ecstall/Spoksuut Conservancy;
  - (b) Big Cedar; and
  - (c) West Kalum,
- as set out in Appendix J Part 1.

# HARVESTING RIGHTS



## CHAPTER 17 – WILDLIFE

### General

1. Kitsumkalum has the right to harvest Wildlife for Domestic Purposes within the Kitsumkalum Harvest Area throughout the year in accordance with this Agreement.
2. For greater certainty, trapping may be used as a method to harvest Wildlife for Domestic Purposes.
3. The Kitsumkalum Right to Harvest Wildlife is limited by duly authorized measures necessary for conservation, public health or public safety.
4. Canada or British Columbia, as applicable, will Consult with Kitsumkalum before implementing any conservation, public health or public safety measures that may adversely affect the Kitsumkalum Right to Harvest Wildlife.
5. For greater certainty, the obligation to Consult under paragraph 4 is subject to paragraphs 67 to 74 of Chapter 1 General Provisions related to emergencies.
6. The Kitsumkalum Right to Harvest Wildlife is held by Kitsumkalum and cannot be alienated.
7. The Kitsumkalum Right to Harvest Wildlife is a right to harvest in a manner that is consistent with the communal nature of Kitsumkalum's harvest for Domestic Purposes, and periods of harvest as determined by Kitsumkalum.
8. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Wildlife except as otherwise provided under Kitsumkalum Law.
9. The Minister retains the authority for managing and conserving Wildlife and Wildlife habitat and will exercise that authority in a manner consistent with this Agreement.
10. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Wildlife.

### Consultation Regarding Crown Dispositions

11. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 61 to 74 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitsumkalum Right to Harvest Wildlife.
12. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 11, British Columbia will Consult with Kitsumkalum regarding any Contemplated Crown Conduct with a view to trying to obtain the free, prior and informed consent of Kitsumkalum in accordance with paragraph 62 of Chapter 1 General Provisions.

13. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 12, and, unless Kitsumkalum and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Wildlife; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Wildlife are identified, proposed and implemented, if appropriate.
14. For greater certainty, where Kitsumkalum and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 11, the processes set out in that agreement will be relied upon by Kitsumkalum and British Columbia for the purposes of consultation in relation to that conduct and in satisfaction of the obligation of British Columbia to Consult under paragraph 12.
15. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 13 precludes Kitsumkalum from raising the issue of whether there has been an unjustified infringement of the Kitsumkalum Right to Harvest Wildlife.
16. British Columbia and Kitsumkalum will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Wildlife and may agree to amend the Specific Consultation Process under paragraph 13 to include those processes.

#### **Incidental Use**

17. Kitsumkalum Members may use resources on provincial Crown land within the Kitsumkalum Harvest Area for purposes reasonably incidental to the exercise of the Kitsumkalum Right to Wildlife, subject to duly authorized measures necessary conservation, public health or public safety.

#### **Harvesting on Federal Crown Land**

18. Nothing in this Agreement precludes Kitsumkalum from entering into an agreement with a federal department or agency that provides for access and harvesting on land administered or occupied by that department or agency by Kitsumkalum Members in accordance with that agreement and Federal and Provincial Law.

#### **Harvesting on Fee Simple Lands**

19. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Wildlife on lands that are privately owned in fee simple off Kitsumkalum Lands, but access for the purposes of harvesting will be in accordance with Federal and Provincial Law.



20. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Wildlife on lands owned by another First Nation within the Kitsumkalum Harvest Area, provided access for purposes of harvesting will be in accordance with Federal and Provincial Law and the laws or agreements of the other First Nation respecting access to those lands.

### **Harvesting Outside the Kitsumkalum Harvest Area**

21. Nothing in this Agreement precludes Kitsumkalum Members from harvesting Wildlife anywhere in Canada outside of the Kitsumkalum Harvest Area in accordance with:
- (a) Federal and Provincial Law; or
  - (b) Federal and Provincial Law and:
    - (i) any agreements between Kitsumkalum and other aboriginal peoples;
    - (ii) any arrangements between other aboriginal peoples and Canada or British Columbia; or
    - (iii) any agreements between Kitsumkalum and British Columbia or Canada, as applicable.

### **Licences and Fees**

22. Subject to paragraph 23, Kitsumkalum Members are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia in relation to the Kitsumkalum Right to Harvest Wildlife.
23. Nothing in this Agreement affects Canada's ability to require Kitsumkalum Members to obtain licences for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
24. For greater certainty, Kitsumkalum Members who are Status Indians may harvest Wildlife outside of the Kitsumkalum Harvest Area in the same manner as other Status Indians in British Columbia in accordance with the *Wildlife Act*.

### **Trade and Barter and Sale**

25. Kitsumkalum has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Wildlife and Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife.
26. Kitsumkalum Members may exercise the right to Trade and Barter set out in paragraph 25 except as otherwise provided in Kitsumkalum Law.
27. The right to Trade and Barter set out in paragraph 25 is held by Kitsumkalum and cannot be be alienated.
28. Kitsumkalum and Kitsumkalum Members may, in accordance with Federal and Provincial Law, sell Wildlife and Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife.

**Transport and Export**

29. Any transportation of Wildlife and Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife will be in accordance with Kitsumkalum Law and Federal and Provincial Law, including any requirement under the *Wildlife Act* to possess a record of receipt.
30. The information in the documentation issued by Kitsumkalum pursuant to paragraph 36 will be deemed to serve as a hunting permit or licence number under Federal and Provincial Law relating to the transport of Wildlife and Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife.
31. Any export of Wildlife or Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife will be in accordance with Federal and Provincial Law.

**Law-Making**

32. Kitsumkalum may make laws in relation to the Kitsumkalum Right to Harvest Wildlife for:
  - (a) the designation of Kitsumkalum Members who may harvest Wildlife;
  - (b) the designation of individuals in accordance with a Designated Harvester Agreement;
  - (c) the administration of documentation of those individuals authorized to harvest Wildlife;
  - (d) the method, timing and location of the harvest of Wildlife;
  - (e) the distribution of harvested Wildlife among Kitsumkalum Members; and
  - (f) the Trade and Barter, under paragraph 25, of harvested Wildlife.
33. Kitsumkalum Law under paragraph 32 prevails to the extent of a Conflict with Federal or Provincial Law.
34. Kitsumkalum will make laws to require all individuals who harvest or transport Wildlife under the Kitsumkalum Right to Harvest Wildlife to carry documentation issued by Kitsumkalum and produce that documentation on request by an authorized individual.
35. Federal or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law under paragraph 34.

**Documentation**

36. Kitsumkalum will issue documentation to identify:
  - (a) Kitsumkalum Members who are authorized by Kitsumkalum to exercise the Kitsumkalum Right to Harvest Wildlife; and
  - (b) Designated Harvesters.
37. Documentation issued under paragraph 36 will:
  - (a) be in the English language, which version is authoritative, and, at the discretion of Kitsumkalum, in Sm'alg yax;

- (b) include sufficient information to identify the individual;
  - (c) be identifiable as having been issued by Kitsumkalum; and
  - (d) meet any other requirements under Kitsumkalum Law.
38. Documentation issued by Kitsumkalum will be deemed to satisfy documentation requirements under Federal or Provincial Law for transporting and harvesting Wildlife harvested under the Kitsumkalum Right to Harvest Wildlife.

**Designated Harvester**

39. Subject to paragraph 40 and the completion of a Designated Harvester Agreement, Kitsumkalum may designate individuals other than Kitsumkalum Members to exercise the Kitsumkalum Right to Harvest Wildlife on behalf of a Kitsumkalum Member who is unable to exercise the Kitsumkalum Right to Harvest Wildlife.
40. The designation of a Designated Harvester under paragraph 39 must be in accordance with this Agreement and the Designated Harvester Agreement.
41. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on a Designated Harvester Agreement that will include:
- (a) criteria that individuals must meet to be designated;
  - (b) the duration of designations;
  - (c) the number of individuals that may be designated on behalf of a Kitsumkalum Member;
  - (d) the documentation Kitsumkalum will provide to a Designated Harvester; and
  - (e) any reporting requirements.
42. Subject to paragraph 43, neither Kitsumkalum nor a Kitsumkalum Member may pay any remuneration to, or accept any payment from, a Designated Harvester in relation to harvesting under paragraph 39.
43. Kitsumkalum, or a Kitsumkalum Member may reimburse a Designated Harvester for reasonable expenses incurred in relation to harvesting under paragraph 39.
44. All Wildlife and Wildlife parts, including meat and furs, harvested by a Designated Harvester are the property of the Kitsumkalum Member on whose behalf the Designated Harvester is harvesting.
45. Kitsumkalum may only designate an individual under paragraph 39 if that individual possesses a valid hunting licence under Provincial Law or is exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia.

**Conservation Measures**

46. The Minister may establish or vary conservation measures in relation to Wildlife species in the Kitsumkalum Harvest Area.

47. Kitsumkalum may propose conservation measures to the Minister in relation to Wildlife species in the Kitsumkalum Harvest Area.
48. When contemplating conservation measures under paragraphs 46 or 47, the Minister will Consult Kitsumkalum regarding those conservation measures, including in relation to the role of Kitsumkalum in the development and implementation of the conservation measure.
49. When contemplating conservation measures under paragraphs 46 or 47, 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 Kitsumkalum Harvest Area; and
    - (ii) within its normal range or area of movement outside the Kitsumkalum Harvest Area; and
  - (c) the necessity for and the nature of the proposed conservation measure.
50. Before authorizing a conservation measure that will affect the Kitsumkalum Right to Harvest Wildlife, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the Kitsumkalum Right to Harvest Wildlife.
51. The Minister will provide to Kitsumkalum:
  - (a) a copy of any authorized conservation measure in respect of a Wildlife species within the Kitsumkalum Harvest Area; and
  - (b) at the request of Kitsumkalum, written reasons for the adoption of that conservation measure.
52. Kitsumkalum will provide notice to Kitsumkalum Members in relation to any conservation measure received under paragraph 51.
53. Where the Minister determines that establishing or varying an Allocation for Kitsumkalum is a necessary conservation measure, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on the Allocation for Kitsumkalum, and such allocations shall be expressed as a percentage of the Total Allowable Harvest within the relevant Harvesting Zones.
54. Notwithstanding paragraph 5 of Chapter 29 Dispute Resolution, at the request of either British Columbia or Kitsumkalum, where agreement is not reached between Kitsumkalum and British Columbia under paragraph 53, British Columbia and Kitsumkalum will resolve the matter in accordance with paragraphs 55 to 59.

#### **Use of Arbitration in Allocation Decisions**

55. Notwithstanding paragraphs 28 and 29 of Chapter 29 Dispute Resolution, a dispute under paragraph 54 will, on delivery of a notice by a Disputing Party to all Parties as required under Appendix O-5, be referred to and resolved by arbitration in accordance with Chapter 29 Dispute Resolution and Appendix O-5, as modified by paragraphs 56 to 59, without having to proceed through Stage One or Stage Two.

56. In determining an Arbitral Award referred to arbitration under paragraph 55, the Arbitral Tribunal will take into account all relevant information provided by Kitsumkalum and British Columbia.
57. Notwithstanding paragraph 33 of Chapter 29 Dispute Resolution, an Arbitral Award referred to arbitration under paragraph 55 is only binding on the Parties where the Minister determines the Arbitral Award upholds the honour of the Crown with regards to British Columbia's obligations to Kitsumkalum and other aboriginal peoples.
58. Prior to implementing an Arbitral Award referred to arbitration under paragraph 55, the Minister may:
  - (a) Consult with other aboriginal peoples about the Arbitral Award and any potential adverse impacts to the rights recognized and affirmed by section 35 of the *Constitution Act, 1982* of those other aboriginal peoples that may occur; and
  - (b) as a result of consultation under paragraph 58(a), and in a manner consistent with the honour of the Crown, amend the Arbitral Award.
59. Where the Minister amends an Arbitral Award under paragraph 58(a):
  - (a) Kitsumkalum may, where a cause of action exists, commence or pursue judicial proceedings; and
  - (b) that ministerial decision is not subject to the processes in Chapter 29 Dispute Resolution.

### **Wildlife Advisory Management Processes**

60. Kitsumkalum has the right to participate in any public Wildlife advisory management processes established by British Columbia that includes any portion of the Kitsumkalum Harvest Area.
61. The Minister may request recommendations from a Wildlife advisory management process referred to in paragraph 60 before determining whether a Wildlife species will be or continue to be subject to a conservation measure.
62. Kitsumkalum and British Columbia will meet, at least once each calendar year, to share harvest level information and to discuss and, where appropriate, make recommendations to the Minister regarding:
  - (a) Wildlife management and enforcement issues within the Kitsumkalum Harvest Area;
  - (b) any issues related to Designated Harvesters;
  - (c) public health, public safety and conservation measures that may affect the Kitsumkalum Right to Harvest Wildlife;
  - (d) any issues related to trapping, guiding, and angling tenures on Kitsumkalum Lands; and
  - (e) other matters agreed to by Kitsumkalum and British Columbia.

63. Where the Minister disagrees with any recommendations under paragraph 62, the Minister will provide written reasons.

### **Trapping**

64. Registered traplines that:

- (a) exist on the Effective Date;
- (b) are located in whole or in part on Kitsumkalum Lands; and
- (c) are listed in Appendix G-5 Part 4,

are retained by the persons who hold those traplines and may be transferred, renewed or replaced in accordance with Provincial Law.

65. If a trapline set out in Appendix G-5 Part 4 becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration to any portion of the trapline located on Kitsumkalum Lands without the consent of Kitsumkalum.
66. If, by operation of Provincial Law, a registered trapline within the Kitsumkalum Harvest Area becomes available, British Columbia will notify Kitsumkalum of that opportunity.
67. If a person who holds a registered trapline set out in Appendix G-5 Part 4 agrees to transfer the trapline to Kitsumkalum, British Columbia will consent to and register the transfer.

### **Guiding**

68. Guide outfitter licences and guiding territory certificates that:

- (a) exist on the Effective Date;
- (b) are located in whole or in part on Kitsumkalum Lands; and
- (c) are set out in Appendix G-5 Part 3,

are retained by the persons who hold those licences and certificates and may be transferred, renewed or replaced in accordance with Provincial Law.

69. On or after the Effective Date, British Columbia will not grant the privilege of guiding for game on any portion of Kitsumkalum Lands not included in a guide outfitter licence or guiding territory certificate referred to in paragraph 68, or any transfer, renewal or replacement of a guide outfitter licence or guiding territory certificate referred to in paragraph 68, without the consent of Kitsumkalum.
70. If a privilege of guiding for game exercisable in an area that is in whole or in part on Kitsumkalum Lands 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 included in Kitsumkalum Lands without the consent of Kitsumkalum.
71. If, by operation of Provincial Law, a guiding territory within the Kitsumkalum Harvest Area becomes available British Columbia will notify Kitsumkalum of that availability.

72. For greater certainty, paragraph 71 does not apply to the transfer of a guiding territory certificate in accordance with Provincial Law.

**Angling**

73. Angling guide licences that have an approved Angling Guide Operating Plan in effect on the Effective Date that includes waters adjacent to Kitsumkalum Lands, and any Angler Day Quota allocated to any of those licences, are retained by the persons who hold those licences and Angler Day Quota and those licences and any Angler Day Quota allocated to those licences may be transferred, renewed or replaced in accordance with Provincial Law.
74. British Columbia will notify Kitsumkalum when, by operation of Provincial Law, Angler Day Quota becomes available for a Classified Water adjacent to Kitsumkalum Lands because of the cancellation or surrender or an angling guide licence.
75. For greater certainty, paragraph 74 does not apply to the transfer of an angling guide licence or Angler Day Quota in accordance with Provincial Law.
76. British Columbia will not approve any new or amended Angling Guide Operating Plan that applies to the portion of any Unclassified Waters adjacent to Kitsumkalum Lands that is not included in an angling guide licence referred to in paragraph 74 without including a requirement in the Angling Guide Operating Plan that the consent of Kitsumkalum is required for the purposes of carrying out angling guide activities on any portion of those Unclassified Waters adjacent to Kitsumkalum Lands.
77. British Columbia will provide Kitsumkalum with the first opportunity to acquire, in accordance with and subject to Provincial Law, any angling guide licence or Angler Day Quota on the Kitsumkalum River that becomes available as a result of the cancellation or surrender of any Angler Day Quota on the Kitsumkalum River.
78. For greater certainty, paragraph 78 does not apply to the transfer of an angling guide licence or Angler Day Quota in accordance with Provincial Law.

**Trapping, Guiding and Angling Guide Access to Kitsumkalum Lands**

79. Kitsumkalum will allow reasonable access to Kitsumkalum Lands, other than Kitsumkalum Private Lands, by:
- (a) a person who holds a registered trapline set out in Appendix G-5 Part 4, or any renewal, replacement or transfer of that trapline; and
  - (b) a person who has written permission from that registered trapline holder to trap within the registered trapline area,
- for the purpose of carrying out trapping activities.
80. Kitsumkalum will allow reasonable access to Kitsumkalum Lands, other than Kitsumkalum Private Lands, by a person who holds a guide outfitter licence or guiding territory certificate set out in Appendix G-5 Part 3, or any renewal, replacement or transfer of that licence or certificate, and to their respective employees, agents and other representatives for the purpose of carrying out guiding activities.

81. Kitsumkalum will allow reasonable access to Kitsumkalum Lands, other than Kitsumkalum Private Lands, by a person who holds an angling guide licence or Angler Day Quota referred to in paragraph 74, or any renewal, replacement or transfer of that licence or Angler Day Quota, and to their respective employees, agents, and other representatives for the purpose of carrying out angling guiding activities.
82. For greater certainty, access allowed under paragraphs 79, 80 or 81 will not be subject to any permits, licences or fees, other than as may be required in accordance with Provincial Law.
83. Notwithstanding paragraph 82, Kitsumkalum may require that, at no cost, persons accessing Kitsumkalum Lands under paragraphs 79, 80 or 81, provide Kitsumkalum with an assumption of risk, release and waiver of claim in relation to that access.
84. Access under paragraphs 79, 80 and 81 does not include:
  - (a) harvesting or extracting resources other than as authorized by the applicable registered trapline, guiding territory certificate, guide outfitter licence, angling guide licence or Angler Day Quota, unless authorized by Kitsumkalum or as in accordance with this Agreement;
  - (b) causing damage to Kitsumkalum Lands or resources on Kitsumkalum Lands;
  - (c) causing a nuisance; or
  - (d) interfering with other uses authorized by Kitsumkalum or interfering with the ability of Kitsumkalum to authorize uses or dispose of Kitsumkalum Lands.
85. Access under paragraphs 79, 80 and 81 is subject to and will be exercised in accordance with Kitsumkalum Law made under paragraphs 18(a), 18(c), and 18(d) of Chapter 7 Access regulating public access on Kitsumkalum Lands.
86. Kitsumkalum will take reasonable measures to notify the holders of:
  - (a) The registered traplines set out in Appendix G-5 Part 4;
  - (b) the guide outfitter licences and guiding territory certificates set out in Appendix G-5 Part 3; and
  - (c) the angling guide licences and Angler Day Quota referred to in paragraph 74,of the terms and conditions respecting access to Kitsumkalum Lands.
87. British Columbia will take reasonable measures to notify the persons referred to in paragraph 86 to take reasonable measures to inform themselves of the terms and conditions respecting access to Kitsumkalum Lands.



## CHAPTER 18 – MIGRATORY BIRDS

### General

1. Kitsumkalum has the right to harvest Migratory Birds for Domestic Purposes within the Kitsumkalum Migratory Birds Harvest Area throughout the year in accordance with this Agreement.
2. The Kitsumkalum Right to Harvest Migratory Birds is limited by duly authorized measures necessary for conservation, public health or public safety.
3. Canada or British Columbia, as applicable, will Consult with Kitsumkalum before implementing any conservation, public health or public safety measures that may adversely affect the Kitsumkalum Right to Harvest Migratory Birds.
4. For greater certainty, the obligation to Consult under paragraph 3 is subject to paragraphs 67 to 74 of Chapter 1 General Provisions related to emergencies.
5. The Kitsumkalum Right to Harvest Migratory Birds is held by Kitsumkalum and cannot be alienated.
6. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Migratory Birds except as otherwise provided under Kitsumkalum Law.
7. The Minister retains authority for managing and conserving Migratory Birds and Migratory Birds habitat and will exercise that authority in a manner consistent with this Agreement.
8. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Migratory Birds.

### Consultation Regarding Crown Dispositions

9. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 61 to 74 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitsumkalum Right to Harvest Migratory Birds.
10. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 9, British Columbia will Consult with Kitsumkalum regarding any Contemplated Crown Conduct with a view to trying to obtain the free, prior and informed consent of Kitsumkalum in accordance with paragraph 61 of Chapter 1 General Provisions.
11. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 10, and, unless Kitsumkalum and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Migratory Birds; and

- (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Migratory Birds are identified, proposed and implemented, if appropriate.
12. For greater certainty, where Kitsumkalum and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 9, the processes set out in that agreement will be relied upon by Kitsumkalum and British Columbia for the purposes of consultation in relation to that conduct and in satisfaction of the obligation of British Columbia to Consult under paragraph 10.
13. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 11 precludes Kitsumkalum from raising the issue of whether there has been an unjustified infringement of the Kitsumkalum Right to Harvest Migratory Birds.
14. British Columbia and Kitsumkalum will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Migratory Birds and may agree to amend the Specific Consultation Process under paragraph 11 to include those processes.

#### **Incidental Use**

15. Kitsumkalum Members may use resources on provincial Crown land within the Kitsumkalum Migratory Birds Harvest Area for purposes reasonably incidental to the exercise of the Kitsumkalum Right to Harvest Migratory Birds, subject to duly authorized measures necessary for conservation, public health or public safety.

#### **Harvesting on Federal Crown Land**

16. Nothing in this Agreement precludes Kitsumkalum from entering into an agreement with a federal department or agency that provides for access and harvesting on land administered or occupied by that department or agency by Kitsumkalum Members in accordance with that agreement and Federal and Provincial Law.

#### **Harvesting on Fee Simple Lands within the Kitsumkalum Migratory Birds Harvest Area**

17. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Migratory Birds on lands that are privately owned in fee simple off Kitsumkalum Lands, but access for the purposes of harvesting will be in accordance with Federal and Provincial Law.
18. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Migratory Birds on lands owned by another First Nation within the Kitsumkalum Migratory Birds Harvest Area, provided access for purposes of harvesting will be in accordance with Federal and Provincial Law and the laws or agreements of the other First Nation respecting access to those lands.

#### **Licences and Fees**

19. Subject to paragraph 20, Kitsumkalum Members are not required to have federal or provincial permits or licences, or pay any fees or royalties to Canada or British Columbia in relation to the Kitsumkalum Right to Harvest Migratory Birds.

20. Nothing in this Agreement affects Canada’s ability to require Kitsumkalum Members to obtain licences for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.

### **Harvesting Outside the Kitsumkalum Migratory Birds Harvest Area**

21. Nothing in this Agreement precludes Kitsumkalum Members from harvesting Migratory Birds anywhere in Canada in accordance with:
- (a) Federal and Provincial Law; or
  - (b) Federal and Provincial Law; and
    - (i) any agreements between Kitsumkalum and other aboriginal peoples;
    - (ii) any arrangements between other aboriginal peoples and Canada or British Columbia; or
    - (iii) any agreements between Kitsumkalum and British Columbia or Canada, as applicable.

### **Trade and Barter and Sale**

22. Kitsumkalum has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Migratory Birds harvested under the Kitsumkalum Right to Harvest Migratory Birds.
23. Kitsumkalum Members may exercise the right to Trade and Barter set out in paragraph 22 except as otherwise provided in Kitsumkalum Law.
24. Kitsumkalum and Kitsumkalum Members may, in accordance with Federal or Provincial Law and Kitsumkalum Law under paragraph 30(b), sell Migratory Birds harvested under the Kitsumkalum Right to Harvest Migratory Birds.
25. Notwithstanding paragraph 24 Kitsumkalum and Kitsumkalum Members may sell inedible byproducts, and the down, of Migratory Birds harvested under the Kitsumkalum Right to Harvest Migratory Birds in accordance with Kitsumkalum Law under paragraph 28(g)

### **Transport and Export**

26. Kitsumkalum Members may transport, throughout the year, in accordance with Federal and Provincial Law, Migratory Birds harvested under the Kitsumkalum Right to Harvest Migratory Birds.
27. Any export of Migratory Birds harvested under the Kitsumkalum Right to Harvest Migratory Birds will be in accordance with Federal and Provincial Law.

### **Law-Making**

28. Kitsumkalum may make laws in relation to the Kitsumkalum Right to Harvest Migratory Birds for:
- (a) the designation of Kitsumkalum Members who may harvest Migratory Birds;

- (b) the designation of individuals in accordance with a Designated Harvester Agreement;
  - (c) the administration of documentation of those individuals authorized to harvest Migratory Birds;
  - (d) the method, timing, and location of the harvest of Migratory Birds;
  - (e) the distribution of harvested Migratory Birds among Kitsumkalum Members;
  - (f) the Trade and Barter, under paragraph 22, of harvested Migratory Birds; and
  - (g) the sale of down and inedible byproducts of harvested Migratory Birds under paragraph 25.
29. Kitsumkalum Law under paragraph 28 prevails to the extent of a Conflict with Federal or Provincial Law.
30. Kitsumkalum may make laws in relation to:
- (a) the management of Migratory Birds on Kitsumkalum Lands; and
  - (b) the sale of Migratory Birds, other than their inedible byproducts and down, if permitted by Federal and Provincial Law.
31. For greater certainty nothing in paragraph 30(b) limits the ability of Kitsumkalum to make laws under paragraph 28(g).
32. Kitsumkalum will make laws to require all individuals who harvest Migratory Birds under the Kitsumkalum Right to Harvest Migratory Birds to carry documentation issued by Kitsumkalum and produce that documentation on request by an authorized individual.
33. Federal or Provincial Law in relation to Migratory Birds prevails to the extent of a Conflict with Kitsumkalum Law under paragraphs 30 and 33.

**Documentation**

34. Kitsumkalum will issue documentation to identify:
- (a) Kitsumkalum Members who are authorized by Kitsumkalum to exercise the Kitsumkalum Right to Harvest Migratory Birds; and
  - (b) Designated Harvesters.
35. Documentation issued under paragraph 34 will:
- (a) be in the English language, which version is authoritative, and, at the discretion of Kitsumkalum, in the Sm'algyax language;
  - (b) include sufficient information to identify the individual;
  - (c) be identifiable as having been issued by Kitsumkalum; and
  - (d) meet any other requirements under Kitsumkalum Law.

36. Documentation issued by Kitsumkalum will be deemed to satisfy federal or provincial documentation requirements for transporting and harvesting Migratory Birds harvested under the Kitsumkalum Right to Harvest Migratory Birds.

### **Designated Harvester**

37. Subject to paragraph 38 and the completion of a Designated Harvester Agreement, Kitsumkalum may designate individuals other than Kitsumkalum Members to exercise the Kitsumkalum Right to Harvest Migratory Birds on behalf of a Kitsumkalum Member who is unable to exercise the Kitsumkalum Right to Harvest Migratory Birds.
38. The designation of a Designated Harvester under paragraph 37 must be in accordance with this Agreement and the Designated Harvester Agreement.
39. At the request of Kitsumkalum, Canada and Kitsumkalum will negotiate and attempt to reach agreement on a Designated Harvester Agreement that will include:
- (a) criteria that individuals must meet to be designated;
  - (b) the duration of designations;
  - (c) a requirement that a Kitsumkalum Member may have only one designated harvester of Migratory Birds at a time;
  - (d) documentation requirements;
  - (e) a requirement to return the products of the harvest to the Kitsumkalum Member; and
  - (f) limitations on remuneration.

### **Consultation on International Negotiations**

40. Canada will Consult with Kitsumkalum on the development of Canada's positions in relation to international discussions or negotiations that may adversely affect the Kitsumkalum Right to Harvest Migratory Birds.

### **Conservation Measures**

41. Canada and Kitsumkalum may enter into agreements in relation to achieving Migratory Birds population and habitat conservation objectives.
42. In accordance with the Minister's obligation to Consult, the Minister will provide to Kitsumkalum:
- (a) notice of any approved conservation measure that may adversely affect the Kitsumkalum Right to Harvest Migratory Birds; and
  - (b) at the request of Kitsumkalum, written reasons for the adoption of that conservation measure.
43. Kitsumkalum will provide notice to Kitsumkalum Members regarding any conservation measure received under paragraph 42.



## CHAPTER 19 – GATHERING

### General

1. Kitsumkalum has the right to gather Plants for Domestic Purposes on provincial Crown land within the Kitsumkalum Harvest Area throughout the year in accordance with this Agreement.
2. The Kitsumkalum Right to Gather Plants is limited by duly authorized measures necessary for conservation, public health or public safety.
3. Canada or British Columbia, as applicable, will Consult with Kitsumkalum before implementing any conservation, public health or public safety measures that may adversely affect the Kitsumkalum Right to Gather Plants.
4. For greater certainty, the obligation to Consult under paragraph 3 is subject to paragraphs 67 to 74 of Chapter 1 General Provisions related to emergencies.
5. The Kitsumkalum Right to Gather Plants is held by Kitsumkalum and cannot be alienated.
6. Kitsumkalum Members may exercise the Kitsumkalum Right to Gather Plants except as otherwise provided under Kitsumkalum Law.
7. Nothing in this Agreement precludes Kitsumkalum Members from gathering Plants on provincial Crown land in accordance with Federal and Provincial Law.
8. The Minister retains authority for managing and conserving Plants and Plant habitat and will exercise that authority in a manner consistent with this Agreement.
9. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Plants.

### Consultation Regarding Crown Dispositions

10. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 61 to 74 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitsumkalum Right to Gather Plants.
11. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 9, British Columbia will Consult with Kitsumkalum regarding any Contemplated Crown Conduct with a view to trying to obtain the free, prior and informed consent of Kitsumkalum in accordance with paragraph 61 of Chapter 1 General Provisions.
12. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 10, and, unless Kitsumkalum and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of gathering under the Kitsumkalum Right to Gather Plants; and

- (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of gathering under the Kitsumkalum Right to Gather Plants are identified, proposed and implemented, if appropriate.
13. For greater certainty, where Kitsumkalum and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 10, the processes set out in that agreement will be relied upon by Kitsumkalum and British Columbia for the purposes of consultation in relation to that conduct and in satisfaction of the obligation of British Columbia to Consult under paragraph 11.
  14. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 12, precludes Kitsumkalum from raising the issue of whether there has been an unjustified infringement of the Kitsumkalum Right to Gather Plants.
  15. British Columbia and Kitsumkalum will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Gather Plants and may agree to amend the Specific Consultation Process under paragraph 12 to include those processes.

#### **Incidental Use**

16. Kitsumkalum Members may use resources on provincial Crown land within the Kitsumkalum Harvest Area for purposes reasonably incidental to the exercise of the Kitsumkalum Right to Gather Plants, subject to duly authorized measures necessary for conservation, public health or public safety.

#### **Licences and Fees**

17. Kitsumkalum Members are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia in relation to the Kitsumkalum Right to Gather Plants.

#### **Trade and Barter and Sale**

18. Kitsumkalum has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Plants and household goods and apparel made from Plants gathered under the Kitsumkalum Right to Gather Plants.
19. Kitsumkalum Members may exercise the right to Trade or Barter set out in paragraph 18 except as otherwise provided in Kitsumkalum Law.
20. Kitsumkalum and Kitsumkalum Members may, in accordance with Federal or Provincial Law, sell Plants and household goods and apparel made from Plants gathered under the Kitsumkalum Right to Gather Plants.
21. The Kitsumkalum right to Trade and Barter set out in paragraph 18 is held by Kitsumkalum and cannot be alienated.



### **Transport and Export**

22. Kitsumkalum Members may transport, throughout the year, in accordance with Federal and Provincial Law, Plants and household goods and apparel made from Plants gathered under the Kitsumkalum Right to Gather Plants.
23. Any export of Plants and household goods and apparel made from Plants gathered under the Kitsumkalum Right to Gather Plants will be in accordance with Federal and Provincial Law.

### **Law-Making**

24. Kitsumkalum may make laws in relation to the Kitsumkalum Right to Gather Plants for:
  - (a) the designation of Kitsumkalum Members who may gather Plants;
  - (b) the designation of individuals in accordance with with a Designated Harvester Agreement;
  - (c) the administration of documentation of those individuals authorized to gather Plants;
  - (d) the method, timing and location of the gathering of Plants;
  - (e) the distribution of gathered Plants among Kitsumkalum Members; and
  - (f) the Trade and Barter, under paragraph 18, of gathered Plants.
25. Kitsumkalum Law under paragraph 24 prevails to the extent of a Conflict with Federal or Provincial Law.
26. If documentation is required under Federal or Provincial Law for gathering or transporting Plants, Kitsumkalum will make laws to require all individuals who gather or transport Plants under the Kitsumkalum Right to Gather Plants to carry documentation issued by Kitsumkalum and produce that documentation on request by an authorized individual.
27. Federal or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law under paragraph 26.

### **Designated Harvester**

28. At the request of British Columbia or Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on a Designated Harvester Agreement that will include:
  - (a) criteria that individuals must meet to be designated;
  - (b) the duration of designations;
  - (c) the number of individuals that may be designated on behalf of a Kitsumkalum Member;
  - (d) requirements for the documentation that Kitsumkalum will provide to a Designated Harvester; and
  - (e) any reporting requirements.

29. Kitsumkalum may designate individuals other than Kitsumkalum Members to exercise the Kitsumkalum Right to Gather Plants on behalf of a Kitsumkalum Member who is unable to exercise the Kitsumkalum Right to Gather Plants.
30. Subject to paragraph 31, neither Kitsumkalum nor a Kitsumkalum Member may pay any remuneration to or accept any payment from, a Designated Harvester in relation to gathering under paragraph 29.
31. Kitsumkalum or a Kitsumkalum Member may reimburse a Designated Harvester for reasonable expenses incurred in relation to gathering under paragraph 29.
32. All Plants gathered by a Designated Harvester are the property of the Kitsumkalum Member on whose behalf the Designated Harvester is gathering.

### **Documentation**

33. If documentation is required under Provincial Law for harvesting Plants, Kitsumkalum Government will issue documentation to identify:
  - (a) Kitsumkalum Members who are authorized by Kitsumkalum to exercise the Kitsumkalum Right to Gather Plants; and
  - (b) Designated Harvesters.
34. Documentation issued under paragraph 33 will:
  - (a) be in the English language, which version is authoritative, and, at the discretion of Kitsumkalum, in the Sm'algyax language;
  - (b) include sufficient information to identify the individual;
  - (c) be identifiable as having been issued by Kitsumkalum; and
  - (d) meet any other requirements under Kitsumkalum Law.
35. Documentation issued by Kitsumkalum will be deemed to satisfy any provincial documentation requirements for gathering Plants under the Kitsumkalum Right to Gather Plants.

### **Conservation Measures**

36. The Minister may establish or vary conservation measures in relation to Plant species in the Kitsumkalum Harvest Area.
37. Kitsumkalum may propose conservation measures to the Minister in relation to Plant species in the Kitsumkalum Harvest Area.
38. When contemplating conservation measures under paragraphs 36 or 37, the Minister will:
  - (a) Consult with Kitsumkalum regarding those conservation measures; and
  - (b) take into account:
    - (i) the conservation risk to the Plant species;

- (ii) the population of the Plant species:
  - (iii) the necessity for, and the nature of, the proposed conservation measure; and
  - (iv) Kitsumkalum’s role in the development and implementation of the conservation measure.
- 39. Before authorizing a conservation measure that will affect the Kitsumkalum Right to Gather Plants, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the Kitsumkalum Right to Gather Plants..
- 40. The Minister will provide to Kitsumkalum:
  - (a) a copy of any authorized conservation measure in relation to a Plant species within the Kitsumkalum Harvest Area; and
  - (b) at the request of Kitsumkalum, written reasons for the adoption of that conservation measure.
- 41. Kitsumkalum will provide notice to Kitsumkalum Members regarding any conservation measure received under paragraph 40.



**CHAPTER 20 – TIMBER FOR DOMESTIC USE**

1. Kitsumkalum has the right to harvest Timber for Domestic Use on provincial Crown land within the Kitsumkalum Harvest Area in accordance with this Agreement and a Domestic Use Timber Harvest Agreement.
2. The Kitsumkalum Right to Harvest Timber is limited by duly authorized measures necessary for conservation, public health or public safety.
3. Canada or British Columbia, as applicable, will Consult with Kitsumkalum before implementing any conservation, public health or public safety measure proposed by the Minister that may adversely affect the Kitsumkalum Right to Harvest Timber.
4. For greater certainty, the obligation to Consult under paragraph 3 is subject to paragraphs 67 to 74 of Chapter 1 General Provisions related to emergencies.
5. In the absence of a Domestic Use Timber Harvest Agreement, Kitsumkalum Members may harvest Timber for traditional and cultural activities in accordance with Provincial Law.
6. The Kitsumkalum Right to Harvest Timber is held by Kitsumkalum and cannot be alienated.
7. On the Effective Date, British Columbia and Kitsumkalum will enter into a Domestic Use Timber Harvest Agreement.
8. The Domestic Use Timber Harvest Agreement will include provisions relating to the process to establish:
  - (a) the amount of Timber that may be harvested over a specified period of time;
  - (b) the types of Timber that may be harvested; and
  - (c) the geographic location of the harvest.
9. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 61 to 74 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitsumkalum Right to Harvest Timber.
10. When contemplating the authorization of proposed uses or dispositions of provincial Crown land under paragraph 9, British Columbia will Consult with Kitsumkalum regarding any Contemplated Crown Conduct with a view to trying to obtain the free, prior and informed consent of Kitsumkalum in accordance with paragraph 61 of Chapter 1 General Provisions.

11. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 10, and unless otherwise agreed in writing that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Timber; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse effects of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Timber are identified, proposed and implemented, if appropriate.
12. For greater certainty, where Kitsumkalum and British Columbia have an agreed upon Specific Consultation Process in effect that addresses Contemplated Crown Conduct under paragraph 11, the processes set out in that agreement will be relied upon by Kitsumkalum and British Columbia for the purposes of consultation in respect of that conduct and in satisfaction of the obligation of British Columbia to Consult under paragraph 10.
13. For greater certainty, nothing in this Agreement or a Specific Consultation Process under paragraph 11, precludes the ability of Kitsumkalum to raise the issue of whether there has been an unjustified infringement of the Kitsumkalum Right to Harvest Timber.
14. British Columbia and Kitsumkalum will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitsumkalum Right to Harvest Timber; and, if agreed by British Columbia and Kitsumkalum, may amend the Specific Consultation Process under paragraph 11 to include those processes.
15. Kitsumkalum will not be required to pay any fees, rents or stumpage to British Columbia relating to the harvest of Timber under the Kitsumkalum Right to Harvest Timber.
16. The Timber volumes set out in a Domestic Use Timber Harvest Agreement will be additional to any other sources of Timber available to Kitsumkalum.
17. The Kitsumkalum Right to Harvest Timber may only be exercised by those persons designated by Kitsumkalum under Kitsumkalum Law under paragraph 18(a).

### **Law-Making Authority**

18. Kitsumkalum may make laws in relation to the Kitsumkalum Right to Harvest Timber that are consistent with this Agreement and the Domestic Use Timber Harvest Agreement with respect to the following:
  - (a) the designation of individuals or persons authorized to exercise the Kitsumkalum Right to Harvest Timber, which includes:
    - (i) a Kitsumkalum Member, a Kitsumkalum Corporation or a corporation owned by a Kitsumkalum Member or a Kitsumkalum Corporation; or

- (ii) individuals or persons other than those identified in paragraph 18(a) designated by Kitsumkalum;
  - (b) the reporting of Timber harvested under the Kitsumkalum Right to Harvest Timber;
  - (c) the distribution of harvested Timber to and its use by Kitsumkalum, a Kitsumkalum Institution, a Kitsumkalum Corporation or a Kitsumkalum Member;
  - (d) the administration of documentation to identify Kitsumkalum Members or individuals or persons designated to exercise the Kitsumkalum Right to Harvest Timber; and,
  - (e) Trade and Barter under paragraph 22.
19. In the event of a Conflict between a Kitsumkalum Law under paragraph 18 and a Federal or Provincial Law, the Kitsumkalum Law will prevail to the extent of the Conflict.
20. For greater certainty:
- (a) the Minister retains authority to manage Timber on provincial Crown land, and will exercise that authority in a manner consistent with this Agreement; and
  - (b) this Agreement does not alter Federal or Provincial Law with respect to property in Timber on provincial Crown land.
21. For greater certainty, with respect to the Kitsumkalum Right to Harvest Timber, the Minister will manage Timber on provincial Crown land in accordance with the common law priority respecting rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

### **Sale, Trade and Barter**

22. Kitsumkalum may not trade, barter or sell Timber harvested under the Kitsumkalum Right to Harvest Timber except for traditional crafts and artistic objects, including baskets, carvings, poles and canoes, and other similar crafts and artistic objects.

### **Documentation**

23. Kitsumkalum will issue documentation to identify those designated under Kitsumkalum Law under paragraph 18(a) to harvest Timber under the Kitsumkalum Right to Harvest Timber.
24. Documentation issued under paragraph 23 will:
- (a) be in the English language, which version is authoritative, and at the discretion of Kitsumkalum, in the Sm'algyax language;
  - (b) include sufficient information to identify the person;
  - (c) be identifiable as having been issued by Kitsumkalum; and
  - (d) meet any other requirements under Kitsumkalum Law.





## CHAPTER 21 – FISH

### General

1. Kitsumkalum has the right to harvest for Domestic Purposes:
  - (a) Fish and Aquatic Plants in the Kitsumkalum Shellfish and Aquatic Plants Fishing Area; and
  - (b) Finfish in the Kitsumkalum Finfish Fishing Area,in accordance with this Agreement.
2. Kitsumkalum has the authority to determine the portions of the Kitsumkalum Fish Allocations prescribed in Schedule 1 that may be harvested in the Kitsumkalum Fishing Areas for Domestic Purposes or sale purposes, in accordance with sections 37 to 42 and this Agreement.
3. The Kitsumkalum Fishing Right is limited by duly authorized measures necessary for conservation, public health or public safety.
4. The Minister will Consult with Kitsumkalum respecting any proposed conservation, public health, or public safety measures that may adversely affect the Kitsumkalum Fishing Right.
5. For greater certainty, the obligation to Consult under paragraph 4 is subject to paragraphs 67 to 74 of Chapter 1 General Provisions related to emergencies.
6. Where the Parties agree, the Kitsumkalum Joint Fisheries Committee may be relied upon to facilitate the Specific Consultation Process for matters related to fisheries management.
7. The Specific Consultation Process referred to in paragraph 6 will be described in the Fisheries Operational Guidelines.
8. The Kitsumkalum Fishing Right is held by Kitsumkalum and Kitsumkalum may not alienate that right.
9. The harvest of Fish and Aquatic Plants under the Kitsumkalum Fishing Right will be carried out in accordance with Kitsumkalum Harvest Documents.
10. The Minister retains authority for managing and conserving Fish, Aquatic Plants, and Fish habitat and will exercise that authority in a manner that is consistent with this Agreement.
11. The Minister's authority referred to in paragraph 10 will be exercised in a manner that upholds the priority of the Kitsumkalum Fishing Right in accordance with Section 35 of the *Constitution Act, 1982*.
12. This Agreement does not alter Federal or Provincial Law in respect of property in Fish or Aquatic Plants.
13. Kitsumkalum has the right to Trade and Barter Fish and Aquatic Plants harvested under the Kitsumkalum Fishing Right among Kitsumkalum Members, and with other aboriginal people of Canada.

14. Except as otherwise provided under Kitsumkalum Law, Kitsumkalum Members may exercise the right to Trade and Barter Fish and Aquatic Plants harvested under the Kitsumkalum Fishing Right.
15. Nothing in this Agreement precludes:
  - (a) Kitsumkalum Members from harvesting Fish and Aquatic Plants under a licence, permit or other document issued under a Federal or Provincial Law;
  - (b) Kitsumkalum from concluding agreements that are in accordance with Federal and Provincial Law with other aboriginal groups in respect of designations to harvest Fish or Aquatic Plants; or
  - (c) Kitsumkalum Members from being designated by another aboriginal group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that aboriginal group.

### **Consultation Regarding Crown Dispositions**

16. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 61 to 74 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitsumkalum Fishing Right.
17. When contemplating the authorization of proposed uses or dispositions of provincial Crown land under paragraph 16, British Columbia will Consult with Kitsumkalum regarding any Contemplated Crown Conduct with a view to trying to obtain the free, prior and informed consent of Kitsumkalum in accordance with paragraph 63 of Chapter 1 General Provisions.
18. As soon as practicable after being requested to do so, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 17, and unless otherwise agreed in writing that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of gathering by Kitsumkalum Members under the Kitsumkalum Fishing Right; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of gathering by Kitsumkalum Members under the Kitsumkalum Fishing Right are identified, proposed and implemented, if appropriate.
19. For greater certainty, where Kitsumkalum and British Columbia have an agreed upon Specific Consultation Process in effect that addresses Contemplated Crown Conduct under paragraph 17, the processes set out in that agreement will be relied upon by Kitsumkalum and British Columbia for the purposes of consultation in respect of that conduct, and in satisfaction of the obligation of British Columbia to Consult under paragraph 17.
20. For greater certainty, nothing in this Agreement or a Specific Consultation Process under paragraph 18 precludes the ability of Kitsumkalum to raise the issue of whether there has been an unjustified infringement of the Kitsumkalum Fishing Right.

21. British Columbia and Kitsumkalum will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting by Kitsumkalum Members under the Kitsumkalum Fishing Right; and, if agreed by British Columbia and Kitsumkalum, may amend the Specific Consultation Process under paragraph 18 to include those processes.

### **Allocations**

22. The Kitsumkalum Fish Allocations for species managed by Canada are described in Schedule 1 as amended from time to time.
23. For a species or species group where the Kitsumkalum Fish Allocation is defined as a fixed number, Kitsumkalum will be permitted to harvest the maximum Kitsumkalum Fish Allocation reserved for Domestic Purposes of a species or species group in each year when commercial or recreational fisheries are permitted to target that species or species group in the Kitsumkalum Fish and Aquatic Plants Fishing Area and the Kitsumkalum Finfish Fishing Area.
24. Subject to paragraph 23, for a species or species group where the Kitsumkalum Fish Allocation is defined as a fixed number, and in any year, where the Minister determines that the quantity of a stock or species of Fish or Aquatic Plant that is available for harvest is not sufficient to meet all anticipated allocations from that stock or species to Kitsumkalum and other aboriginal groups for Domestic Purposes due to abundance concerns for that stock or species, the Minister will take into account written recommendations from the Kitsumkalum Joint Fisheries Committee or any of the Parties and may reduce any one or more of those allocations for that year.
25. In any given year, if the Kitsumkalum Joint Fisheries Committee or any Party makes a recommendation to the Minister to increase a maximum Kitsumkalum Fish Allocation described in Schedule 1, the Minister will take into account the written recommendations of the Kitsumkalum Joint Fisheries Committee or any of the Parties.
26. In the event that the Minister does not follow the written recommendations referred to in paragraph 26 and 27, the Minister will provide written reasons to the Kitsumkalum Joint Fisheries Committee.
27. The annual Kitsumkalum Fish Allocation for Skeena Sockeye salmon will vary with the abundance of the Skeena Sockeye up to a maximum amount as per Schedule 1. The methodology to determine the annual allocation will be described in the Fisheries Operational Guidelines and will be based upon:
  - (a) a lower limit, established for conservation purposes, so when the estimated return is at or below that limit, the allocation to Kitsumkalum will be zero;
  - (b) an upper abundance level, at which point the maximum annual allocation would be reached during years of high abundance;
  - (c) an approach or formulae for determining the annual allocation when the estimated abundance is between the lower limit and the upper abundance level.

28. The annual Skeena River Sockeye abundance will be determined, as described in the Fisheries Operational Guidelines, using one or more of:
  - (a) a pre-season forecast,
  - (b) an in-season abundance-based model, or
  - (c) another method as appropriate.
29. An abundance-based formula will be developed for Skeena Chinook, which will be applied when the information is sufficient to develop an abundance-based formula, as described in the Fisheries Operational Guidelines.
30. On the Effective Date, or such other date set by Kitsumkalum and Canada, Kitsumkalum and Canada will agree on a new allocation of Coho different to that of Schedule 1, and Schedule 1 will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.
31. An abundance-based approach may be developed for coho or pink. Where Canada or Kitsumkalum proposes the establishment of an abundance-based formula, Canada and Kitsumkalum will negotiate and attempt to reach agreement on the formula, as described in the Fisheries Operational Guidelines.
32. Allocations of specific rockfish species may be determined annually by the Minister, taking into account recommendations of the Kitsumkalum Joint Fisheries Committee as appropriate.
33. The specific allocations in paragraphs 31 may take into account conservation, which includes sustainability of specific rockfish species and associated area-based management measures.
34. Subject to paragraphs 32 and 33, the specific allocations of individual rockfish stocks or species will be described within the applicable Kitsumkalum Harvest Document, however, the maximum amount for the species group rockfish set out in Schedule 1 will not be reduced.
35. If permitted and subject to the conditions of a Kitsumkalum Harvest Document or license, non-target stocks or species caught in Kitsumkalum commercial fisheries targeting halibut within the Kitsumkalum Finfish Fishing Area may be retained for Domestic Purposes and will be counted against the defined maximum allocation for that stock or species in Schedule 1, unless those non-targeted stocks or species are retained under a commercial licence.

Seeking confirmation on paragraph 35
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36. Any Periodic Renewal regarding Kitsumkalum Fish Allocations will be conducted in accordance with the process outlined in paragraph 7 of Chapter 2 Periodic Renewal and Orderly Process and in the Fisheries Operational Guidelines.

**Allocation Disposition**

37. For greater certainty, Fish and Aquatic Plants harvested under the Kitsumkalum Fishing Right for Domestic Purposes cannot be sold.

38. Kitsumkalum may designate any portion of the Kitsumkalum Fish Allocations prescribed in Schedule 1 to be harvested for sale purposes if the following conditions are met:
- (a) the portion of Kitsumkalum Fish Allocations designated for sale purposes is identified pre-season in accordance with conditions set out in the Fisheries Operational Guidelines;
  - (b) the apportionment of Kitsumkalum Fish Allocations between harvests for Domestic Purposes and sale purposes is set out in the Kitsumkalum Annual Fishing Plan; and
  - (c) any in-season changes to the apportionment between Domestic Purposes and sale purposes, will follow the in-season adjustment process outlined for the Kitsumkalum Joint Fisheries Committee and in the Fisheries Operational Guidelines.
39. Any portion of an allocation designated for sale purposes pursuant to paragraph 38 has the same priority in fisheries management decisions as commercial fisheries.
40. Conditions for Kitsumkalum to harvest Fish for sale purposes include:
- (a) the conditions set out in the Integrated Fisheries Management Plan approved by the federal Minister for initiating a commercial fishery for that species or stock are met;
  - (b) any requirements for monitoring and reporting set out in the Fisheries Operational Guidelines, licences or regulations;
  - (c) the Minister has issued a licence to harvest for sale purposes, setting out terms and conditions; and
  - (d) requirements of applicable federal and provincial laws relating to the sale of Fish and including but not limited to laws respecting health and safety, inspection, processing, packaging, storage, export, quality control and labelling.
41. For greater certainty, Non-allocated Species harvested under this Agreement may not be sold.
42. Details and process regarding paragraphs 38 to 40 will be described in the Fisheries Operational Guidelines.

**Excess Salmon to Spawning Requirements**

43. In paragraphs 44 to 47, surplus refers to a number of salmon that is available for harvest where spawner abundance is in excess of spawning requirements, following all other approved fisheries.
44. Each year the Minister may determine whether there is a surplus of a species or stock of salmon originating in the Kitsumkalum Fishing Area, the size of the surplus, and access to that surplus.
45. The Kitsumkalum Joint Fisheries Committee, or any Party, may recommend to the Minister with respect to a species or stock of salmon returning to spawn to the Kitsumkalum Fishing Area:
- (a) the procedures for the identification of a surplus;
  - (b) the declaration of a surplus;

- (c) the size and disposition of the surplus; and
  - (d) the terms and conditions for the harvest of the surplus.
46. The Minister will consider the recommendations of the Kitsumkalum Joint Fisheries Committee, or any Party, and may declare a surplus of a species or stock of salmon returning to spawn in the Kitsumkalum Fishing Area and the size of the surplus.
47. Where the Minister declares a surplus, the Minister will determine:
- (a) if a portion of the declared surplus may be harvested by Kitsumkalum; and
  - (b) the terms and conditions for the harvest of the Kitsumkalum portion of the declared surplus.
48. For greater certainty, nothing in paragraph 47 limits the ability of the Minister to declare a surplus of a species or stock of salmon originating in the Kitsumkalum Fishing Area in the absence of recommendations from the Kitsumkalum Joint Fisheries Committee or any Party.

#### **Process for Non-Allocated Species Managed by Canada**

49. Paragraphs 50 to 69 apply only to those species of Fish and Aquatic Plants managed by Canada.
50. Kitsumkalum may harvest a Non-Allocated Species under the Kitsumkalum Fishing Right in accordance with a Kitsumkalum Harvest Document.
51. No sooner than five years after the Effective Date, or unless otherwise agreed, Canada or Kitsumkalum may propose the establishment of a Kitsumkalum Fish Allocation for a Non-Allocated Species by providing the Parties and the Kitsumkalum Joint Fisheries Committee with a written proposal.
52. Where Canada or Kitsumkalum provides a proposal under paragraph 51, they will seek to agree on a Basic Harvest, including the Base Period, for a Non-Allocated Species in accordance with the process set out in paragraphs 53 to 55.
53. The duration of the Base Period for the consideration of a proposal for the establishment of a Kitsumkalum Fish Allocation of a Non-Allocated Species may consist of:
- (a) a number of life cycles of a species specified in the Fisheries Operational Guidelines;
  - (b) a number of calendar years for species specified in the Fisheries Operational Guidelines; or,
  - (c) quantum of time as agreed to by the Minister and Kitsumkalum.
54. Where Canada and Kitsumkalum seek to reach an agreement on an allocation for a Non-Allocated Species, the Kitsumkalum Joint Fisheries Committee will be engaged to facilitate this process and provide recommendations to the Parties regarding the information needed to define the Kitsumkalum Fish Allocation, the Basic Harvest amount and the Base Period.
55. Any agreement between Canada and Kitsumkalum in respect of the Basic Harvest, including Base Period, for a Non-Allocated Species will be in writing.

56. Where Canada and Kitsumkalum have not agreed on a Basic Harvest, including a Base Period, for a Non-Allocated Species within one year of the receipt of a written proposal under paragraph 51, the Basic Harvest, including the Base Period, will be finally determined by arbitration under Chapter 29 Dispute Resolution without having to proceed through Stage One and Stage Two.
57. Where Canada and Kitsumkalum agree to a Basic Harvest, including the Base Period, for a Non-Allocated Species, or an arbitrator determines the Basic Harvest, including the Base Period, for that species, Canada and Kitsumkalum will seek to agree on a Kitsumkalum Fish Allocation for that species.
58. The Kitsumkalum Fish Allocation for the Non-Allocated Species may be an amount determined by a defined harvest quantity or quota, a formula defining a harvest quantity or quota, or a defined harvest area within the Kitsumkalum Fishing Area.
59. Where Canada and Kitsumkalum seek to agree on a Kitsumkalum Fish Allocation for a Non-Allocated Species, Canada and Kitsumkalum will provide each other with written recommendations in respect of that Kitsumkalum Fish Allocation and with any material that they consider relevant to the recommendations.
60. Where Canada and Kitsumkalum seek to agree on the Kitsumkalum Fish Allocation for a Non-Allocated Species, they will take into account:
  - (a) Base Period information on the harvests by Kitsumkalum of that Non-Allocated Species for Domestic Purposes;
  - (b) information on the historic and current harvest;
  - (c) measures necessary for conservation, public health, or public safety;
  - (d) biological status of a species or stock of Fish available for harvest in the Kitsumkalum Fishing Areas;
  - (e) impact of other fisheries on the Kitsumkalum Fishing Right;
  - (f) Kitsumkalum interests in a species for Domestic Purposes including data on community needs;
  - (g) Kitsumkalum population growth; and
  - (h) other relevant matters.
61. Where Canada and Kitsumkalum agree on the Kitsumkalum Fish Allocation for a Non-Allocated Species, the agreement will be in writing.
62. Where Canada and Kitsumkalum do not agree on an allocation for a Non-Allocated Species, the Minister will determine the Kitsumkalum Fish Allocation in accordance with paragraphs 63 and 64.

63. In determining a Kitsumkalum Fish Allocation for a Non-Allocated Species, the Minister will take into account:
  - (a) written recommendations and other material in respect of an allocation for a Non-Allocated Species provided by the Kitsumkalum Joint Fisheries Committee;
  - (b) written recommendations provided by Kitsumkalum; and
  - (c) all other considerations under paragraph 60.
64. Where the Minister determines a Kitsumkalum Fish Allocation for a Non-Allocated Species, the Kitsumkalum Fish Allocation for that species will not be less than the Basic Harvest during the Base Period with an additional amount that accounts for population growth.
65. Where the Minister determines a Kitsumkalum Fish Allocation for a Non-Allocated Species the determination will be provided to Kitsumkalum and the Kitsumkalum Joint Fisheries Committee in writing.
66. Where the Kitsumkalum Fish Allocation for a Non-Allocated Species that has been determined by the Minister varies from the written recommendations of Kitsumkalum, the Minister will provide written reasons to Kitsumkalum in respect of the basis of the determination of the Kitsumkalum Fish Allocation for that species by the Minister.
67. Where Canada and Kitsumkalum agree on the Kitsumkalum Fish Allocation under paragraph 61 or the Minister determines the Kitsumkalum Fish Allocation, Schedule 1 will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to document the allocation.

### **Oolichan**

68. The Kitsumkalum Fishing Right includes the harvest of oolichan in the Kitsumkalum Fishing Areas and the Red Bluff Oolichan Harvest Site. The harvest of oolichan will be in accordance with this Agreement and the Kitsumkalum Harvest Document.
69. If the Minister proposes to establish a commercial fishery for Skeena River oolichan, the Minister will Consult with Kitsumkalum on this proposal.

### **Process for Non-Allocated Species Managed by British Columbia**

70. Paragraphs 71 to 79 apply only to those species of Fish and Aquatic Plants managed by British Columbia.
71. Where a Kitsumkalum Fish Allocation, for a species of Fish or Aquatic Plants managed by British Columbia, is not established under this Agreement, that species of Fish or Aquatic Plant may be harvested for Domestic Purposes under the Kitsumkalum Fishing Right in accordance with Kitsumkalum Harvest Documents.
72. Where a Kitsumkalum Fish Allocation for a species of Fish or Aquatic Plant managed by British Columbia has not been established under this Agreement, British Columbia or Kitsumkalum may propose the establishment of a Kitsumkalum Fish Allocation for that species by providing British Columbia or Kitsumkalum, as applicable, with a written proposal and providing a copy of the proposal to the Kitsumkalum Joint Fisheries Committee.



73. Where the Minister or Kitsumkalum proposes the establishment of a Kitsumkalum Fish Allocation under paragraph 72, the Minister and Kitsumkalum will negotiate and attempt to reach agreement on the Kitsumkalum Fish Allocation.
74. Where British Columbia and the Kitsumkalum cannot reach an agreement on the allocation, the matter will be finally determined by arbitration under Chapter 29 Dispute Resolution.
75. In determining the Kitsumkalum Fish Allocation under paragraph 74, the arbitrator will take into account all relevant information provided by Kitsumkalum and British Columbia.
76. Notwithstanding paragraph 33 of Chapter 29 Dispute Resolution, an Arbitral Award referred to arbitration under paragraph 74 is only binding on the Parties where the Minister determines the Arbitral Award upholds the honour of the Crown with regards to British Columbia’s obligations to Kitsumkalum and other aboriginal peoples.
77. Prior to implementing an Arbitral Award referred to arbitration under paragraph 74, the Minister may:
  - (a) consult with other aboriginal people about the Arbitral Award and any potential adverse impacts to the rights recognized and affirmed by section 35 of the *Constitution Act, 1982* of those other aboriginal people that may occur; and
  - (b) as a result of consultation under paragraph 77(a), and in a manner consistent with the honour of the Crown, amend the Arbitral Award.
78. Where the Minister amends an Arbitral Award under paragraph 77(b):
  - (a) Kitsumkalum may, where a cause of action exists, commence or pursue judicial proceedings; and
  - (b) that ministerial decision is not subject to the processes in Chapter 29 Dispute Resolution.
79. Where British Columbia and Kitsumkalum agree on a Kitsumkalum Fish Allocation under paragraph 71, the arbitrator determines a Kitsumkalum Fish Allocation under paragraph 74, or an Arbitral Award is varied under paragraph 77(b), this Chapter will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment by adding a new Schedule to document the allocation.

**Power to Make Laws**

80. Kitsumkalum may make laws in respect of:
  - (a) the designation of vessels to harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right;
  - (b) the designation of Kitsumkalum Members and other individuals who may harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right; and
  - (c) the distribution among Kitsumkalum Members of Fish and Aquatic Plants harvested under the Kitsumkalum Fishing Right.

81. A Kitsumkalum Law made under paragraph 80 prevails to the extent of a Conflict with a Federal or Provincial Law.
82. Kitsumkalum may make laws in respect of:
  - (a) the portion of the Kitsumkalum Fish Allocation that may be harvested for Domestic Purposes or sale purposes pursuant to paragraph 38;
  - (b) the designation of individuals who may participate in a sale fishery described in paragraphs 38 to 42 and the documentation required;
  - (c) the harvest of that portion of the Kitsumkalum Fish Allocation identified for sale purposes pursuant to paragraph 38; and,
  - (d) the sale of that portion of the Kitsumkalum Fish Allocation identified for sale purposes pursuant to paragraph 38.
83. Kitsumkalum may make laws in respect of:
  - (a) the documentation of vessels that are designated to be used by Kitsumkalum to harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right;
  - (b) the documentation of individuals who are designated by Kitsumkalum to harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right; and
  - (c) the Trade and Barter of Fish and Aquatic Plants harvested by Kitsumkalum Members under the Kitsumkalum Fishing Right.
84. Federal or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law made under paragraph 82 and 83.

**Designation**

85. Kitsumkalum Fishing Right may only be exercised by those individuals who are designated by Kitsumkalum to harvest Fish and Aquatic Plants.
86. The Kitsumkalum Fisheries Operational Guidelines may describe which vessels are required to be designated and the period of time for which they are required to be designated.
87. Designation of a vessel by Kitsumkalum does not alter the application of Federal or Provincial Law in respect of foreign fishing vessels in Canadian waters.
88. Where an individual is designated by Kitsumkalum to harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right, Canada and British Columbia will not require that individual to have a federal or provincial fishing licence to harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right.
89. Where a Kitsumkalum Fish Allocation for a species of Fish or Aquatic Plants has been established under this Agreement, Kitsumkalum may designate vessels and Kitsumkalum Members and other individuals to harvest the species under the Kitsumkalum Fishing Right.

90. Where the Kitsumkalum allocation for a species of Fish or Aquatic Plant has not been established under the Agreement, Kitsumkalum may designate:
- (a) vessels and Kitsumkalum Members to harvest that species under the Kitsumkalum Fishing Right; and
  - (b) any other individual to harvest the species under the Kitsumkalum Fishing Right in accordance with a Kitsumkalum Harvest Document.

**Documentation**

91. Where Kitsumkalum designates an individual or a vessel, Kitsumkalum will issue documentation to that individual or vessel to evidence the designation.
92. Documentation issued under paragraph 91 will:
- (a) be in the English language, which version will be the authoritative version and, at the discretion of Kitsumkalum, in Sm’algyax;
  - (b) in the case of an individual, include the name and sufficient information to identify the individual;
  - (c) in the case of a vessel, include the name and address of the operator; and
  - (d) meet any requirements set out in the Kitsumkalum Harvest Documents and the Kitsumkalum Fisheries Operational Guidelines.

**Kitsumkalum Harvest Documents**

93. Kitsumkalum will provide, to the Minister, biological samples, catch data and other information related to Fish and Aquatic Plants harvested under the Kitsumkalum Fishing Right as may be required by a Kitsumkalum Harvest Document or Federal or Provincial Law.
94. The Minister will issue, in a timely manner, one or more Kitsumkalum Harvest Documents to Kitsumkalum in respect of the Kitsumkalum Fishing Right and all such Kitsumkalum Harvest Documents will be issued in a manner consistent with this Agreement.
95. Kitsumkalum will notify individuals designated by Kitsumkalum to Harvest Fish and Aquatic Plants under the Kitsumkalum Fishing Right of the provisions of the Kitsumkalum Harvest Documents.
96. In addition to the matters set out in the proposed Kitsumkalum Annual Fishing Plan, where the Minister issues a Kitsumkalum Harvest Document, the Minister will take into account:
- (a) conservation, public health and public safety;
  - (b) any written recommendations received from the Parties or from the Kitsumkalum Joint Fisheries Committee;
  - (c) the constitutional priority of the Kitsumkalum Fishing Right;
  - (d) efficient and effective harvesting and management of fisheries resources; and

- (e) any other matters that the Parties considers relevant.
97. The Minister will provide written reasons to Kitsumkalum and the Kitsumkalum Joint Fisheries Committee if Kitsumkalum Harvest Documents vary from the final submitted Kitsumkalum Annual Fishing Plan or written recommendations received from Kitsumkalum.
98. In addition to any duty to consult, and subject to paragraph 99, where any amendments to a Kitsumkalum Harvest Document are contemplated, the Minister will discuss the proposed amendments with the Kitsumkalum Joint Fisheries Committee prior to issuing an amended Kitsumkalum Harvest Document.
99. Where special circumstances make it impracticable to discuss a proposed amendment to the Kitsumkalum Harvest Document with the Kitsumkalum Joint Fisheries Committee under paragraph 98, the Minister:
- (a) may amend the Kitsumkalum Harvest Document without receiving recommendations from the Kitsumkalum Joint Fisheries Committee; and
  - (b) as soon as practicable after making the amendment, will notify the Kitsumkalum Joint Fisheries Committee and Kitsumkalum of the special circumstances and the reasons for the amendment.
100. Canada or British Columbia will not charge any fee for a Kitsumkalum Harvest Document, or any management fee or landing fee in respect of fisheries authorized by a Kitsumkalum Harvest Document.

### **Kitsumkalum Annual Fishing Plan**

101. Every year and in a timely manner, Kitsumkalum will develop, and provide to the Kitsumkalum Joint Fisheries Committee, a Kitsumkalum Annual Fishing Plan for the harvest of a Kitsumkalum Fish Allocation and Non-Allocated Species under the Kitsumkalum Fishing Right.
102. A Kitsumkalum Annual Fishing Plan will include, as appropriate:
- (a) the Kitsumkalum preferred means of harvest for each species as described in the Fisheries Operational Guidelines;
  - (b) what species or stocks of Fish or Aquatic Plants will be harvested and in what amounts;
  - (c) the location and timing of the harvest;
  - (d) the size, type, identification, marking and quantity of fishing gear to be used, the manner in which the fishing gear would be used, and other matters concerning the method of harvest;
  - (e) the transportation of Fish or Aquatic Plants harvested under the Kitsumkalum Fishing Right;
  - (f) the monitoring of harvests, including notification, catch monitoring, identification and reporting of harvest;
  - (g) Kitsumkalum enforcement activities; and

- (h) other matters as may be required for Kitsumkalum Harvest Documents.

## Management Plans

### Kitsumkalum Community Fishing Area

Parties under review
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103. The Kitsumkalum Joint Fisheries Committee will develop a proposed management plan for the Kitsumkalum Community Fishing Area.
104. The proposed management plan for the Kitsumkalum Community Fishing Area will be developed in accordance with the principles and process described in the Kitsumkalum Fisheries Operational Guidelines.
105. In the development of a management plan under paragraph 103, Kitsumkalum may make proposals to the Kitsumkalum Joint Fisheries Committee related to Kitsumkalum’s interests in the Kitsumkalum Community Fishing Area.
106. The management plan will address access by Kitsumkalum Members to fish at Kitsumkalum fishing sites and be based on the following principles:
- (a) reduce potential for conflict;
  - (b) non-exclusivity; and
  - (c) collaboration with other user groups.

### Kitsumkalum Joint Fisheries Committee

107. On the Effective Date, the Parties will establish a Kitsumkalum Joint Fisheries Committee to facilitate discussion of any matters relating to the exercise of the Kitsumkalum Fishing Right, including the cooperative assessment, planning and management of Fish, Fish habitat, and Aquatic Plants.
108. The Parties will each appoint one representative to the Kitsumkalum Joint Fisheries Committee. Additional individuals may participate in meetings to support or assist a Party’s representative in carrying out that representative’s responsibilities on the Kitsumkalum Joint Fisheries Committee.
109. Each representative will be notified of and may participate in all meetings of the Kitsumkalum Joint Fisheries Committee.
110. Canada may choose not to attend Kitsumkalum Joint Fisheries Committee meetings on fisheries matters related to species managed by British Columbia. British Columbia may choose not to attend Kitsumkalum Joint Fisheries Committee meetings on fisheries matters related to species managed by Canada.
111. The Kitsumkalum Joint Fisheries Committee representatives will seek to operate by consensus. The agreement of British Columbia is not required for consensus regarding fisheries matters related to species managed by Canada. The agreement of Canada is not required for consensus regarding fisheries matters related to species managed by British Columbia.

112. The Kitsumkalum Joint Fisheries Committee will establish its own operating procedures and these will be set out in the Kitsumkalum Fisheries Operational Guidelines.
113. Subject to paragraph 89 of Chapter 1 General Provisions, and any confidentiality limitations, the Parties will provide each other with information necessary to enable the Kitsumkalum Joint Fisheries Committee to carry out its functions and activities.
114. Subject to paragraph 118, the Kitsumkalum Joint Fisheries Committee may, where consensus is reached, make decisions in respect of some or all of:
  - (a) components of the Kitsumkalum Annual Fishing Plan;
  - (b) the collection and exchange of relevant fisheries related data, including fisheries research and stock assessment;
  - (c) fisheries monitoring and catch reporting;
  - (d) how activities and functions of the Kitsumkalum Joint Fisheries Committee will be coordinated with activities and functions of other regional fisheries processes;
  - (e) in-season amendments that are needed to a Kitsumkalum Harvest Document issued by the federal Minister pursuant to paragraphs 94 and 96; and
  - (f) any other matters that the Parties agree to in writing.
115. Subject to paragraph 118, Kitsumkalum Joint Fisheries Committee may discuss and make consensus recommendations to the Minister or any other Party in respect of some or all of the following matters:
  - (a) conservation, public health and public safety considerations that could affect harvesting under the Kitsumkalum Fishing Right;
  - (b) the management of fisheries both within and outside of the Kitsumkalum Fishing Area that could affect the Kitsumkalum Fishing Right;
  - (c) Management Plans for the Kitsumkalum Community Fishing Area;
  - (d) in-season management that could affect harvesting under the Kitsumkalum Fishing Right;
  - (e) the management objectives and biological considerations for Fish and Aquatic Plants harvested under the Kitsumkalum Fishing Right;
  - (f) the management and protection of Fish and Aquatic Plant habitat in the Kitsumkalum Fishing Area;
  - (g) Enhancement Initiatives and Stewardship Activities conducted in the Kitsumkalum Fishing Area; and
  - (h) other fisheries matters relevant to the exercise of the Kitsumkalum Fishing Right.

116. Where the Kitsumkalum Joint Fisheries Committee does not reach a consensus decision paragraph 114, or a consensus recommendation under paragraph 115, any Party may provide their written recommendations to the other Parties and submit a copy to the Kitsumkalum Joint Fisheries Committee.
117. The Minister will consider a consensus recommendation under paragraph 115, or a written recommendation made under paragraph 116 prior to making a decision.
118. If the federal Minister makes a decision that varies from a consensus decision under paragraph 114, or a consensus recommendation under paragraph 115, or a recommendation under paragraph 116, the federal Minister will provide written reasons to the Kitsumkalum Joint Fisheries Committee.
119. If the provincial Minister makes a decision that varies from a consensus recommendation under paragraph 115 or a written recommendation under paragraph 116, the provincial Minister will provide written reasons to the Kitsumkalum Joint Fisheries Committee.
120. Notwithstanding paragraphs 117 to 119, if there is an emergency the Minister:
  - (a) may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Parties to the Kitsumkalum Joint Fisheries Committee; and
  - (b) will provide written reasons to the Parties of the Kitsumkalum Joint Fisheries Committee, as soon as possible, of the emergency and the decision made or action taken.
121. Each year, Kitsumkalum will provide a draft Kitsumkalum Annual Fishing Plan, to the Kitsumkalum Joint Fisheries Committee, in a timely manner.
122. The Kitsumkalum Joint Fisheries Committee will, in a timely manner, review the draft Kitsumkalum Annual Fishing Plan and may make recommendations to Kitsumkalum with respect to the draft Kitsumkalum Annual Fishing Plan.
123. Kitsumkalum will consider any recommendations from the Kitsumkalum Joint Fisheries Committee on the draft Kitsumkalum Annual Fishing Plan.
124. Subject to paragraph 118, where the Kitsumkalum Joint Fisheries Committee has made a decision regarding one or more components of the Kitsumkalum Annual Fishing Plan those agreed to components will be submitted to the Minister and form the basis of the Kitsumkalum Harvest Documents.
125. Where the Kitsumkalum Joint Fisheries Committee does not reach a decision on one or more components of the Kitsumkalum Annual Fishing Plan, Kitsumkalum will, in a timely manner, submit the Kitsumkalum annual Fishing Plan to the Minister for consideration in the issuance of a Kitsumkalum Harvest Document, with a copy to the Kitsumkalum Joint Fisheries Committee.
126. The Kitsumkalum Joint Fisheries Committee will establish appropriate dates for:
  - (a) the submission of the draft Kitsumkalum Annual Fishing Plan by Kitsumkalum to the Kitsumkalum Joint Fisheries Committee;

- (b) the collaborative discussion by the Kitsumkalum Joint Fisheries Committee of the draft Kitsumkalum Annual Fishing Plan;
- (c) the submission of the Kitsumkalum Annual Fishing Plan by Kitsumkalum; and
- (d) the issuance of the Kitsumkalum Harvest Documents by the Minister,

and these dates will be set out in the Fisheries Operational Guidelines.

127. Each year the Kitsumkalum Joint Fisheries Committee will conduct a post-season review of matters related to the exercise of the Kitsumkalum Fishing Right, and other matters as the Parties may agree, as described in the Fisheries Operational Guidelines. The Parties will prepare an annual post-season report.

### **Regional Fisheries Committee**

128. Where a regional fisheries process for aboriginal fisheries is proposed or established between First Nations and Canada or British Columbia in an area that includes all or part of the Kitsumkalum Fishing Area, or that may affect the exercise of the Kitsumkalum Fishing Right, Kitsumkalum will be Consulted.
129. Any representative may request to the other representatives on the Kitsumkalum Joint Fisheries Committee that a function or activity of the Kitsumkalum Joint Fisheries Committee be addressed by a regional fisheries process.
130. Where the Parties agree that a function or activity of the Kitsumkalum Joint Fisheries Committee will be carried out by a regional fisheries process:
- (a) the Parties will update the Kitsumkalum Fisheries Operational Guidelines, as required, to reflect the change; and
  - (b) a reference in this Agreement to the Kitsumkalum Joint Fisheries Committee will be read as a reference to the regional fisheries process for that function or activity.
131. Where the regional fisheries process carries out a function or activity of the Kitsumkalum Joint Fisheries Committee and, in carrying out the function or activity, makes a written recommendation to the Minister, a Party may, if it does not agree with the recommendation of the regional fisheries process, submit its own written recommendation to the Minister with a copy to the other Parties to the Kitsumkalum Joint Fisheries Committee.
132. On receipt of such a recommendation, the Minister will respond in writing to the Parties with a copy to the Kitsumkalum Joint Fisheries Committee.
133. Where a Party determines that the regional fisheries process is not effectively carrying out a function or activity of the Kitsumkalum Joint Fisheries Committee, the Party may request that the Kitsumkalum Joint Fisheries Committee resume carrying out that function and activity, and no Party will unreasonably withhold their consent to such request. The Parties will update the Kitsumkalum Fisheries Operational Guidelines, as required, to reflect any change.



134. If a regional fisheries process is terminated and is not replaced by another process, the Kitsumkalum Joint Fisheries Committee will resume its original functions or activities. The Parties will update the Kitsumkalum Fisheries Operational Guidelines, as required, to reflect the change.
135. The Parties will, annually, or as requested by a Party, review and discuss the effectiveness of the regional fisheries process that carries out a function or activity of the Kitsumkalum Joint Fisheries Committee.
136. For greater certainty, a regional fisheries process does not include an international advisory process.

#### **Public Fisheries Advisory Process**

137. Where Canada or British Columbia has established or establishes a public fisheries advisory process that includes all or part of the Kitsumkalum Fishing Area, Canada or British Columbia will, if requested by Kitsumkalum, provide for participation by Kitsumkalum.
138. A public fisheries advisory process referred to in paragraph 137 does not include an international fisheries advisory process.
139. The design, establishment and termination of public fisheries advisory processes are at the discretion of the Minister.

#### **Fisheries Operational Guidelines**

140. Prior to Effective Date, the Parties will jointly develop guidelines, called the Fisheries Operational Guidelines, to assist the Parties in implementing the provisions of this Chapter. The Fisheries Operational Guidelines may include operational principles and procedures.
141. The Kitsumkalum Joint Fisheries Committee will update and maintain the Fisheries Operational Guidelines as required.
142. For greater certainty, any amendments to the Fisheries Operational Guidelines will require the written agreement of the Parties.
143. The Fisheries Operational Guidelines do not create legal obligations.

#### **Fisheries Enforcement**

##### **Enforcement of Kitsumkalum Laws by Fishery Officers and Fishery Guardians**

144. Fishery Officers and Fishery Guardians have the authority to, and may in their discretion, enforce Kitsumkalum Laws made pursuant to this Chapter, subject to the terms of their designation under the *Fisheries Act* and as described in a fisheries enforcement agreement negotiated pursuant to paragraph 147.
145. Kitsumkalum may make laws, consistent with a fisheries enforcement agreement negotiated pursuant to paragraph 147, to limit the powers of Fishery Officers and Fishery Guardians enforcing Kitsumkalum Laws under paragraph 144.
146. A Kitsumkalum Law under paragraph 145 prevails to the extent of a Conflict with Federal or Provincial Law.

147. At the request of Canada or Kitsumkalum, Canada and Kitsumkalum will negotiate and attempt to reach agreement regarding the enforcement of Kitsumkalum Laws made pursuant to this Chapter by Fishery Officers and Fishery Guardians pursuant to a fisheries enforcement agreement.
148. The fisheries enforcement agreement referred to in paragraph 147 may address the following matters:
- (a) funding opportunities and sources;
  - (b) cultural sensitivity training;
  - (c) operational training requirements;
  - (d) information sharing;
  - (e) joint patrols and working together;
  - (f) ticketing, prosecutions and restorative justice;
  - (g) improving enforcement capacity;
  - (h) establishing collaborative and professional relationships;
  - (i) scope of authority for the enforcement of Kitsumkalum Laws made pursuant to this Chapter;
  - (j) operational matters, including enforcement procedures and cultural protocols;
  - (k) identifying the organizations and individuals responsible for implementing the agreement; and
  - (l) any other matter to which the Parties may agree.
149. The powers and protections that a Fishery Officer or Fishery Guardian has under *the Fisheries Act* or any other Act of Parliament, including the powers and protections of a peace officer under the *Criminal Code*, apply to a Fishery Officer or Fishery Guardian enforcing Kitsumkalum Laws made pursuant to this Chapter.

### **Enforcement of Federal Law respecting Fisheries**

150. At the request of Canada or Kitsumkalum, Canada and Kitsumkalum will negotiate and attempt to reach agreement regarding the process and standards necessary for Kitsumkalum Enforcement Officers to have the authority to enforce Federal Law in respect of fisheries matters.
151. The negotiations referred to in paragraph 150 may result in an agreement that addresses the following matters:
- (a) training programs for Kitsumkalum Enforcement Officers;
  - (b) identification of which Federal Laws Kitsumkalum Enforcement Officers have the authority to enforce;

- (c) standards of enforcement;
- (d) responsibilities of Kitsumkalum as the employer of Kitsumkalum Enforcement Officers; and
- (e) any other matter to which the Parties may agree.

### **Stewardship and Enhancement**

- 152. Kitsumkalum may propose to the Kitsumkalum Joint Fisheries Committee stewardship, enhancement and habitat restoration initiatives in the Kitsumkalum Fishing Area. The Kitsumkalum Joint Fisheries Committee may make recommendations to the Parties regarding these initiatives.
- 153. The Parties may identify strategic restoration and enhancement opportunities, and negotiate agreements concerning those opportunities in accordance with Federal Law, Provincial Law, and Kitsumkalum Law.

### **Marine Protected Areas**

- 154. Canada will Consult with Kitsumkalum when Canada proposes to establish or terminate, or change the boundaries of, a Marine Protected Area that is wholly or partly within the Kitsumkalum Fishing Area.
- 155. Kitsumkalum may recommend in writing that Canada establish, or terminate, or change the boundaries of, a Marine Protected Area that is wholly or partly within the Kitsumkalum Fishing Area.
- 156. Where Kitsumkalum makes a written recommendation under paragraph 155 to establish or terminate, or change the boundaries of, a Marine Protected Area that is wholly or partly within the Kitsumkalum Fishing Area, Canada will review the recommendation and provide a written response.

### **Kitsumkalum Fisheries Conservation and Stewardship Fund**

- 157. Kitsumkalum may establish a Fisheries Conservation and Stewardship Fund from funds received from the Capital Transfer.
- 158. The Kitsumkalum Fisheries Conservation and Stewardship Fund may be used for:
  - (a) projects related to the conservation and protection of Fish and Aquatic Plants and Fish habitat in the Kitsumkalum Fishing Areas;
  - (b) facilitating the sustainable management of Fish and Aquatic Plants in the Kitsumkalum Fishing Areas;
  - (c) promoting and supporting participation by Kitsumkalum in the stewardship of Fish and Aquatic Plants and Fish habitat in the Kitsumkalum Fishing Areas.
- 159. In pursuing the uses of the Kitsumkalum Fisheries Conservation and Stewardship Fund, Kitsumkalum may seek and consider recommendations from the Kitsumkalum Joint Fisheries Committee.

**Economic Opportunities**

160. On the Effective Date, Canada, British Columbia and Kitsumkalum will enter into a Kitsumkalum Commercial Harvest Agreement.
161. If a Party terminates the Kitsumkalum Commercial Harvest Agreement, that Party will recompense the Kitsumkalum in accordance with the terms of that agreement.
162. For purposes of increasing the fishing capacity of Kitsumkalum, on the Effective Date, Canada will provide to Kitsumkalum \$7,797,397 (seven million seven hundred ninety seven thousand three hundred ninety seven) to be adjusted for inflation prior to the Effective Date, to establish a Kitsumkalum Fishing Capacity Fund.
163. For greater certainty, commercial fishing access obtained with the use of the funds from the Kitsumkalum Fishing Capacity Fund, may be added to the Kitsumkalum Commercial Harvest Agreement.

**New Emerging Commercial Fisheries**

164. Where the Minister proposes to establish a new emerging commercial fishery in all or in part of the Kitsumkalum Fishing Area, the Minister will Consult Kitsumkalum on the proposal to establish the fishery and the process for participants to enter the fishery and for how the fishery should be allocated among participants that may include Kitsumkalum.

**Aquaculture Tenures and Licenses**

Seeking confirmation on this section
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165. At the request of Kitsumkalum the Parties will collaborate on future shellfish aquaculture tenure and licensing application processes.
166. If the Minister proposes to establish a commercial fishery for Intertidal Bivalves at locations that are in Area 1 or Area 2, identified in Appendix K Part 4, the Minister will Consult with Kitsumkalum on this proposal.
167. For greater certainty, the Kitsumkalum Fishing Right includes the harvest of Intertidal Bivalves in the Kitsumkalum Shellfish and Aquatic Plants Fishing Area.
168. The Kitsumkalum harvest of Intertidal Bivalves will be in accordance with this Agreement and Federal and Provincial Law respecting public health and public safety.
169. The harvesting of Intertidal Bivalves in Area 1 and Area 2 identified in Appendix K Part 4 are not exclusive to Kitsumkalum.
170. Consistent with applicable Federal Law, and subject to funding approvals, Canada will, or in collaboration with Kitsumkalum, conduct the water quality and biotoxin monitoring required to provide reasonable assurance that Intertidal Bivalves harvested from locations in Area 1 in Appendix K Part 4 are safe for consumption.
171. Canada and Kitsumkalum may adopt flexibilities laid out in the Fisheries Operational Guidelines to provide reasonable assurance that Intertidal Bivalves harvested for Domestic Purposes are safe for consumption as food.

**Schedule 1 – Kitsumkalum Fish Allocations for species managed by Canada**

Table 1. Kitsumkalum Fish Allocations, maximum annual amounts.

Species/group	Maximum Annual Allocation
Sockeye Salmon (pieces)*	23,800
Skeena Chinook Salmon (pieces)**	2,500
Coho Salmon (pieces)***	1,000
Pink Salmon (pieces)	3,100
Herring (whole pounds)	10,000
Halibut (dressed head-off pounds) <u>Seeking confirmation</u>	16,150
Sablefish (whole pounds)	4,000
Rockfish (whole pounds)	3,600
Lingcod (whole pounds)	2,700
Urchins (whole pounds)	1,500
Sea Cucumbers (whole pounds)	300
Prawn / Shrimp (whole pounds)	2,400
Crab (whole pounds)	41,000

\* Abundance-based allocation see paragraph 27.

\*\* Will be a fixed maximum until an abundance-based formula developed under paragraph 29.

\*\*\* To be determined prior to effective date



# FISCAL RELATIONS





**CHAPTER 22 – CAPITAL TRANSFER**

1. On the Effective Date of this Agreement, a Capital Transfer in the amount of \$123,076,061 (Q1 2023) will be paid by Canada to Kitsumkalum in accordance with Schedule 1.
2. The Capital Transfer paid by Canada is provided, amongst other things:
  - (a) to recognize Kitsumkalum’s willingness to enter into a new treaty relationship that includes Kitsumkalum’s commitment to the recognition and predictable implementation of the aboriginal rights of Kitsumkalum as set out in paragraphs 44 to 53 of Chapter 1 General Provisions; and
  - (b) as a contribution toward Kitsumkalum’s priorities in achieving reconciliation.
3. A Federal Capital Advance in the amount of \$10,000,000 may be paid by Canada to Kitsumkalum Band after the successful ratification of this Agreement by Kitsumkalum but prior to Effective Date.
4. The Federal Capital Advance will be subject to the terms and conditions of a funding agreement between Canada and Kitsumkalum Band.
5. The Capital Transfer amount under paragraph 1 and any Federal Capital Advance paid in accordance with paragraph 3 will be adjusted for price as determined in Schedule 1.
6. Kitsumkalum acknowledges that a Federal Capital Advance paid to Kitsumkalum Band is a partial payment of the Capital Transfer under paragraph 1 and that the Capital Transfer paid by Canada to Kitsumkalum under paragraph 1 will be reduced by the amount of any Federal Capital Advance as determined in Schedule 1.
7. Prior to Effective Date, a Capital Transfer payment of \$15,000,000 will have been paid by British Columbia to Kitsumkalum for infrastructure and economic development purposes.
8. On Effective Date, a Capital Transfer payment of \$5,000,000 will be paid by British Columbia to Kitsumkalum for infrastructure and economic development purposes.
9. The amounts referred to in paragraph 7 and paragraph 8 will be adjusted in accordance with FDDIPI starting from when the “Canada and British Columbia Comprehensive Offer for Concluding a Treaty” document was provided to Kitsumkalum on June 21st, 2023 and ending within 30 days prior to the payment transfer date.

Seeking confirmation on paragraph 9
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**Schedule 1: Price Adjustments to the Capital Transfer paid by Canada**

1. To arrive at the final value owing of the Capital Transfer to be paid by Canada on Effective Date:
  - (a) the Capital Transfer amount described in paragraph 1 will be multiplied by the first published value of the FDDIPI (Final Domestic Demand Implicit Price Index) for the latest quarter available from Statistics Canada 30 days before the Effective Date (FDDIPI<sub>ED</sub>) and divided by the value of the FDDIPI for the 1<sup>st</sup> quarter of 2023 as published at the same time as (FDDIPI<sub>ED</sub>).
  - (b) The Federal Capital Advance described in paragraph 3 will be multiplied by the first published value of the FDDIPI for the latest quarter available from Statistics Canada 30 days before the Effective Date (FDDIPI<sub>ED</sub>) and divided by the value of the FDDIPI for the quarter on which the Federal Capital Advance was made as published at the same time as (FDDIPI<sub>ED</sub>).
  - (c) The Federal Capital Advance calculated through 1(b) will be deducted from the Capital Transfer amount calculated through 1(a).

## CHAPTER 23 – RESOURCE REVENUE SHARING

1. The sharing of a resource revenue between Kitsumkalum and British Columbia will be within the highest range of British Columbia’s sharing of that resource revenue with Indigenous nations, subject to the applicable Resource Revenue Sharing Agreement.
2. British Columbia will pay to Kitsumkalum on an annual basis, the amounts in accordance with a Resource Revenue Sharing Agreement.
3. On the Effective Date, British Columbia and Kitsumkalum will enter into a Forestry Resource Revenue Sharing Agreement.
4. Unless British Columbia and Kitsumkalum otherwise agree, a Resource Revenue Sharing Agreement will include:
  - (a) the manner in which paragraph 1 is implemented;
  - (b) the amount of agreed-upon Resource Revenues;
  - (c) the calculation for the agreed-upon Resource Revenues;
  - (d) clarity with respect to the resource revenue sharing methodology;
  - (e) whether Resource Revenues will contribute towards an accommodation for any Contemplated Crown Conduct associated with the resource activities required to generate the Resource Revenues;
  - (f) whether a Resource Revenue Sharing Agreement will be considered as a Specific Consultation Process;
  - (g) acknowledgment that the Resource Revenue Sharing Agreement will not:
    - (i) affect British Columbia’s ability to regulate provincial Crown land and resources;
    - (ii) amend provincial policies in relation to Crown lands and resources; or
    - (iii) create or affect any interest in Crown lands or resources in favour of any person;
  - (h) procedures for:
    - (i) the collection and exchange of information, including, statistical and financial information, required for the administration of the Resource Revenue Sharing Agreement;
    - (ii) dispute resolution in relation to the negotiations of the Resource Revenue Sharing Agreement; and
    - (iii) amending the Resource Revenue Sharing Agreement; and
  - (i) other matters agreed to by Kitsumkalum and British Columbia.

5. If an amendment to Provincial Law or policy changing how British Columbia collects a revenue materially and unfairly reduces a Resource Revenue that is the subject of an agreement with Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on an amended Resource Revenue Sharing Agreement or remedial measures.
6. If British Columbia and Kitsumkalum are unable to reach agreement on whether an amendment to Provincial Law or policy changing how British Columbia collects a revenue materially and unfairly reduces a Resource Revenue, upon the agreement of British Columbia and Kitsumkalum, this matter will be finally determined by arbitration under Chapter 29 Dispute Resolution.
7. For greater certainty, reductions in Resource Revenues caused by or implemented in response to environmental stewardship, public safety, natural disasters or other events beyond the control of the Parties do not constitute an unfair reduction under paragraph 5.
8. If British Columbia implements a new, or amends an existing program or policy, of general application for the negotiation of agreements to share resource revenues with First Nations then:
  - (a) Kitsumkalum is entitled to the benefit of the new or amended program or policy, subject to its applicable terms and conditions; and
  - (b) at the request of Kitsumkalum, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on a new or amended Resource Revenue Sharing Agreement so Kitsumkalum may benefit from that new or amended program or policy.
9. At Kitsumkalum's request, the Kitsumkalum and British Columbia may negotiate agreements to share provincial revenues from natural resources, except to the extent that a Resource Revenue Sharing Agreement already provides a share of revenues from those natural resources to Kitsumkalum.
10. Any funding required for the purposes of:
  - (a) a Resource Revenue Sharing Agreement; or
  - (b) any other agreement reached or permitted under this Chapter 23 Resource Revenue Sharing that provides for financial obligations on the part of British Columbia,is subject to the appropriation of funds by the Legislature of British Columbia.

## CHAPTER 24 – TAX

### Direct Taxation

1. The Kitsumkalum Government may make laws with respect to:
  - (a) Direct taxation of Kitsumkalum Members within Kitsumkalum Lands in order to raise revenue for Kitsumkalum Government purposes; and
  - (b) the implementation of any taxation agreement between it and Canada or British Columbia.
2. The Kitsumkalum Government law-making authority under paragraph 1(a) does not limit the taxation powers of Canada or British Columbia.
3. Notwithstanding any other provision of this Agreement, any Kitsumkalum Law made under this Chapter or any exercise of power by the Kitsumkalum Government, will be subject to and will conform with Canada's International Legal Obligations respecting taxation, and paragraphs 28 to 31 of Chapter 1 General Provisions do not apply in respect of Canada's International Legal Obligations in respect of taxation.

### Tax Agreements

4. From time to time, at the request of Kitsumkalum, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with the Kitsumkalum Government with respect to:
  - (a) the extent to which the Direct taxation law-making authority of the Kitsumkalum Government under paragraph 1(a) may be extended to apply to Persons, other than Kitsumkalum Members, within Kitsumkalum Lands; and
  - (b) the manner in which the Kitsumkalum Government law-making authority under paragraph 1(a), as extended by the application of paragraph 4(a), 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 Kitsumkalum Government; and
    - (ii) the terms and conditions under which Canada or British Columbia may administer, on behalf of Kitsumkalum, taxes imposed by the Kitsumkalum Government.

### Real Property Taxation

5. On or after the Effective Date, on the request of the Kitsumkalum, British Columbia and Kitsumkalum will enter into real property tax arrangements that establish Kitsumkalum as the sole real property tax authority for Kitsumkalum Lands and includes the delegation of law-making authority with respect to the taxation of persons other than Kitsumkalum Members.

**Penalties**

6. A Kitsumkalum Law in respect of taxation may provide for:
- (a) a fine that is greater than the limits set out in Chapter 9 Administration of Justice; or
  - (b) a term of imprisonment that is greater than the limit set out in Chapter 9 Administration of Justice,

where there is an agreement to that effect as contemplated in paragraph 4 of this Chapter.

**Adjudication**

7. Notwithstanding Chapter 9 Administration of Justice, parties to an agreement under paragraph 4 may provide for an alternative approach to the appeal, enforcement or adjudication of Kitsumkalum Law with respect to taxation.

**Kitsumkalum Lands**

8. Kitsumkalum is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of Kitsumkalum in Kitsumkalum Lands on which there are no improvements or on which there is a designated improvement.
9. In paragraph 8, “designated improvement” means:
- (a) a residence of a Kitsumkalum 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 Kitsumkalum cultural or spiritual purposes;
    - (ii) works of public convenience constructed or operated for the benefit of Kitsumkalum Members, occupiers of Kitsumkalum Lands or individuals visiting or in transit through Kitsumkalum Lands, 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 paragraphs 9(b)(i) and 9(b)(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.

10. In paragraph 9(b), “public purpose” does not include the provision of property or services primarily for the purpose of profit.
11. For the purposes of paragraphs 8 and 9:
  - (a) for greater certainty, Kitsumkalum Lands include 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.
12. For greater certainty, the exemption from taxation in paragraph 8 does not apply to a taxpayer other than Kitsumkalum nor does it apply with respect to a disposition of Kitsumkalum Lands or interests in those lands by Kitsumkalum.
13. For federal and British Columbia income tax purposes, proceeds of disposition received by Kitsumkalum on expropriation of Kitsumkalum Lands in accordance with Chapter 3 Kitsumkalum Lands will not be taxable.

### **Transfer of Kitsumkalum Capital**

14. A transfer under the Agreement of Kitsumkalum Capital and a recognition of ownership of Kitsumkalum Capital under the Agreement are not taxable.
15. For purposes of paragraph 14, an amount paid to a Kitsumkalum Member is deemed to be a transfer of Kitsumkalum Capital under the Agreement if the payment:
  - (a) reasonably can be considered to be a distribution of Capital Transfer received by Kitsumkalum; and
  - (b) becomes payable to the Kitsumkalum Member within 90 days and is paid to the Kitsumkalum Member within 270 days from the date that Kitsumkalum receives the Capital Transfer.
16. For federal and British Columbia income tax purposes, Kitsumkalum Capital is deemed to have been acquired by Kitsumkalum 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.

### ***Indian Act Tax Exemption***

17. Subject to paragraph 19, Section 87 of the *Indian Act* applies to a Kitsumkalum Member who is an Indian.
18. Subject to paragraph 1(a) and paragraphs 19 to 21, Section 87 of the *Indian Act* applies on Kitsumkalum Lands that were an Indian Reserve on the day before the Effective Date as if the lands were an Indian Reserve.
19. Paragraphs 17 and 18 only apply so long as Section 87 of the *Indian Act* itself remains in force.

20. Paragraph 18 only applies to an Indian during the period that Section 87 of the *Indian Act* applies to the Indian.
21. Kitsumkalum may enter into a tax agreement with Canada or British Columbia that limits the application of paragraph 18 to the extent specified in that tax agreement.

**Tax Treatment Agreement**

22. The Parties will enter into a tax treatment agreement which will come into effect on the Effective Date.
23. 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.



**CHAPTER 25 – FISCAL**

1. Canada and Kitsumkalum acknowledge and agree that the government-to-government relationship set out in this Agreement includes the establishment of a new intergovernmental fiscal relationship between Canada and Kitsumkalum Government through which Canada and Kitsumkalum will work together over time to ensure that Kitsumkalum has access to sufficient fiscal resources to carry out Federally Supported Government Responsibilities based on Expenditure Need Methodologies.
2. The fiscal relationship described in paragraph 1 shall be implemented through Fiscal Arrangements that will:
  - (a) identify the areas of Government Responsibility which are Federally Supported Government Responsibilities;
  - (b) identify how Federally Supported Government Responsibilities are to be funded, whether this is through Interim Funding Methodologies or Expenditure Need Methodologies;
  - (c) set out the respective responsibilities and obligations of Canada and Kitsumkalum Government for Federally Supported Government Responsibilities; and
  - (d) consider Kitsumkalum Government’s fiscal capacity to provide support towards Federally Supported Government Responsibilities as appropriate.
3. The Parties acknowledge that they each have a role in supporting Kitsumkalum through direct financial support, as set out in Fiscal Arrangements and Fiscal Provisions, or indirect financial support, or through access to public programs and services.
4. Prior to terminating a Fiscal Arrangement, Canada will engage with Kitsumkalum in accordance with the process set out in that Fiscal Arrangement.
5. In any review or consideration of changes to a Fiscal Arrangement, Canada and Kitsumkalum will consider:
  - (a) the existing Fiscal Arrangement, including those that have most recently expired or been terminated;
  - (b) Canada’s prevailing fiscal policy for self-government arrangements; and
  - (c) the principle that fiscal arrangements be reasonably stable and predicable over time.
6. In any review or consideration of changes to a Fiscal Provisions, the British Columbia and Kitsumkalum First Nation will consider:
  - (a) the existing Fiscal Provisions, including those that have most recently expired or been terminated;
  - (b) British Columbia’s prevailing fiscal policy for self-government arrangements;
  - (c) the principle that Fiscal Provisions be reasonably stable and predictable over time; and

- (d) Kitsumkalum’s needs with respect to governmental operations and delivery of programs and services.
7. Notwithstanding paragraphs 4 and 5, Canada and Kitsumkalum intend that there will always be a Fiscal Arrangement in place in accordance with the provisions of this Chapter, though they acknowledge their fiscal relationship and the associated needs of Kitsumkalum may evolve over time.
8. When Kitsumkalum Government’s own fiscal capacity is considered in Fiscal Arrangements:
- (a) No revenues will be considered from:
    - (i) transfers to Kitsumkalum made under this Agreement;
    - (ii) a Specific Claims Settlement;
    - (iii) proceeds from the sale or expropriation of Kitsumkalum’s lands;
    - (iv) transfers from Canada or British Columbia made directly or indirectly through an intermediary to support Government Responsibilities and the delivery of programs and services by Kitsumkalum Government; and
    - (v) payments provided to Kitsumkalum in respect of actual or potential impacts on Kitsumkalum or its Members arising from projects located off Kitsumkalum Lands. This exemption will not apply to payments made in respect of the purchase of goods or services provided by Kitsumkalum Government or an entity controlled by Kitsumkalum Government in connection with such projects.
9. Fiscal Arrangements or Fiscal Provisions that include consideration of Kitsumkalum’s fiscal capacity will not permit:
- (a) Canada to benefit from the decision of British Columbia to vacate tax room, to delegate tax authorities or to transfer revenues or revenue capacity to Kitsumkalum; or
  - (b) British Columbia to benefit from the decision of Canada to vacate tax room, to delegate tax authorities or to transfer revenues or revenue capacity to Kitsumkalum.
10. Where a proposed change to the publicly available federal policy on self-government fiscal arrangements, in place from time to time, could have an impact on existing Fiscal Arrangements, Kitsumkalum is entitled to:
- (a) participate in any national or regional collaborative process of engagement established by Canada with Indigenous self-governments on the proposed changes to the publicly available federal policy on self-government fiscal arrangement; or
  - (b) where a regional or national collaborative process of engagement referred to in paragraph 10(a) does not exist, Canada will provide notice of the proposed change to the federal policy on self-government fiscal arrangements and provide an opportunity to meet and discuss its views or concerns respecting the proposed changes, prior to changes to the publicly available federal policy on self-government fiscal arrangements being made by Canada.

11. Unless it is otherwise agreed by the Parties in Fiscal Arrangements or Fiscal Provisions, the creation of the Kitsumkalum Government, the recognition of the Kitsumkalum Government's legislative authority under this Agreement or the exercise of the Kitsumkalum Government's legislative authority does not create or imply any financial obligation or service delivery obligation on the part of any Party.
12. Any funding required for the purposes of any Fiscal Arrangement or Fiscal Provision 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 the Parliament of Canada;
  - (b) in the case of British Columbia by the Legislature of British Columbia; and,
  - (c) in the case of Kitsumkalum by the legislature of Kitsumkalum.



# **PROCEDURES**



## CHAPTER 26 – ELIGIBILITY AND ENROLMENT

### Eligibility Criteria

1. Subject to paragraph 2, an individual is eligible for enrolment under this Agreement if that individual is:
  - (a) of Kitsumkalum ancestry by matrilineal or patrilineal descent and has a Demonstrated Attachment to Kitsumkalum;
  - (b) a member or entitled to be a member of the Kitsumkalum Band;
  - (c) adopted as a Child under laws recognized in Canada, or by a Kitsumkalum custom, by an individual eligible for enrolment under paragraphs 1(a) or 1(b);
  - (d) a descendant or an adopted Child of an individual eligible for enrolment under paragraphs 1(a), 1(b) or 1(c); or
  - (e) a spouse, including a common law spouse, of an individual eligible for enrolment under paragraphs 1(a), 1(b) or 1(c) and who is, after the Effective Date, accepted under a community acceptance process set out in Kitsumkalum Law.
2. On the day after the Effective Date, paragraph 1 ceases to be the source of the Eligibility Criteria and an individual is eligible for enrolment under this Agreement if that individual meets the Eligibility Criteria set out in the Kitsumkalum Constitution.

### Changes to Kitsumkalum Eligibility Criteria

3. Kitsumkalum may, after the Effective Date and in accordance with this Agreement, amend the Eligibility Criteria by amending the Kitsumkalum Constitution.
4. The Kitsumkalum Constitution will provide:
  - (a) that amendments to the Eligibility Criteria must, in addition to any other steps required to amend the Kitsumkalum Constitution, be authorized by a referendum of Kitsumkalum Members who are at least 18 years of age on the last scheduled day of voting in the referendum, in which at least 50 percent plus one of these Kitsumkalum Members vote, and at least 50 percent plus one of those who vote, vote in favour of the amendments to the Eligibility Criteria;
  - (b) that individuals who are enrolled under this Agreement on the date immediately prior to the date that the amendments to the Eligibility Criteria come into effect will continue to be enrolled;
  - (c) that individuals who have applied for enrolment under this Agreement by the date immediately prior to the date that the amendments to the Eligibility Criteria come into effect will have their application determined in accordance with the Eligibility Criteria that would have applied prior to the date that the amendments to the Eligibility Criteria come into effect; and

- (d) that individuals with Kitsumkalum ancestry by matrilineal or patrilineal descent and a Demonstrated Attachment to Kitsumkalum will always be eligible for enrolment.
5. Kitsumkalum may make laws in relation to factors, consistent with the definition of Demonstrated Attachment, according to which an individual's Demonstrated Attachment to Kitsumkalum is to be assessed.
  6. Kitsumkalum Law under paragraph 5 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Applications for Enrolment**

7. An individual may:
  - (a) apply
    - (i) before the Effective Date, to the Enrolment Committee;
    - (ii) on or after the Effective Date, to Kitsumkalum under paragraph 42(a), for enrolment under this Agreement;
  - (b) appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; or
  - (c) seek judicial review of a decision of the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a), as applicable,

on the individual's own behalf, or on behalf of an individual whose affairs they have the legal authority to manage.
8. Each individual referred to in paragraph 7 has the burden of demonstrating that the Eligibility Criteria are met.

### **Other Land Claims Agreements**

9. Except as provided in this Chapter, an individual 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.
10. Upon submitting an application to be enrolled under this Agreement, an individual must notify the Enrolment Committee, or Kitsumkalum under paragraph 42(a), as applicable, if they are a beneficiary of, or have applied for enrolment under, another treaty or land claims agreement in Canada.
11. Subject to paragraphs 12 to 14, an individual described in paragraph 9 will be enrolled if they meet the Eligibility Criteria.
12. An individual who has been enrolled under paragraph 11 will:
  - (a) within 120 days after the Effective Date; or



- (b) where the decision to accept their application to be enrolled under paragraph 11 is made after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee, or Kitsumkalum under paragraph 42(a), as applicable, that they have been enrolled;

provide written evidence to the Enrolment Committee, or Kitsumkalum under paragraph 42(a), as applicable, to demonstrate that they have ceased to be a beneficiary of, or have withdrawn their application for enrolment under, another treaty or land claims agreement in Canada.

- 13. If an individual enrolled under paragraph 11 fails to satisfy the requirements of paragraph 12, their name will be removed from the Enrolment Register.
- 14. An individual enrolled under paragraph 11 is not entitled to exercise any rights or receive any benefits under this Agreement until they have satisfied the requirements of paragraph 12.

### **Membership in a Band Other Than the Kitsumkalum Band**

- 15. For greater certainty, after the Effective Date, upon becoming a Kitsumkalum Member, an individual ceases to be a member or a registered Indian of any Band in accordance with paragraph 32 of Chapter 1 General Provisions.

- 16. An individual who was a member or a registered Indian of any Band other than the Kitsumkalum Band will:

- (a) within 120 days after the Effective Date; or
- (b) where the decision to accept their application to be enrolled is made after the Effective Date, within 120 days of receiving notification from the Enrolment Committee, or Kitsumkalum under paragraph 42(a), as applicable, that they have been enrolled,

do all things necessary to request Canada to change their affiliation to Kitsumkalum and to issue a new status card.

### **The Enrolment Committee**

- 17. Kitsumkalum will establish an enrolment committee consisting of three individuals appointed by Kitsumkalum.
- 18. Kitsumkalum will notify Canada and British Columbia of the names of the individuals appointed to the Enrolment Committee as soon as practicable after their appointment.
- 19. The Enrolment Committee will:
  - (a) establish enrolment procedures and set time limits;
  - (b) receive enrolment applications, consider each application, request further information from applicants if required, enrol all applicants who meet the Eligibility Criteria and maintain a record of those decisions;
  - (c) establish and maintain an enrolment register containing the names of all enrolled individuals;

- (d) publish its enrolment procedures, including a list of the documentation and information required of applicants;
  - (e) publish the Eligibility Criteria and provide information on the enrolment process and application forms to any individual who wishes to apply for enrolment;
  - (f) notify in writing each applicant and the Parties of its decision and, where enrolment is refused, provide written reasons;
  - (g) on request, provide to a Party or the Enrolment Appeal Board, in confidence, information in respect of an individual’s enrolment application;
  - (h) add, delete or amend names from the Enrolment Register in accordance with this Chapter and decisions of the Enrolment Appeal Board;
  - (i) subject to this Chapter, keep information provided by and about applicants confidential;
  - (j) provide a true copy of the Enrolment Register to the Parties on request;
  - (k) take reasonable steps to notify individuals potentially eligible for enrolment of the Eligibility Criteria and application procedures; and
  - (l) provide a true copy of the Enrolment Register and any other relevant information requested to the Ratification Committee in a timely manner.
20. After a decision by the Enrolment Committee and before any appeal of that decision is commenced, an individual may submit new information to the Enrolment Committee.
21. Subject to this Chapter, all decisions of the Enrolment Committee are final and binding.
22. The Enrolment Committee may, before an appeal of a decision is commenced, vary a decision on the basis of new information, if it considers that the decision was in error.
23. If the Enrolment Committee fails to decide upon an application for enrolment within the time established in its enrolment procedures, the application will be deemed to be refused and the deemed refusal will constitute grounds for appeal to the Enrolment Appeal Board.
24. If an individual applies to have their name, or the name of an individual they have legal authority to manage, removed from the Enrolment Register, the Enrolment Committee will remove the name and notify the individual who made the application.

### **The Enrolment Appeal Board**

25. Canada and Kitsumkalum will establish the Enrolment Appeal Board at a date agreed upon by the Parties.
26. Kitsumkalum 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.
27. A member of the Enrolment Committee will not be a member of the Enrolment Appeal Board.

28. An applicant or a Party may appeal by written notice to the Enrolment Appeal Board:
  - (a) any decision of the Enrolment Committee made under paragraph 19(b) or 22; or
  - (b) any application deemed to be refused under paragraph 23.
29. The Enrolment Appeal Board will:
  - (a) establish and publish its procedures and time limits, including a time limit for making enrolment decisions;
  - (b) hear and determine any appeal brought under paragraph 28 and decide whether the individual 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 and the Parties;
  - (e) maintain a record of its decisions and provide it to the Enrolment Committee; and
  - (f) report on the appeal process to the Parties on request.
30. After 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 that individual's possession; and
  - (b) direct a witness to answer on oath or solemn affirmation any relevant question posed to the witness; and
  - (c) re-hear an appeal that was completed before the Effective Date on the basis of:
    - (i) new information; or
    - (ii) such other factors as the Enrolment Appeal Board considers relevant including its ability to exercise its powers under paragraphs 30(a) and 30(b).
31. A judge of the Provincial Court of British Columbia or other court of competent application may, on application by the Enrolment Appeal Board, enforce a summons or direction made under paragraphs 30(a) or 30(b).
32. Any individual appearing before the Enrolment Appeal Board may be represented by counsel or an agent.
33. Subject to paragraphs 35 to 38, all decisions of the Enrolment Appeal Board are final and binding.

**Actions Against the Enrolment Committee or Enrolment Appeal Board**

34. No action lies or may be commenced against the Enrolment Appeal Board, the Enrolment Committee, any member of the Enrolment Appeal Board 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.

**Judicial Review**

35. An applicant or a Party may apply to the Supreme Court of British Columbia to review a decision of the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a), as applicable, on the grounds that the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a):
- (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.
36. On an application for judicial review the Supreme Court of British Columbia may either dismiss the application or set aside the decision and refer the matter back to the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a), as applicable, for determination in accordance with any directions that the Supreme Court of British Columbia considers appropriate.
37. Where the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a), as applicable, refuses or fails to hear or decide an appeal within a reasonable time, the applicant or a Party may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a), to hear or decide the appeal in accordance with any directions that the Supreme Court of British Columbia considers appropriate.
38. An applicant or a Party may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board, or Kitsumkalum under paragraph 42(a), as applicable, or a longer time that may be determined by the Supreme Court of British Columbia.

**Costs**

39. Canada and British Columbia will, as agreed between them, provide funding for the Enrolment Committee and the Enrolment Appeal Board to carry out the duties and responsibilities of the Enrolment Committee and Enrolment Appeal Board under this Chapter.
40. Kitsumkalum will bear the administrative costs associated with enrolment applications received on or after the Effective Date.

**Enrolment as of the Effective Date**

41. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered decisions in respect of those applications or appeals commenced before the Effective Date, and on dissolution the Enrolment Committee and the Enrolment Appeal Board will provide their records to Kitsumkalum and on request to British Columbia or Canada.
42. As of the Effective Date, Kitsumkalum will:
  - (a) be responsible for an enrolment process, including the application of the Eligibility Criteria, and the administrative costs of that process;
  - (b) maintain the Enrolment Register;
  - (c) provide a true copy of the Enrolment Register to Canada and British Columbia on request; and
  - (d) provide information concerning enrolment to Canada and British Columbia on request.

**General**

43. Enrolment under this Agreement does 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 Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.



## CHAPTER 27 – RATIFICATION

### General

1. This Agreement will be submitted to the Parties for ratification after it has been initialled by the chief negotiators for the Parties.
2. This Agreement is legally binding once it has been ratified and brought into effect in accordance with this Chapter.

### Ratification of Agreement by Kitsumkalum

3. Ratification of this Agreement by Kitsumkalum requires:
  - (a) that individuals who may be eligible to vote have a reasonable opportunity to review this Agreement;
  - (b) a vote, by way of a secret ballot;
  - (c) that at least 50 percent plus one of the Eligible Voters on the Final Treaty Voters List cast their vote; and
  - (d) that at least 50 percent plus one of those voters who cast their vote, must vote in favour of entering into this Agreement;
  - (e) ratification of the Kitsumkalum Constitution through the process set out in this Agreement; and
  - (f) that this Agreement be signed by an authorized representative of Kitsumkalum.

### Ratification of the Kitsumkalum Constitution

4. Ratification of the Kitsumkalum Constitution by Kitsumkalum requires:
  - (a) that individuals who may be eligible to vote have a reasonable opportunity to review the Kitsumkalum Constitution;
  - (b) a vote, by way of a secret ballot; and
  - (c) that at least 50 percent plus one of the Eligible Voters on the Final Constitution Voters List cast their vote; and
  - (d) that at least 50 percent plus one of the ballots cast by Eligible Voters under paragraph 4(c) are in favour of the Kitsumkalum Constitution.

### Ratification Committee

5. The Parties will establish a ratification committee, consisting of one representative appointed by each of the Parties, to be responsible for the Kitsumkalum ratification processes.

6. The Ratification Committee will:
- (a) establish and publish ratification procedures and time limits in relation to the Constitution Ratification Vote and the Treaty Ratification Vote;
  - (b) take reasonable steps to provide an opportunity for individuals who may be eligible to vote to review the Kitsumkalum Constitution before the Constitution Ratification Vote and this Agreement before the Treaty Ratification Vote;
  - (c) prepare and publish:
    - (i) at least 30 days before the first day of voting for the Constitution Ratification Vote, a Constitution Voters List; and
    - (ii) at least 30 days before the first day of voting for the Treaty Ratification Vote, a Treaty Voters List,

by determining whether each individual whose name is provided to it by the Enrolment Committee under paragraph 19(1) of Chapter 26 Eligibility and Enrolment is eligible to vote under paragraph 8;
  - (d) update the Constitution Voters List for the Constitution Ratification Vote and the Treaty Voters List for the the Treaty Ratification Vote by:
    - (i) on an ongoing basis until the close of polls on the last day of voting, adding to the Constitution Voters List or the Treaty Voters List, as applicable:
      - 1. the name of each individual whose name has been removed under paragraph 6(d)(ii)1 and who has provided contact information to Kitsumkalum or the Ratification Committee;
      - 2. the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 8; and
      - 3. the name of each individual who casts a ballot under paragraph 9 and whose ballot is counted under paragraph 10; and
    - (ii) removing from the Constitution Voters List or the Treaty Voters List, as applicable:
      - 1. the name of each individual whom Kitsumkalum has requested be removed before the close of polls on the last day of voting due to an inability to contact that individual, provided that Kitsumkalum provides documentation of the steps taken to contact the individual and the Ratification Committee is satisfied that those steps are reasonable;
      - 2. the name of each individual who did not vote and who provides, within seven days of the last day of voting, a letter from a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for general voting and



3. the name of each individual who died on or before the last day of voting without having voted;
  4. the name of each individual who has applied, or on whose behalf an application has been made, before the close of polls on the last day of voting to have his or her name removed from the Enrolment Register by the Enrolment Committee under paragraph 24 of Chapter 26 Eligibility and Enrolment, provided the individual has not already voted; and
  5. the name of each individual who has applied or on whose behalf an application has been made, before the close of polls on the last day of voting, to have their name removed, provided the individual has not already voted.
- (e) after updating the Constitution Voters List under paragraph 6(d), preparing and publishing a final version of the Constitution Voters List;
  - (f) after updating the Treaty Voters List under paragraph 6(d), preparing and publishing a final version of the Treaty Voters List;
  - (g) approve the form and content of the ballots before the first day of voting for each Ratification Vote;
  - (h) authorize and provide general direction to voting officers, including the establishment of polling stations and rules that may include advance polling and mail-in ballots;
  - (i) publish the dates of each Ratification Vote and the location of the polling stations;
  - (j) conduct each Ratification Vote on the day or days determined by the Ratification Committee;
  - (k) publish the results of each Ratification Vote immediately following the Ratification Vote count; and
  - (l) prepare and provide to the Parties a written report on the outcome of each Ratification Vote within 90 days following the last day of voting for Ratification Vote.
7. For greater certainty, a Ratification Vote may include voting by electronic means.

**Eligible Voters**

8. An individual is eligible to vote in a Ratification Vote if the individual is:
  - (a) enrolled under Chapter 26 Eligibility and Enrolment; and
  - (b) at least 18 years of age on the last day of voting in that Ratification Vote.
9. An individual whose name is not included on the Constitution Voters List or the Treaty Voters List may vote in the applicable Ratification Vote if:
  - (a) the Enrolment Committee provides a voting officer with confirmation that the individual submitted a completed enrolment application to the Enrolment Committee; and

- (b) the individual provides evidence satisfactory to a voting officer that the individual is at least 18 years of age on the last day of voting in that Ratification Vote.
10. If the Enrolment Committee notifies the Ratification Committee that an individual referred to in paragraph 9 meets the Eligibility Criteria:
- (a) the name of the individual will be added to the Constitution Voters List or the Treaty Voters List, as applicable; and
  - (b) the ballot of the individual will be counted for the purposes of the votes under paragraphs 3 and 4.

**Costs**

11. Canada and British Columbia will, as agreed between them, provide funding for the Ratification Committee to carry out its duties and responsibilities under this Chapter.

**Ratification by Canada**

12. Ratification of this Agreement by Canada requires:
- (a) that this Agreement be signed by a Minister authorized by the federal Cabinet; and
  - (b) the coming into force of Federal Settlement Legislation.

**Ratification by British Columbia**

13. 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.

## CHAPTER 28 – IMPLEMENTATION

### General

1. The Implementation Plan takes effect on the Effective Date and has a term of ten years, which may be extended by agreement of the Parties.

### Implementation Plan

2. The Implementation Plan:
  - (a) identifies actionable obligations in this Agreement, the activities to be undertaken to fulfill those obligations, the responsible Party and the timeframes for completion of those activities;
  - (b) specifies how the Implementation Plan may be amended, renewed or extended; and
  - (c) addresses other matters agreed to by the Parties.
3. The Implementation Plan:
  - (a) does not create legal obligations;
  - (b) does not alter any rights or obligations under 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.

### Implementation Committee

4. On the Effective Date the Parties will establish an implementation committee for a term of ten years, which term may be renewed or extended by agreement of the Parties.
5. On the Effective Date, Kitsumkalum, Canada and British Columbia will each appoint one member as their representative on the Implementation Committee.
6. A member of the Implementation Committee may invite other individuals to participate in Implementation Committee meetings to support or assist the member.
7. For greater certainty, where the Implementation Committee addresses an issue or matter outside the responsibility of the federal Minister for Crown-Indigenous Relations, Canada will provide an appropriate representative from the responsible federal department or agency.
8. 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 relation to this Agreement;

- (b) establish terms of reference, including procedures and operating guidelines;
- (c) review the Implementation Plan before the expiry of the Implementation Plan, and advise the Parties on the further implementation of the Agreement; and
- (d) address other matters agreed to by the Parties.

## CHAPTER 29 – DISPUTE RESOLUTION

### General

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.
2. Except as otherwise provided, Participants may agree to vary a procedural requirement in this Chapter, or in Appendices O-1 to O-5, as it applies to a particular Disagreement.
3. Participants may agree in writing, or the Supreme Court of British Columbia on application, may order, that a time limit in this Chapter or in Appendices O-1 to O-5 be:
  - (a) abridged; or
  - (b) extended, despite the expiration of that time limit.

### Scope: When This Chapter Applies

4. This Chapter does not apply to all disputes between or among the Parties, but is limited to the disputes described in paragraph 5.
5. This Chapter only applies to:
  - (a) a dispute in relation to:
    - (i) the interpretation, application or implementation of this Agreement; or
    - (ii) a breach or anticipated breach of this Agreement;
  - (b) a dispute, where provided for in this Agreement; or
  - (c) negotiations required under any provision of this Agreement that provides that any of Parties “will negotiate and attempt to reach agreement”.
6. This Chapter does not apply to:
  - (a) an agreement or other document made between or among the Parties that is ancillary, subsequent, or supplemental to this Agreement unless the Parties have agreed that this Chapter applies to that agreement or other document;
  - (b) the Implementation Plan; or
  - (c) disputes, where excluded from this Chapter.

7. For greater certainty, this Chapter does not apply to any statutory decision, except where there is an obligation under this Agreement to issue a tenure, licence or other authorization such that paragraph 5(a) applies.
8. Nothing in this Chapter limits the application of a dispute resolution process, under any Federal or Provincial Law, to a dispute involving a person if that dispute is not a Disagreement.
9. Nothing in Federal or Provincial Law limits a Party's ability to refer a Disagreement to a process under this Chapter.

### **Stages to Resolve Disagreements**

10. The Parties intend that most Disagreements will be resolved by informal discussions between or among the Parties, without needing to invoke this Chapter.
11. 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 resolve a Disagreement, in collaborative negotiations under Appendix O-1;
  - (b) Stage Two: structured efforts to resolve a Disagreement with the assistance of a Neutral Individual, who has no authority to resolve the Disagreement, in a facilitated process under Appendix O-2, O-3 or O-4 as applicable; and
  - (c) Stage Three: final adjudication of a Disagreement in arbitral proceedings under Appendix O-5, or in judicial proceedings.
12. 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 Stage Two.
13. Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
  - (a) to preserve 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.

### **Stage One: Collaborative Negotiations**

14. If a Disagreement is not resolved by informal discussion, and a Party wishes to invoke this Chapter, that Party will deliver written notice, as required under Appendix O-1, to the other Parties, requiring collaborative negotiations to commence.
15. Upon receiving the notice under paragraph 14, a Party identified in that notice as a Disputing Party will participate in the collaborative negotiations.
16. A Party not identified in the notice under paragraph 14 as a Disputing Party may become a Participant in the collaborative negotiations by giving written notice to the Disputing Parties, preferably before the collaborative negotiations commence.

17. If the Parties have commenced negotiations in the circumstances described in paragraph 5(c), then, for all purposes under this Chapter, those negotiations are deemed collaborative negotiations and the particular matter under negotiation will be considered a Disagreement.
18. Collaborative negotiations terminate in the circumstances set out in Appendix O-1.

**Stage Two: Facilitated Processes**

19. Within 15 days of collaborative negotiations terminating without resolving a Disagreement, a Disputing Party may commence a facilitated process by delivering notice to the other Parties.
20. Notice under paragraph 19:
  - (a) will identify the Disputing Parties and include a summary of the particulars of the Disagreement; and
  - (b) may propose a particular facilitated process described in paragraph 23.
21. Upon receiving a notice under paragraph 19, a Disputing Party will participate in a facilitated process described in paragraph 23.
22. Within 15 days of delivery of a notice under paragraph 19, a Party not identified as a Disputing Party in that notice may become a Participant in the facilitated process by giving written notice to the Disputing Parties.
23. Within 30 days after delivery of a notice under paragraph 19, the Disputing Parties will attempt to agree to use one of the following processes:
  - (a) mediation under Appendix O-2;
  - (b) technical advisory panel under Appendix O-3;
  - (c) neutral evaluation under Appendix O-4; or
  - (d) any other non-binding dispute resolution process assisted by a Neutral Individual,
  - (e) and if they fail to agree, they will be deemed to have selected mediation under Appendix O-2.
24. A facilitated process terminates:
  - (a) in the circumstances set out in the applicable part of Appendices O-2 to O-4; or
  - (b) as agreed by the Disputing Parties, if Appendices O-2 to O-4 do not apply.

**Negotiating Conditions**

25. In order to enhance the prospect of resolving a Disagreement, the Participants in collaborative negotiations or a negotiation component of a facilitated process will:
  - (a) where a Participant requests, disclose sufficient information and documents in a timely manner to enable a full examination of the subject matter being negotiated;

- (b) make every reasonable effort to appoint negotiating representatives with sufficient authority to resolve the Disagreement, or with ready access to such authority; and
- (c) negotiate in good faith.

**Settlement Agreement**

- 26. Any agreement reached in a process under this Chapter is binding only on the Parties who have signed the agreement and will be:
  - (a) in writing;
  - (b) signed by authorized representatives of the Parties to the agreement; and
  - (c) delivered to all Parties.
- 27. An agreement under paragraph 26 only requires the agreement of the Disputing Parties.

**Stage Three: Adjudication - Arbitration**

- 28. Disagreements not otherwise resolved under Stage One or Stage Two will be referred to arbitration for final resolution in accordance with Appendix O-5 when:
  - (a) the Disagreement arises out of any provision of this Agreement that provides that a matter will be “finally determined by arbitration”; and
  - (b) a Disputing Party delivers a notice to all Parties as required under Appendix O-5.
- 29. Disagreements, other than Disagreements referred to in paragraph 28, will be referred to and finally resolved by arbitration in accordance with Appendix O-5 if the Disputing Parties agree in writing.
- 30. If there are only two Disputing Parties, and they make a written agreement under paragraph 29, those two Disputing Parties will deliver a copy of the agreement to the Party that is not a Disputing Party.
- 31. A Party will be added as a Participant in the arbitration of a Disagreement, whether or not that Party participated in Stage One or Stage Two, upon delivering written notice to the Disputing Parties within 15 days of receiving a notice under paragraph 28(b) or a copy of a written agreement under paragraph 30.
- 32. At any time an Arbitral Tribunal may, of its own accord or on application of a Party, make an order adding a Party as a Participant, if the Arbitral Tribunal considers that:
  - (a) the Disputing Parties will not be unduly prejudiced; or
  - (b) the issues raised in the arbitration are materially different from those identified in the notice to arbitrate under paragraph 28 or the written agreement to arbitrate in paragraph 29,

and, in that event, the Arbitral Tribunal may make any order it considers appropriate or necessary in the circumstances in relation to conditions upon which the Party may be added, including the payment of costs.



**Effect of Arbitral Award**

33. Subject to paragraph 34, an Arbitral Award is final and binding on all Parties whether or not a Party was a Participant in the arbitration.
34. An Arbitral Award is not binding on a Party that was not a Participant in the arbitration if:
  - (a) that Party did not receive copies of:
    - (i) the notice to arbitrate as required by paragraph 28(b) or the written agreement to arbitrate as required by paragraph 30; or
    - (ii) the documents referenced in paragraphs 65, 66 and 67 of Appendix O-5; or
  - (b) the Arbitral Tribunal refused to add the Party as a Participant to the arbitration under paragraph 32.

**Application of Legislation Relating to Arbitration**

35. No legislation of any Party respecting arbitration, except the Settlement Legislation, applies to an arbitration conducted under this Chapter.
36. A court must not intervene or offer assistance in an arbitration or review an Arbitral Award under this Chapter except as provided in Appendix O-5.

**Stage Three: Adjudication - Judicial Proceedings**

37. Nothing in this Chapter creates a cause of action where none otherwise exists.
38. Subject to paragraph 39, at any time a Party may commence proceedings in the Supreme Court of British Columbia in relation to a Disagreement.
39. Subject to paragraph 13, a Party may not commence judicial proceedings in relation to a Disagreement if the Disagreement:
  - (a) is required to be referred to arbitration under paragraph 28 or has been agreed to be referred to arbitration under paragraph 29;
  - (b) has not been referred Stage One and Stage Two; or
  - (c) has been referred to Stage One and Stage Two, and Stage Two has not yet been terminated.
40. Nothing in paragraph 39(a) prevents an Arbitral Tribunal or the Participants from referring a question of law to the Supreme Court of British Columbia for a ruling in accordance with Appendix O-5.

**Costs**

41. Except as otherwise provided in the Appendices O-1 to O-5, each Participant will bear the costs of its own participation, representation, and appointments in Stage One, Stage Two or Stage Three.

42. Subject to paragraph 41 and except as otherwise provided in Appendices O-1 to O-5, the Participants will share equally all other costs in Stage One, Stage Two or Stage Three.
43. For purposes of paragraph 42, “costs” include:
  - (a) fees of a Neutral Individual;
  - (b) costs of hearing and meeting rooms;
  - (c) actual and reasonable costs of communications, accommodation, meals and travel of a Neutral Individual;
  - (d) costs of required secretarial and administrative support for a Neutral Individual, as permitted in Appendices O-1 to O-5; and
  - (e) administration fees of a Neutral Appointing Authority.

## CHAPTER 30 – TRANSITION

1. The *Indian Act* applies after the Effective Date, 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 an Indian of the Kitsumkalum Band.
2. Before the Effective Date, Canada will take reasonable steps to:
  - (a) notify in writing all Indians of the Kitsumkalum Band who have deposited wills with the Minister; and
  - (b) provide information to all Indians of the Kitsumkalum Band who have not deposited wills with the Minister and to all individuals who may be eligible for enrolment under the 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.
3. Section 51 of the *Indian Act* applies after the Effective Date, with any modifications that the circumstances require, to the property and estate of an individual 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*.
4. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a Kitsumkalum Member:
  - (a) who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before 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*.
5. Sections 52 and 52.2 to 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which a Kitsumkalum Child is entitled, where the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister in relation to the property have been discharged.

### **Continuation of *Indian Act* Bylaws and *Kitsumkalum Land Code***

6. On Former Kitsumkalum Indian Reserves:
  - (a) the bylaws of the Kitsumkalum Band;

- (b) the *Kitsumkalum Land Code*; and
- (c) any law made under the *Kitsumkalum Land Code*,

that were in effect immediately before the Effective Date, continue to have effect for 180 days after the Effective Date.

7. As of the Effective Date, the relationship between an enactment referred to in paragraph 6, and Federal and Provincial Law, will be governed by the provisions of this Agreement governing the relationship between Kitsumkalum Law and Federal and Provincial Law in relation to the subject matter of the enactment.
8. The Kitsumkalum Government may repeal, but not amend, an enactment referred to in paragraph 6.
9. Nothing in this Agreement precludes a person from challenging the validity of an enactment referred to in paragraph 6.

#### **Transfer of Band Assets**

10. On the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of the Kitsumkalum Band vest in Kitsumkalum and the Kitsumkalum Band ceases to exist.
11. All moneys held by Canada under the *Indian Act* for the use and benefit of the Kitsumkalum Band, including capital and revenue moneys of the Kitsumkalum Band, will be transferred by Canada to Kitsumkalum as soon as practicable after the Effective Date.
12. Upon the transfer of the moneys referred to in paragraph 11, Canada will no longer be responsible for the collection of moneys payable:
  - (a) to or for the benefit of Kitsumkalum; or
  - (b) except as provided in paragraphs 1 and 3 to 5, to or for the benefit of a Kitsumkalum Member.
13. For greater certainty, Canada is not liable for any errors or omissions in the administration of all moneys held by Kitsumkalum for the use and benefit of Kitsumkalum that occur subsequent to the transfer of capital and revenue moneys of the Kitsumkalum Band from Canada to Kitsumkalum.

## CHAPTER 31 – AMENDMENT

### GENERAL

1. Any Party may propose an amendment to this Agreement.
2. Before proceeding with an amendment to this Agreement under paragraph 1, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.
3. Except as provided under paragraphs 9 and 10, amendments to this Agreement require the consent of the Parties.
4. Where the Parties agree to amend this Agreement, they will determine the form and wording of the amendment, including additions, substitutions and deletions.
5. Except as provided under paragraphs 9 and 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 order of the Lieutenant Governor in Council; and
  - (c) Kitsumkalum, by a resolution adopted by a majority of the elected members of the legislative branch of the Kitsumkalum Government.
6. If federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia, as applicable, will take all reasonable steps to enact the legislation.
7. Unless the Parties otherwise agree, an amendment to this Agreement takes effect once the consent requirements under paragraph 5 are complete and any legislation referred to in paragraph 6, if applicable, has been brought into force.
8. Each Party will give notice to the other Parties when its consent under paragraph 5 has been given and when it has brought into force any legislation referred to in paragraph 6, if applicable.
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 paragraphs 3 and 5 will not apply;
  - (b) paragraph 7 will not apply;
  - (c) as soon as possible 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 paragraph 4 and, if applicable, paragraph 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 to 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.
10. Notwithstanding paragraphs 2 to 9, where:
- (a) this Agreement provides that:
    - (i) 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; and
    - (ii) if agreement is not reached, the matter will be finally determined by arbitration in accordance with Chapter 29 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 that the agreement or the decision of the arbitrator takes effect, as applicable.
11. In respect of amendments contemplated by paragraph 10, the applicable Parties will:
- (a) provide notice to any Party not a party to an agreement reached or an arbitrator’s decision, as applicable; and
  - (b) agree on the form and wording of the amendment.
12. If an arbitrator makes a decision under paragraph 10, and the applicable Parties are unable to agree on the form and wording of the deemed amendment, the form and wording of the deemed amendment will be finally determined by the arbitrator.

### **Implementation of Amendments**

13. The Parties will take the necessary steps to implement an amendment to this Agreement as soon as possible after the amendment takes effect.
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 Kitsumkalum in the public registry of Kitsumkalum Law referred to in paragraph 20(a) of Chapter 8 Self-Government.

# **OTHER MATTERS**





## CHAPTER 32 – DEFINITIONS

In this Agreement:

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

- (a) accurately and unambiguously describes the extent of a parcel of land including the location of any natural boundary forming a perimeter boundary but which, at the discretion of the Surveyor General of British Columbia, may include boundaries defined entirely or partially by reference to physical features, coordinates, existing parcel corners or other criteria, and may include boundaries that are physically surveyed and/or monumented;
- (b) is prepared by a British Columbia Land Surveyor;
- (c) is determined to be acceptable by the Surveyor General of British Columbia; and
- (d) is to be filed in a Land Title Office or the Crown Land Registry;

“**Adjudicative Body**” means a Kitsumkalum Institution comprised of one or more Adjudicators, established or authorized under Kitsumkalum Law in paragraph 48(a) of Chapter 9 Administration of Justice;

“**Adjudicator**” means an individual appointed, authorized or designated by Kitsumkalum in accordance with a Kitsumkalum Law under paragraph 48(b) of Chapter 9 Administration of Justice;

“**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 are determined through an administrative process, rather than through prosecution or through an action in the civil courts;

“**Aerodrome Reference Point**” means the designated geographical location of a Registered Aerodrome or Certified Aerodrome identified in the Canadian aeronautical information products and set out in the Implementation Plan;

“**Agreement**” means this Kitsumkalum Treaty;

“**Allocation**” means in respect of a right to harvest Wildlife or Migratory Birds:

- (a) a defined harvest quantity or quota; or
- (b) a formula defining a harvest quantity or quota,

if required as a conservation measure;

“**Angler Day**” has the same meaning as “angler day” in the *Wildlife Act*;

“**Angler Day Quota**” has the same meaning as “angler day quota” in the *Wildlife Act*;

“**Angling Guide Operating Plan**” has the same means as “angling guide operating plan” in the *Wildlife Act*;

“**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;

“**Arbitral Award**” means any decision of the Arbitral Tribunal on the substance of the Disagreement submitted to it, and includes:

- (a) an interim arbitral award, including an interim award made for the preservation of property; and
- (b) an award of interest or costs;

“**Arbitral Tribunal**” means a single arbitrator or a panel of arbitrators appointed under Appendix O-5;

“**Archaeological Human Remains**” means human remains that are likely of aboriginal ancestry and are not the subject of a police or coroner investigation;

“**Assurance Fund**” means the assurance fund as defined under the *Land Title Act*;

“**ATR Policy**” means Canada’s Policy on Additions to Reserve/Reserve Creation (2016), including any amendment or replacement of that policy;

“**Available Flow**” means the volume of flow of surface water or Groundwater beyond that required:

- (a) to ensure the preservation of Environmental Flow Needs;
- (b) for Water Licences (active or applied for) with an earlier date of precedence; and
- (c) for Water Licences already drawn from the Kitsumkalum water reservations;

and taking into account any applicable requirements under Federal or Provincial Law.

“**Band**” has the same meaning as “band” under the *Indian Act*;

“**Basic Harvest**” means the annual harvest of a species of Fish or Aquatic Plants by Kitsumkalum for Domestic Purposes for each year in the Base Period for that species;

“**Base Period**” means, for a Non-Allocated Species, the duration of time immediately preceding the date of a proposal to establish a Kitsumkalum Fish Allocation made under paragraph 51 of Chapter 21 Fish, as agreed to by the Parties;

“**Billabong Lands**” means those lands legally described as Lot 1 District Lot 1705 Range 5 Coast District Plan PRP44919, except Plan PRP44927 and Lot A District Lot 1705 Range 5 Coast District Plan PRP44927;

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

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

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

“**Canadian Charter of Rights and Freedoms**” means the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;

“**Capital Transfer**” means the total amount paid by Canada or British Columbia to Kitsumkalum under Chapter 22 Capital Transfer;

“**Certified Aerodrome**” means an aerodrome that holds an airport certificate, as issued under the Canadian Aviation Regulations and set out in the Implementation Plan;

“**Chief of Police**” means the chief constable, chief officer or commissioner under the *Police Act* of the Police Service providing policing and law enforcement on Kitsumkalum Lands, or their delegate;

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

“**Child Care**” means the care, supervision, social or educational training, including pre-school education, or 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, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a Kitsumkalum Law under paragraph 104 of Chapter 8 Self-Government;

“**Child and Family Service**” means a service to support children and families including prevention services, early intervention services and child protection services;

“**Classified Water**” means a water or group of waters that is an item in column 1 of Schedule A of the *Angling and Scientific Collection Regulation*;

“**Co-Management Agreement**” means an agreement that Kitsumkalum, Canada and British Columbia, or Kitsumkalum and Canada or British Columbia, as applicable, agree to negotiate and attempt to reach agreement on or conclude under paragraph 8 of Chapter 16 Co-Management;

“**Common Objectives**” means those common objectives set out in recital J of the Preamble;

“**Community Correctional Services**” means community supervision of, or community-based programs and interventions for, adults and youth convicted under or otherwise in conflict with the law, which for greater certainty includes an individual subject to a judicial order, a conditional release, a police undertaking, an adult diversion, or a youth extrajudicial measure;

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

“**Constitution Ratification Vote**” means the vote conducted under Chapter 27 Ratification to ratify the Kitsumkalum Constitution;

“**Constitution Voters List**” means the list of eligible voters for the Constitution Ratification Vote prepared by the Ratification Committee under paragraph 6 of Chapter 27 Ratification;

“**Consult**” means that Canada or British Columbia, as applicable, will:

- (a) ensure that Kitsumkalum is provided notice of the Contemplated Crown Conduct and all information that either Party, acting reasonably, considers necessary to permit Kitsumkalum to prepare its views regarding any potential adverse impacts on Kitsumkalum Exercisable Section 35 Rights;
- (b) provide a reasonable period of time to permit Kitsumkalum to prepare its views on the potential adverse impacts on Kitsumkalum Exercisable Section 35 Rights and an opportunity to present those views to Canada or British Columbia, as applicable;
- (c) ensure that the views expressed by Kitsumkalum, including any relevant Indigenous knowledge provided by Kitsumkalum, are seriously considered and, if appropriate, demonstrably integrated into the decision-making process for the Contemplated Crown Conduct;
- (d) if appropriate, provide feedback to Kitsumkalum both during the consultation process and after the decision-making process of how their views were taken into account in the decision-making process for the Contemplated Crown Conduct; and
- (e) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the Contemplated Crown Conduct are identified, proposed and implemented, if appropriate.

For greater certainty, for the purposes of paragraphs (c), (d) and (e), “if appropriate” means taking into account the severity of the potential impacts of the Contemplated Crown Conduct;

“**Contaminated Site**” means a “contaminated site” as defined in the *Environmental Management Act*;

“**Contamination**” has the same meaning as “contamination” under the *Environmental Management Act*;

“**Contemplated Crown Conduct**” means contemplated conduct by Canada or British Columbia or both that would, at common law, trigger a duty to consult with respect to potential adverse impacts on Kitsumkalum Exercisable Section 35 Rights;

“**Criminal Code**” means the *Criminal Code of Canada*, R.S.C., 1985, c. C-45, as may be amended or replaced from time to time;

“**Crown**” means Canada or British Columbia, as applicable;

“**Crown Corridor**” means a road, highway or right-of-way, including the road allowance, that is on Crown land and is used for transportation or public utility purposes that are set out in Appendix H Part 1;

“**Crown Land Registry**” means the Crown land registry as set out in Section 7 of the *Land Act*;

“**Debt**” means an amount of money that is due and payable to a Kitsumkalum Institution under Kitsumkalum Law;

“**Debt Certificate**” means a document in a form prescribed by Kitsumkalum Law stating a Debt, and the name of the person who is liable for it;

**“Demonstrated Attachment”** means an objective demonstration that there is a solid bond of past and present mutual identification and recognition of a common belonging between the individual and Kitsumkalum;

**“Designated Harvester”** means an individual designated under paragraph 39 of Chapter 17 Wildlife, paragraph 37 of Chapter 18 Migratory Birds, or paragraph 29 of Chapter 19 Gathering, as applicable;

**“Designated Harvester Agreement”** means an agreement entered into by Kitsumkalum and British Columbia or Canada, as applicable, in accordance with paragraph 41 of Chapter 17 Wildlife, paragraph 39 of Chapter 18 Migratory Birds, or paragraph 28 of Chapter 19 Gathering, as applicable;

**“Designated Person”** means a person designated under Kitsumkalum Law, or their delegate, who is authorized to file or register Debt Certificates under paragraph 101 or 104 of Chapter 9 Administration of Justice;

**“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 an individual designated as a director by the Minister under the *Child, Family and Community Service Act* or the *Adoption Act*;

**“Disagreement”** means any matter to which dispute resolution applies as set out in paragraph 5 of Chapter 29 Dispute Resolution;

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

- (a) acting reasonably, provides written notice to another Party requiring their participation in a process described in Chapter 29 Dispute Resolution to resolve a Disagreement; or
- (b) receives a notice from the Party described in paragraph (a), requiring their participation in a process in Chapter 29 Dispute Resolution to resolve a Disagreement;

**“Domestic Purposes”** means use for food, social and ceremonial purposes;

**“Domestic Use”** means in respect of Timber, use for traditional or cultural activities, including totem poles, canoes, or masks, or the construction of, or heating for, residential dwellings for Kitsumkalum Members, cultural or community buildings, but does not include the use of Timber for trade, barter or sale, except as provided in paragraph 22 of Chapter 20 Timber for Domestic Use;

**“Domestic Use Timber Harvest Agreement”** means an agreement between Kitsumkalum and British Columbia referred to in paragraph 7 of Chapter 20 Timber for Domestic Use;

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

**“Eligibility Criteria”** means the criteria for enrolment under this Agreement set out in paragraphs 1 or 2 of Chapter 26 Eligibility and Enrolment, as applicable;

**“Eligible Voter”** means, in relation to the Constitution Ratification Vote or the Treaty Ratification Vote, as applicable, an individual who:

- (a) is eligible to vote under paragraph 8 of Chapter 27 Ratification; or

- (b) votes under paragraph 9 and whose ballot is counted under paragraph 10 of Chapter 27 Ratification;

**“Enrolment Appeal Board”** means the appeal board established in accordance with paragraph 25 of Chapter 26 Eligibility and Enrolment;

**“Enrolment Committee”** means the enrolment committee established in accordance with paragraph 17 of Chapter 26 Eligibility and Enrolment;

**“Enrolment Register”** means the enrolment register established under paragraph 19(c) of Chapter 26 Eligibility and Enrolment;

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

- (a) air, land, and water 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 effects of a Provincial Project;

**“Environmental Assessment Certificate”** means a certificate issued by the ministers under provincial environmental assessment legislation that enables a person to undertake or carry out a provincial project;

**“Environmental Emergency”** means an uncontrolled, unplanned, or accidental release, or release in contravention of Federal Law, Provincial Law or Kitsumkalum Law, 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 to human life or health;

**“Environmental Flow Needs”** means, in relation to a Stream, the volume and timing of water flow required for the proper functioning of the aquatic ecosystem of the Stream;

**“Environmental Management Act”** means the *Environmental Management Act*, S.B.C. 2003, c. 53, as may be amended or replaced from time to time;

**“Essential Personal Property”** means personal property held by Kitsumkalum or a Kitsumkalum Public Institution, including funding contributed by Canada through Fiscal Arrangements and British Columbia through Fiscal Provisions, that is:

- (a) essential to the day-to-day operations of Kitsumkalum or a Kitsumkalum Public Institution; or
- (b) essential to the delivery of any programs and services by Kitsumkalum or a Kitsumkalum Public Institution.

**“Expenditure Need Methodology(ies)”** means a methodology for calculating the estimated cost of performing a Federally Supported Government Responsibility based on comparative measures or standards drawn from governments with similar responsibilities or of a similar size and location and where appropriate, other organizations;

**“FDDIPI”** means the Canada Final Domestic Demand Implicit Price Index, published regularly by Statistics Canada in Table 36-10-0106-01 (formerly CANSIM 380 0066): Price Indexes, Gross Domestic Product, or its replacement series as specified by Statistics Canada;

**“Federal Capital Advance”** means a portion of the Capital Transfer paid by Canada to Kitsumkalum Band as precursor to Kitsumkalum in the period between the successful ratification of this Agreement by Kitsumkalum and the Effective Date;

**“Federal Expropriating Authority”** means a federal department or agency or any other person with the authority to expropriate land or an interest in land under Federal Law;

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

**“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 or Provincial Project”** means a Federal Project or a Provincial Project, as applicable;

**“Federal Project”** means a “designated project”, as defined in the *Impact Assessment Act*, which is subject to an impact assessment under that Act;

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

**“Federally Supported Government Responsibility(ies)”** means a Government Responsibility that Canada has agreed to support in a given Fiscal Arrangement, which may evolve from time to time as appropriate;

**“Final Constitution Voters List”** means, in relation to the Constitution Ratification Vote, the final list prepared by the Ratification Committee under paragraph 6(e) of Chapter 27 Ratification;

**“Final Judgment”** means the judgment of the highest Superior Court determining a proceeding following the exhaustion of all appeals;

**“Final Treaty Voters List”** means, in relation to the Treaty Ratification Vote, the final list prepared by the Ratification Committee under paragraph 6(f) of Chapter 27 Ratification;

**“Finfish”** means:

- (a) fish with fins and does not include shellfish, crustaceans and marine animals;
- (b) the parts of fish with fins and does not include parts of shellfish, crustaceans, and marine animals; and
- (c) the eggs, sperm, spawn, larvae, juvenile stages and adult stages of fish with fins and does not include any live stages of shellfish, crustaceans and marine animals;

**“First Nation Government in British Columbia”** means the government of a First Nation in British Columbia which has a treaty or a lands claims agreement in effect with Canada and British Columbia;

**“Fiscal Agreement”** means the agreement entered into between the Parties, initially coming into effect on a date to be agreed, that is a Fiscal Arrangement and a Fiscal Provision;

**“Fiscal Arrangement(s)”** means a mechanism, such as the Fiscal Agreement coming into effect on Effective Date, through which Canada and Kitsumkalum implement the new fiscal relationship referred to in paragraph 1 of Chapter 25 Fiscal.

**“Fiscal Provisions”** means mechanisms, such as the Fiscal Agreement coming into effect on Effective Date, through which British Columbia and Kitsumkalum implement their fiscal relationship;

**“Fish”** means:

- (a) fish, shellfish, crustaceans and marine animals excluding whales;
- (b) the parts of fish, shellfish, crustaceans, and marine animals excluding whales; and
- (c) the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals excluding whales;

**“Fisheries Act”** means the *Fisheries Act*, R.S.C., 1985, c. F-14, as may be amended or replaced from time to time;

**“Fisheries Operational Guidelines”** means the guidelines established under paragraph 140 in Chapter 21 Fish;

**“Fishery Guardian”** means a “fishery guardian” as defined in the *Fisheries Act*;

**“Fishery Officer”** means, for the purposes of paragraphs 144 to 151 of Chapter 21 Fish, a “fishery officer” as defined in the *Fisheries Act* and designated by the Minister of Fisheries and Oceans;

**“Forest Practices”** means Timber harvesting, road construction, road maintenance, road use, road deactivation, silviculture treatments, including grazing for the purposes of brushing, botanical forest products collecting, and fire use, but does not include Timber marking or scaling, manufacture of Timber, or export of Timber;

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

**“Former Kitsumkalum Indian Reserves”** means the lands that:

- (a) were, on the day before the Effective Date, Indian Reserves set apart for the use and benefit of the Kitsumkalum Band; and
- (b) are described in Part 3 of Appendix B-2 and identified for illustrative purposes in Parts 1 and 2 of Appendix B-2 as “Former Kitsumkalum Indian Reserves”;

**“Former Private Fee Simple Lands”** means those Kitsumkalum Lands identified in Appendix B-4;



**“Former Provincial Campgrounds, Recreation Sites and Trails”** means the former provincial campgrounds, recreation sites and trails located on Kitsumkalum Lands shown in Appendix B Maps 19, 20, 21, and 26;

**“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 obtained from a well, but does not include:

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

**“Government Responsibility(ies)”** means an Indigenous self-government responsibility that has been:

- (a) identified for the development of Expenditure Need Methodologies in Canada’s Collaborative Self Government Fiscal Policy (2019), as amended or replaced, including:
  - (i) Governance and administration;
  - (ii) Modern treaty management;
  - (iii) Economic development;
  - (iv) Culture, language and heritage;
  - (v) Stewardship of lands and resources, which may include fish and fish habitat;
  - (vi) Environmental management;
  - (vii) Infrastructure maintenance and replacement;
  - (viii) Housing;
  - (ix) Education;
  - (x) Social development; or
  - (xi) Health,
- (b) otherwise agreed to in writing by Canada and Kitsumkalum for development of an Expenditure Need Methodology;

**“Gravel”** means gravel, rock, random borrow materials and sand;

**“Gravel Pit Development Plan”** means a written description of the development, use and closure of a Gravel pit that contains information such as its location, size and extent, access roads, soil and Gravel descriptions, topographical and geotechnical mapping, developmental plans, anticipated volumes of Gravel extracted per time period, reporting and reclamation;

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

**“Harvesting Zone”** means an area consistent with provincial limited entry hunt zones or, where there are no provincial limited entry hunt zones, other provincial wildlife harvest management zones;

**“Hereditary Leadership”** means hereditary chiefs or matriarchs who hold their positions in accordance with Tsimshian traditional law or customs;

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

**“Impact Assessment”** means an assessment of the effects of a Federal Project that is conducted in accordance with federal impact assessment legislation;

**“Impact Assessment Area”** means the area set out in Appendix J Part 2;

**“Implementation Committee”** means the committee established under paragraph 4 of Chapter 28 Implementation;

**“Implementation Plan”** means the plan described under Chapter 28 Implementation of the Agreement;

**“Indian”** or **“Status Indian”** means an individual who pursuant to the *Indian Act* is registered as an Indian or is entitled to be registered as an Indian;

**“Indian Reserve”** has the same meaning as “reserve” in the *Indian Act*;

**“Intellectual Property”** means any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including, but not limited to, any rights relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights;

**“Interim Funding Methodologies”** means any funding that is not currently based on an Expenditure Need Methodology that sets out funding for a Federally Supported Government Responsibility;

**“International Legal Obligation”** means an 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, panel, tribunal, arbitral tribunal, or other body, established under an international treaty, and has competence to determine Canada’s compliance with an International Legal Obligation;

**“Intertidal Bivalves”** means butter clams (*Saxidomus gigantea*), manila clams (*Venerupis philippinarum*), cockles (*Clinocardium nuttallii*), bentnose clams (*Macoma nasuta*), softshell clams (*Mya arenaria*), littleneck clams (*Protothaca staminea*), and horse clams (*Tresus* spp.) and blue mussels (*Mytilus edulis*);

**“Kitsumkalum”** means the collectivity that comprises all individuals who are eligible for enrolment under this Agreement;

**“Kitsumkalum Agricultural Lands”** means Kitsumkalum Lands that are designated as agricultural under Kitsumkalum Law;

**“Kitsumkalum Annual Fishing Plan”** means a Kitsumkalum annual fishing plan described in paragraph 101 in Chapter 21 Fish;

**“Kitsumkalum Archaeological Human Remains”** means Archaeological Human Remains that are determined to be of Kitsumkalum ancestry;

**“Kitsumkalum Artifact”** means any object created by, traded to, commissioned by, or given as a gift to a Kitsumkalum individual or the Kitsumkalum community, or that originated from the Kitsumkalum community, and that has past and ongoing importance to Kitsumkalum culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to another aboriginal group or person;

**“Kitsumkalum Band”** means the Kitsumkalum Band which was, on the day before the Effective Date, a "band" as defined in the *Indian Act*;

**“Kitsumkalum Capital”** means all land, cash and other assets transferred to Kitsumkalum, or recognized as owned by Kitsumkalum, under the Agreement;

**“Kitsumkalum Certificate”** means a certificate of the Kitsumkalum Government described in Sections 25, 26, 27 and 28 of Schedule 1 of the *Land Title Act*;

**“Kitsumkalum Child”** means a Child who is a Kitsumkalum Member;

**“Kitsumkalum Coastal Site Areas”** means those provincial Crown land shown in Appendix E;

**“Kitsumkalum Coastal Site Conservancy Lands”** means those Kitsumkalum Coastal Site Lands identified in Appendix D Part 2 that immediately before the Effective Date were located within a Provincial Conservancy;

**“Kitsumkalum Coastal Site Lands”** means those lands shown for illustrative purposes in Appendix D Part 1 and, following the completion of Adequate Surveys of those lands, the lands identified in those survey plans;

**“Kitsumkalum Commercial Harvest Agreement”** means the agreement described in paragraph 160 in Chapter 21 Fish;

**“Kitsumkalum Community Fishing Area”** means the area set out in the map attached as Appendix L;

**“Kitsumkalum Community Watershed Lands”** means the Kitsumkalum Lands described as “Community Watershed Lands” in Appendix N;

**“Kitsumkalum Constitution”** means the constitution of Kitsumkalum as described in and ratified in accordance with this Agreement, as amended from time to time;

**“Kitsumkalum Corporation”** means a corporation that is incorporated under Federal or Provincial Law, all of the shares of which, except any qualifying shares that directors are required to own under Federal or Provincial Law, are owned directly or indirectly:

- (a) legally and beneficially by:
  - (i) Kitsumkalum; or
  - (ii) one or more corporations where each such corporation is itself a Kitsumkalum Corporation;
- (b) legally by one more trusts that are in Canada and are for the sole benefit of Kitsumkalum;
- (c) by any combination of persons set out above; or
- (d) by Kitsumkalum Institutions;

**“Kitsumkalum Court”** means a court constituted in accordance with a Kitsumkalum Law under paragraph 81 of the Administration of Justice Chapter;

**“Kitsumkalum Court Judge”** means a judge appointed by Kitsumkalum in accordance with paragraph 81(b) of the Administration of Justice Chapter;

**“Kitsumkalum Enforcement Officer”** means an individual appointed by Kitsumkalum in accordance with paragraph 26 of Chapter 9 Administration of Justice;

**“Kitsumkalum Exercisable Section 35 Rights”** means the rights set out in this Agreement that can be exercised and asserted by Kitsumkalum, including the rights that can be exercised and asserted in and to Kitsumkalum Lands, and any rights that have become exercisable and assertable pursuant to processes set out in this Agreement for amendment, periodic renewal, or orderly process, which rights are recognized and affirmed by Section 35 of the *Constitution Act, 1982*;

**“Kitsumkalum Family”** means a family where one or both parents or guardians live together with one or more Children and:

- (a) at least one of the parents or guardians is a Kitsumkalum Member; or
- (b) at least one of the Children is a Kitsumkalum Child;

**“Kitsumkalum Finfish Fishing Area”** means the geographic area set out in the map attached as Appendix K Part 3;

**“Kitsumkalum Fish Allocation”** means:

- (a) defined harvest quantity or quota of Fish or Aquatic Plants; or
- (b) a formula defining a harvest quantity or quota of Fish or Aquatic Plants;

**“Kitsumkalum Fishing Areas”** means the Kitsumkalum Finfish Fishing Area and the Kitsumkalum Shellfish and Aquatic Plants Fishing Area;

**“Kitsumkalum Fishing Capacity Fund”** means the funding provided pursuant to paragraph 162 of Chapter 21 Fish;

**“Kitsumkalum Fishing Right”** means the right to harvest Fish and Aquatic Plants set out in paragraphs 1 and 68 of Chapter 21 Fish;

**“Kitsumkalum Government”** means the government of Kitsumkalum referred to in Chapter 8 Self-Government and the Kitsumkalum Constitution;

**“Kitsumkalum Harvest Area”** means the area set out in Appendix A; but does not include lands that are administered or occupied by federal departments or agencies or areas temporarily being used for military training from the time that notice has been given to Kitsumkalum until the temporary use is completed;

**“Kitsumkalum Harvest Document”** means any fishing licence, permit or document, or amendments thereto, issued by the Minister under Federal or Provincial Law in respect of the Kitsumkalum Fishing Right;

**“Kitsumkalum Heritage Site”** means a Heritage Site of importance to Kitsumkalum located within the Kitsumkalum Harvest Area;

**“Kitsumkalum Institution”** means the Kitsumkalum Government or a Kitsumkalum Public Institution;

**“Kitsumkalum Joint Fisheries Committee”** means the committee established under paragraph 107 in Chapter 21 Fish;

**“Kitsumkalum Land Code”** means Kitsumkalum’s land code approved by Kitsumkalum in accordance with the Framework Agreement on First Nation Land Management;

**“Kitsumkalum Lands”** means those lands identified in Appendix B;

**“Kitsumkalum Law”** means a law made pursuant to Kitsumkalum law-making authority set out in this Agreement and includes the Kitsumkalum Constitution;

**“Kitsumkalum Member”** means an individual who is enrolled under this Agreement;

**“Kitsumkalum Migratory Birds Harvest Area”** means the area set out in Appendix K Part 1, but does not include lands that are administered or occupied by federal departments or agencies or areas temporarily being used for military training from the time that notice has been given to Kitsumkalum until the temporary use is completed;

**“Kitsumkalum Park”** means those Kitsumkalum Lands shown as Kitsumkalum Park in Appendix B-3 Maps 19 and 46;

**“Kitsumkalum Private Lands”** means those Kitsumkalum Lands that have been designated as Kitsumkalum Private Lands;

**“Kitsumkalum Project”** means a project on Kitsumkalum Lands that is subject to an environmental assessment under Kitsumkalum Law, but does not include a Provincial Project;

**“Kitsumkalum Prosecutor”** means an individual appointed under Kitsumkalum Law in accordance with paragraph 58 of Chapter 9 Administration of Justice;

**“Kitsumkalum Public Institution”** means a body, board, commission or any other similar entity, including societies and trusts, established by Kitsumkalum under Kitsumkalum Law, including a school board or health board, and, for greater certainty, 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 for-profit commercial activities

**“Kitsumkalum Public Officer”** means:

- (a) a member, commissioner, director, or trustee of a Kitsumkalum Public Institution;
- (b) a director, officer or employee of a Kitsumkalum 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 the Kitsumkalum Government or a Kitsumkalum Institution;
- (d) an election official within the meaning of a Kitsumkalum Law;
- (e) a Kitsumkalum Enforcement Officer, an Adjudicator, or Kitsumkalum Prosecutor; or
- (f) a volunteer who participates in the delivery of services by Kitsumkalum, a Kitsumkalum Institution, or a body referred to in (b), under the supervision of an officer or employee of Kitsumkalum, a Kitsumkalum Institution, or a body referred to a body referred to in (b);

**“Kitsumkalum Right to Gather Plants”** means the right of Kitsumkalum to gather Plants set out in paragraph 1 of Chapter 19 Gathering;

**“Kitsumkalum Right to Harvest Migratory Birds”** means the right of Kitsumkalum to harvest Migratory Birds set out in paragraph 1 of Chapter 18 Migratory Birds;

**“Kitsumkalum Right to Harvest Renewable Resources”** means the right of Kitsumkalum to harvest Renewable Resources set out in paragraph 23 of Chapter 13 Parks and Planning;

**“Kitsumkalum Right to Harvest Timber”** means the right to harvest Timber for Domestic Purposes set out in paragraph 1 in Chapter 20 Timber for Domestic Use;

**“Kitsumkalum Right to Harvest Wildlife”** means the right of Kitsumkalum to harvest Wildlife set out in paragraph 1 of Chapter 17 Wildlife;

**“Kitsumkalum Road”** means any road on Kitsumkalum Lands under the administration and control of Kitsumkalum;

**“Kitsumkalum Shellfish and Aquatic Plants Fishing Area”** means the geographic area set out in the map attached as Appendix K Part 2;

**“Kitsumkalum Spoksuut Park”** means the Kitsumkalum Lands shown as Kitsumkalum Spoksuut Park in Appendix B-3 Part 2 Map 46;

**“Kitsumkalum Treaty”** means this agreement between Kitsumkalum, Canada and British Columbia including all Schedules and Appendices to it;

“**Land Title Act**” means the *Land Title Act*, [R.S.B.C. 1996] Chapter 250;

“**Land Title Office**” means a Land Title Office, continued or established under the *Land Title Act*;

“**List of Eligible Voters**” means the list of eligible voters prepared by the Ratification Committee under paragraph 5 of Chapter 27 Ratification;

“**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 Section 3(1)(e) of the *Export and Import Permits Act*;

“**Marine Protected Area**” means a marine protected area as described in the *Oceans Act*;

“**Migratory Birds**” means “migratory birds” as defined under Federal Law enacted further to international conventions, and for greater certainty, includes inedible by-products, feathers and down;

“**Miller Bay Parcel**” means the lands identified for illustrative purposes in Appendix D Part 3;

“**Miller Bay West Parcel**” means the lands identified for illustrative purposes in Appendix F Part 2;

“**Mineral**” means an ore of metal, or natural substance that can be mined, and includes rock, dimension stone, and other materials from mine tailings, dumps and previously mined deposits of minerals;

“**Minister**” means the federal or provincial minister having responsibility for the exercise of powers in relation to the matter in question and any individual with authority to act in relation to the matter in question;

“**Municipal Road**” means a highway that is vested, or the right to possession of which is vested, in a municipality in accordance with section 35 of the *Community Charter*;

“**National Historic Site**” means a site, building, or other place of national historic interest or significance commemorated under the *Historic Sites and Monuments Act*, administered by the Parks Canada Agency, including a national historic site of Canada to which the *Canada National Parks Act* applies;

“**National Marine Conservation Area**” means lands and water areas named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law and includes a national marine conservation area reserve;

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

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

“**Natural Resource Compliance Act**” means the *Natural Resource Compliance Act*, S.B.C. 2011, c. 21, as may be amended or replaced from time to time;

“**NAV CANADA**” means the “Corporation” as that term is defined in the *Civil Air Navigation Services Commercialization Act*;

**“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 Participants;

**“Neutral Individual”** means an individual appointed to assist the Participants to resolve a Disagreement and, except in paragraph 23 of Chapter 29 Dispute Resolution and Appendix O-5, includes an arbitrator;

**“Non-Allocated Species”** means a species of Fish or Aquatic Plant for which a Kitsumkalum Fish Allocation has not been established under this Agreement;

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

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

**“Offence Act”** means the *Offence Act*, R.S.B.C. 1996, c. 338, as may be amended or replaced from time to time;

**“Old Mining Sites”** means those areas of former provincial Crown land identified as “Old Mining Sites” in Appendix B-3 Part 2 Maps 2, 3 and 15;

**“Orderly Process”** means the process set out in paragraphs 26 to 34 of Chapter 2 Periodic Renewal and Orderly Process;

**“Other Indigenous Nation”** means, for the purposes of Chapter 16 Co-Management, an entity that holds established or asserted rights recognized and affirmed by Section 35 of the *Constitution Act, 1982* within the Kitsumkalum Harvest Area, other than Kitsumkalum;

**“Parties”** means Kitsumkalum, Canada and British Columbia and **“Party”** means any one of them;

**“Participant”** means a Party that:

- (a) is a Disputing Party;
- (b) is not a Disputing Party but chooses to participate in a process described in Chapter 29 Dispute Resolution to resolve a Disagreement; or
- (c) is ordered to participate in an arbitration under paragraph 32 of Chapter 29 Dispute Resolution;

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

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

a process described in Chapter 29 Dispute Resolution to resolve a Disagreement;

**“Periodic Renewal”** means the process to review this Agreement in accordance with paragraphs 1 to 25 of the Periodic Renewal and Orderly Process Chapter;



**“Periodic Renewal Date”** means the same day and month on which the first Periodic Renewal commenced as determined under paragraph 2 of Chapter 2 Periodic Renewal and Orderly Process;

**“Person”** for the purposes of Chapter 24 Tax, includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity, or a government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

**“Pest Management Plan”** has the same meaning as “pest management plan” in the *Integrated Pest Management Act*;

**“Pesticide Use Notice”** has the same meaning as “pesticide use notice” in the *Integrated Pest Management Act*;

**“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 recovered from oil sand or oil shale;

**“Placer Mineral”** means ore of metal 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, and includes rock or other materials 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 Resources except for the bark, branches, burls, cones, foliage and roots of Timber Resources;

**“Police Act”** means the *Police Act*, R.S.B.C. 1996, c. 367, as may be amended or replaced from time to time;

**“Police Service”** means a police service in British Columbia, other than the independent investigations office, authorized or established under the *Police Act* and, for greater certainty, includes the Royal Canadian Mounted Police when carrying out the powers and duties of the provincial police service;

**“Port Edward Lots”** means \_;

Definition to be updated with parcels owned by Kitsumkalum Corporation

**“Port Essington Lands”** means the lands legally described in Appendix C, Part 1, and identified for illustrative purposes in Appendix C, Part 2, and which are also shown in Canada Lands Survey Records No. BC 168 and referred to therein as the “Port Essington Indian Reserve”;

**“Pre-Approved Fee Simple Addition Lands”** means the lands identified in Appendix F Part 5;

**“Private Lands”** means, for the purposes of Chapter 15 Forest Resources, lands that are not Crown lands;

**“Provincial Conservancy”** means provincial Crown land established as a conservancy under the *Park Act* or the *Protected Areas of British Columbia Act*;

**“Provincial Court Act”** means the *Provincial Court Act*, R.S.B.C. 1996, c. 379, as may be amended or replaced from time to time;

**“Provincial Court Judge”** means a “judge” as defined in the *Provincial Court Act*;

**“Provincial Crown Gravel Lands”** means provincial Crown land located in the Kitsumkalum Harvest Area in the vicinity of Kitsumkalum Lands, other than provincial Crown land:

- (a) that, as of the Effective Date, was withdrawn or designated for Gravel Pits and Quarries under Section 16 or 17 of the *Land Act*; or
- (b) is subject to a third party disposition by the Province of the right to extract, refine and transport Gravel under Section 11 of the *Land Act*;

**“Provincial Enforcement Officer”** means a conservation officer designated under the *Environmental Management Act* or a natural resource officer designated under the *Natural Resource Compliance Act*;

**“Provincial Environmental Assessment Decision Maker”** means the individual identified by Environmental Assessment legislation as the person responsible for a decision;

**“Provincial Expropriating Authority”** means a provincial ministry or agency or any person with the authority to expropriate land or an interest in land under provincial legislation;

**“Provincial Highway”** means a “highway” within the meaning of the *Transportation Act*, [SBC 2004] Chapter 44;

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

**“Provincial Park”** means provincial Crown land established as a park under the *Park Act* or the *Protected Areas of British Columbia Act*;

**“Provincial Project”** means a “reviewable project”, as defined in the *Environmental Assessment Act*, that is subject to a review 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 that gives effect to this Agreement;

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

- (a) plans, objectives or guidelines for land, marine or resource use, at any of a variety of scales from the regional to the landscape level; and
- (b) plans, objectives or guidelines for specific land, marine and resource use sectors, such as commercial recreation, but not operational plans concerning specific land, marine and resource use proposals;

**“Public Utility”** means:

- (a) a person, or the person’s lessee, trustee, receiver or liquidator who owns or operates in British Columbia equipment or facilities for the:
  - (i) production, gathering processing, storage, transmission, sale, supply, distribution or delivery of petroleum, or petroleum products or by-products;
  - (ii) production, generation, gathering, processing, storage, transmission, sale, supply, distribution or delivery of gas (including natural gas, natural gas liquids, propane, and coal bed methane), electricity, steam or water or any other agent for the production of light, heat, cold or power;
  - (iii) emission, 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; or
- (b) a local or regional authority providing services in connection with air quality, dikes, water, sewage, solid waste disposal and wastewater treatment,

but for the purposes of this definition, “person” does not include a person engaged in the petroleum industry who is not otherwise a Public Utility;

**“Railway”** means a company, established under Federal or Provincial Law, authorized to construct, own or operate a railway, including:

- (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 Corridors”** means any lands identified as “Railway Corridor” in Appendices B-2 and B-3;

**“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;

**“Range Resources”** means those plant communities that are associated with grazing;

**“Ratification Committee”** means the committee established in accordance with paragraph 5 of Chapter 27 Ratification;

**“Ratification Vote”** means the Constitution Ratification Vote or the Treaty Ratification Vote, as applicable;

**“Red Bluff Oolichan Harvest Site”** means the geographic area referred to as the “Red Bluff Oolichan Harvest Site” in the map attached as Appendix K Part 3;

**“Registered Aerodrome”** means an aerodrome registered under the Canadian Aviation Regulations and that is published in Canadian aeronautical information products and set out in the Implementation Plan;

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

**“Renewable Resources”** means Fish, Wildlife, Migratory Birds, Plants, and Timber Resources;

**“Renewal Period”** means the period between the conclusion of a Periodic Renewal and the Periodic Renewal Date for the next Periodic Renewal;

**“Resource Revenues”** means the types of provincial revenues that will be payable to Kitsumkalum as agreed to and set out in a Resource Revenue Sharing Agreement;

**“Resource Revenue Sharing Agreement”** means one or more agreements negotiated between British Columbia and Kitsumkalum in accordance with Chapter 23 Resource Revenue Sharing;

**“Resource Road”** means a Provincial Road that is not a Provincial Highway;

**“Responsible Person”** means a “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 another date as the Parties may agree;

**“Right of Way”** means an interest in a defined area of land on which a grant is given for a specified use, including use for a road, or by a Public Utility or Railway;

**“Sand Lake Parcel”** means the lands identified in Appendix F Part 4;

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

**“Skeena Sawmill Lands”** means the lands legally described in Appendix F Part 3;

**“Site Management Agreement”** means the agreement between Kitsumkalum and British Columbia to be entered into on the Effective Date in accordance with paragraph 44 of Chapter 3 Kitsumkalum Lands related to the Former Provincial Campgrounds, Recreation Sites and Trails, as amended from time to time in accordance with its terms;

**“Site Disclosure Statement”** means “site disclosure statement” as defined in the *Environmental Management Act*;

**“Small Claims Act”** means the *Small Claims Act*, R.S.B.C. 1996, c. 430, as may be amended or replaced from time to time;

**“Species at Risk”** means “species at risk” as defined in the *Species at Risk Act*, as may be amended or replaced from time to time;

“**Species at Risk Act**” means the *Species at Risk Act*, S.C. 2002, c. 29, as may be amended or replaced from time to time;

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

“**Specific Consultation Process**” means any process or arrangement that Kitsumkalum and Canada or British Columbia, as applicable, have agreed in writing will be relied on to meet the consultation obligations of Canada or British Columbia, as applicable, in relation to a particular type of Contemplated Crown Conduct and which is:

- (a) set out in this Agreement;
- (b) set out in a separate agreement that is referenced in this Agreement; or
- (c) established pursuant to Federal or Provincial Law, referenced in this Agreement, including related approval or regulatory processes;

“**Stage One**” means the stage of dispute resolution described in paragraph 11(a) of Chapter 29 Dispute Resolution;

“**Stage Two**” means the stage of dispute resolution described in paragraph 11(b) of Chapter 29 Dispute Resolution;

“**Stage Three**” means the stage of dispute resolution described in paragraph 11(c) of Chapter 29 Dispute Resolution;

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

“**Submerged Lands**” means lands 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) Geothermal Resources; and
- (f) fossils;

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

- (a) listed in Appendix G-5 Part 1; and
- (b) that exist on any parcel of land added to Kitsumkalum Lands immediately before that parcel of land becomes Kitsumkalum Lands;

**“Superior Court”** means, for the purposes of paragraphs 26 to 34 of Chapter 2 Periodic Renewal and Orderly Process, the following courts or any of their successors established under applicable law:

- (a) the Supreme Court, Court of King’s Bench, Superior Court and Superior Court of Justice, as the case may be, of a Province;
- (b) the Supreme Court of Yukon, Supreme Court of the Northwest Territories and the Nunavut Court of Justice;
- (c) a Court of Appeal of a Province or Territory;
- (d) the Federal Court and Federal Court of Appeal; and
- (e) the Supreme Court of Canada;

**“Tenured Subsurface Resources”** means those Subsurface Resources subject to Subsurface Tenures;

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

**“Total Allowable Harvest”** means the maximum number of a given species of Wildlife that may be harvested each year in the Kitsumkalum Harvest Area, or any portion thereof;

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

**“Treaty Ratification Vote”** means the vote conducted under Chapter 27 Ratification to ratify this Agreement;

**“Treaty Voters List”** means the list of eligible voters for the Treaty Ratification Vote prepared by the Ratification Committee under paragraph 6 of Chapter 27 Ratification;

**“Tsimshian Artifacts”** means those objects held at the Effective Date in the permanent collections of the Canadian Museum of History, Parks Canada Agency or the Royal British Columbia Museum that are identified as “Tsimshian” in their documentation;

**“Unclassified Waters”** means a water or group of waters other than a Classified Water;

**“United Nations Declaration on the Rights of Indigenous Peoples”** or **“UNDRIP”** means the *United Nations Declaration on the Rights of Indigenous Peoples* that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007;

**“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 Kitsumkalum under paragraph 16 of Chapter 15 Forest Resources;

**“Wildlife”** means:

- (a) all vertebrate and invertebrate animals, including mammals, birds, reptiles, and amphibians; and

(b) the eggs, juvenile states, and adult stages of all vertebrate and invertebrate animals, but does not include Fish or Migratory Birds;

**“Wildlife Management Area”** means provincial Crown land established as a Wildlife management area under Provincial Law; and

**“Wood Waste Site”** means that area of former provincial Crown Land identified as “Wood Waste Site” in Appendix B-3 Part 2 Map 30.