


**MCLEOD LAKE INDIAN BAND  
TREATY NO. 8 ADHESION AND  
SETTLEMENT AGREEMENT**

Initialed and Recommended for Approval by the Negotiators for each Party on the  
30<sup>th</sup> day of September, 1999:

  
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## TABLE OF CONTENTS

RECITALS	1
ARTICLE 1: DEFINITIONS & INTERPRETATION	2
Definitions	
Interpretation	
ARTICLE 2: TREATY	7
ARTICLE 3: FULFILLMENT OF TREATY OBLIGATIONS	8
ARTICLE 4: TRANSFER OF PROPOSED AND ADDITIONAL RESERVE LANDS	9
Transfer of the Proposed Reserve Lands	
Environmental Audit	
Surveys	
Reserve Entitlement	
Adjustments to Proposed Reserve Lands	
Provincial Order	
Federal Order	
Replacement Interest	
ARTICLE 5: MINERAL RESOURCES	17
ARTICLE 6: FOREST RESOURCES	20
Definitions	
McLeod Lake Forest Development Plans	
Forest Practices	
Annual Report and Annual Audit	
Rectification Committee and Rectification Fund	
Fire Suppression	
Silviculture and Reforestation	
Status Forest Roads	
Disputes under articles 6.7 and 6.8	
Non-Status Forest Roads	
Access	
Fibre Supply	
Stumpage	

ARTICLE 7: NON-RESERVE LANDS	31
Map Reserves	
Fee Simple Sites	
ARTICLE 8: LAND IN SEVERALTY	32
ARTICLE 9: McLEOD LAKE COSTS	34
ARTICLE 10: PAST CLAIMS AND CASH COMPONENT	34
ARTICLE 11: RELEASES, INDEMNITIES AND LITIGATION	35
Definitions	
Releases to Canada from McLeod Lake	
Indemnities to Canada from McLeod Lake	
Releases to British Columbia from McLeod Lake	
Actions or Proceedings by or against McLeod Lake	
Indemnities to British Columbia from McLeod Lake	
Release to McLeod Lake from British Columbia	
Indemnity to McLeod Lake from British Columbia	
Releases to Canada from British Columbia	
Releases to British Columbia from Canada	
Proceedings to Enforce Agreement	
Consent Orders	
ARTICLE 12: OTHER PROGRAMS AND ACTIVITIES	44
ARTICLE 13: DISPUTE RESOLUTION	44
ARTICLE 14: BRITISH COLUMBIA TREATY COMMISSION PROCESS	47
ARTICLE 15: NO PREJUDICE AND NO ADMISSIONS	48
ARTICLE 16: SEVERABILITY	48
ARTICLE 17: FURTHER ASSURANCES	48
ARTICLE 18: ENUREMENT	48
ARTICLE 19: NO IMPLIED WAIVER	49

ARTICLE 20: REPRESENTATIONS AND WARRANTIES	49	
ARTICLE 21: PAYMENT OBLIGATIONS	50	
ARTICLE 22: ENTIRE AGREEMENT	50	
ARTICLE 23: NO BENEFIT	51	
ARTICLE 24: NOTICE	51	
SCHEDULES:		
“A”	Claimed Traditional Territory	54
“B”	Portions of Treaty No. 8	55
“C”	Maps of Proposed Reserve Lands	57
“D”	BC Hydro Flowage Right of Way	58
“E”	BC Hydro Right of Way	66
“F”	Westcoast and Federated Access	76
“G”	Ballot Question	77
“H”	Provincial Order	78
“I”	Federal Order	81
“J”	Map Reserve Sites	82
“K”	Maps of Fee Simple Sites	83
“L”	Ratification Process	84
“M”	Consent Order (Chingee v. HMQ No. C821901)	107
“N”	Consent Order (Chingee v. HMQ No. C964263)	109
“O”	Consent Order (HMQ v. McLeod Lake No. A971649)	112

#### ATTACHMENTS:

“A”	Excerpts from Environmental Audit
“B”	Process for Election of Lands in Severalty or Reserve Lands
“C”	Trust Agreement
“D”	Additions to Reserves Policy
“E”	Agreement in Principle to Creation of Reserves

**McLEOD LAKE INDIAN BAND  
TREATY NO. 8 ADHESION AND  
SETTLEMENT AGREEMENT**

This Agreement made this                      day of                      , 2000

**BETWEEN:**

**McLEOD LAKE INDIAN BAND and the  
Members of the McLeod Lake Indian Band**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA** as represented by the Minister  
of Indian Affairs and Northern Development

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF BRITISH  
COLUMBIA**

**WHEREAS:**

1. In the summer of 1899, Canada entered into a treaty known as Treaty No. 8 with certain Beaver, Chipewyan, Cree and other Indians.
2. Since 1899, Canada has taken a number of adhesions to Treaty No. 8 from other Indians considered by Canada to have inhabited the Treaty No. 8 area.
3. McLeod Lake wishes to adhere to Treaty No. 8 and Canada wishes to take this adhesion.
4. Canada asserts that the aboriginal title and rights to land of Indians inhabiting the Treaty No. 8 area were extinguished when Treaty No. 8 was approved by the Governor in Council on February 20, 1900.
5. Canada and McLeod Lake assert that the western boundary of Treaty No. 8 follows the height of land separating the waters draining into the Arctic Ocean and the Pacific Ocean. British Columbia does not agree with this assertion.



6. McLeod Lake has brought various claims against Canada, British Columbia, or both, as set out in:
  - a. *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others*, (B.C.S.C., Vancouver Registry No. C821901);
  - b. *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others*, (B.C.S.C., Vancouver Registry No. C964263, formerly B.C.S.C., Prince George Registry No. 10232/86); and
  - c. *Chingee and others v. Her Majesty the Queen in right of Canada* (Federal Court of Canada, Trial Division, Registry No. T1264/89).
7. British Columbia has brought a claim against McLeod Lake to recover debts, penalties or assessments arising under the *Forest Act*, R.S.B.C. 1996, c.157 and *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159 in relation to alleged trespasses that occurred between September and December, 1988. British Columbia's claim is set out in *Her Majesty the Queen in right of the Province of British Columbia v. McLeod Lake Indian Band* (B.C.S.C., Vancouver Registry No. A971649).
8. In 1986, McLeod Lake brought a specific claim against Canada under Canada's Specific Claims Policy claiming that approximately 50 acres were omitted from McLeod Lake's reserves due to survey errors.
9. Further to an agreement that was reached between McLeod Lake and British Columbia in 1973 regarding the purchase of 13.726 acres of land for a road right of way through an existing McLeod Lake reserve, McLeod Lake was entitled to but has not yet purchased and received 13.726 acres of reserve lands to replace those purchased by British Columbia for the road right of way.
10. The Parties intend to resolve these disputes in accordance with this Agreement.

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

**ARTICLE 1: DEFINITIONS & INTERPRETATION**

**Definitions**

1.1 In this Agreement:

- 1.1.1 "Abandoned Gas Station Site" means the site described on page D-15 of Canada's environmental audit dated August 10, 1998 and page 3 of Attachment "A" that is adjacent to lands within the McLeod Lake East parcel of the Proposed Reserve Lands, which parcel is described in article 1.1.28(b)(i).

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- 1.1.2 **“Acceptance Date”** means the date or dates on which Canada passes a Federal Order.
- 1.1.3 **“Additional Reserve Lands”** means:
- a any alternate lands selected in accordance with article 4.2.5(a);  
or
  - b. the lands referred to and surveyed in accordance with article 4.5.
- 1.1.4 **“Agreement”** means this McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement.
- 1.1.5 **“Attachment”** means the attachments listed in article 1.5 which are attached to this Agreement for information purposes only and do not form a part of this Agreement.
- 1.1.6 **“Ballot Question”** means the question, in the form attached as Schedule “G”, asked of the Eligible Members in the Ratification Process.
- 1.1.7 **“British Columbia”** means, unless the context otherwise requires, Her Majesty the Queen in right of British Columbia.
- 1.1.8 **“Canada”** means, unless the context otherwise requires, Her Majesty the Queen in right of Canada.
- 1.1.9 **“Claimed Traditional Territory”** means that area set out and depicted in Schedule “A”.
- 1.1.10 **“Council”** means the “council of the band”, as defined in the *Indian Act*, of McLeod Lake.
- 1.1.11 **“Effective Date”** means the date on which this Agreement is signed by the last Party to execute this Agreement.
- 1.1.12 **“Eligible Members”** means all Members who, as of the date on which this Agreement is ratified by McLeod Lake under the Ratification Process:
- a. are 18 years of age or older; and
  - b. are registered as “Indians” within the meaning of the *Indian Act*.
- 1.1.13 **“Environmental Audit of the Other Reserve Lands”** means the audit of the lands to be conducted by Canada in accordance with article 4.2.4.

- 1.1.14 “**Excluded Resources**” means peat, limestone, marble, clay, gypsum, or any building stone when mined for building purposes, earth, ash, marl, gravel, sand or any element that forms part of the agricultural surface of the land within, upon, or under the Reserve Lands.
- 1.1.15 “**Federal Order**” means an order of the Governor in Council, in substantially the form set out in Schedule “T”, or other instruments prescribed under the *Federal Real Property Act*, S.C. 1991, c. 50, accepting from British Columbia the transfer of administration, control and benefit of part or all of the Proposed Reserve Lands or any Additional Reserve Lands.
- 1.1.16 “**Fee Simple Sites**” means the lands identified in article 7.2.1.
- 1.1.17 “**Fuel Spill Site**” means the site described on page B-10 of Canada’s environmental audit dated August 10, 1998 and page 1 of Attachment “A” that is adjacent to lands within the Kerry Lake West parcel of the Proposed Reserve Lands, which parcel is described in article 1.1.28(b)(ii).
- 1.1.18 “**Garbage Sites**” means the landfill, incinerator and garbage dump sites described on page D-14 of Canada’s environmental audit dated August 10, 1998 and page 2 of Attachment “A” that are adjacent to lands within the McLeod Lake East parcel of the Proposed Reserve Lands, which parcel is described in article 1.1.28(b)(i).
- 1.1.19 “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5.
- 1.1.20 “**McLeod Lake**” means the McLeod Lake Indian Band, which is a “band”, as that term is defined in the *Indian Act*.
- 1.1.21 “**Member**” means a “member of the band”, as defined in the *Indian Act*, of McLeod Lake, except where defined otherwise in this Agreement.
- 1.1.22 “**Mineral Resources**” means Minerals, Petroleum, and Natural Gas within, upon or under the Reserve Lands.
- 1.1.23 “**Minerals**” means ores of metal, all naturally occurring useful minerals, and coal but does not include Petroleum, Natural Gas, or Excluded Resources.
- 1.1.24 “**Natural Gas**” means all fluid hydrocarbons, before and after processing, that are not defined as Petroleum, and includes hydrogen sulphide, carbon dioxide and helium produced from a well.



1.1.25 **“Non-Status Forest Roads”** means roads, other than Status Forest Roads, within the Proposed Reserve Lands or any Additional Reserve Lands that were created for forest development purposes.

1.1.26 **“Party”** means a party to this Agreement.

1.1.27 **“Petroleum”** means crude petroleum and all other hydrocarbons, regardless of gravity, that are or can be recovered in liquid form from a pool through a well by ordinary production methods or that are or can be recovered from oil sand or oil shale.

1.1.28 **“Proposed Reserve Lands”** means:

a. the parcels of land (collectively 63 hectares) shown in Schedule “C” and described as approximately:

- i. 1.0 hectare on Finlay Bay,
- ii. 1.0 hectare on Weston Bay,
- iii. 2.0 hectares on the Hominka River,
- iv. 2.0 hectares on Tacheeda Lake,
- v. 1.0 hectare on Davie Lake,
- vi. 2.0 hectares on Arctic Lake,
- vii. 1.9 hectares on Blue Lake,
- viii. 2.0 hectares on McIntyre Lake,
- ix. 12.0 hectares on McLeod Lake,
- x. 4.0 hectares on Weedon Lake,
- xi. 26.0 hectares at the community of Bear Lake, and
- xii. 8.1 hectares in the District Municipality of Mackenzie; and

b. those lands outlined in bold on maps recorded in the Vancouver, British Columbia Office of Legal Surveys Division, Natural Resources Canada, that are described as:

- i. Approximately 8,720.7 hectares of land in the vicinity of McLeod Lake and shown in orthophoto map #990 as “McLeod Lake East” and “McLeod Lake West”;
- ii. Approximately 4,122 hectares of land in the vicinity of Kerry Lake and shown in orthophoto map #991 as “Kerry Lake West” and “Kerry Lake East”;
- iii. Approximately 2,579 hectares of land in the vicinity of Weedon Lake and shown in orthophoto map #992 as “Weedon Carp”; and
- iv. Approximately 4,334 hectares of land in the vicinity of Carp Lake and shown in orthophoto map #993 as “Carp South”,

all of which above parcels are shown for ease of reference on the map in Schedule "C".

- 1.1.29 **"Provincial Order"** means an order of the Lieutenant Governor in Council, in substantially the form set out in Schedule "H", transferring to Canada the administration, control and benefit of part or all of the Proposed Reserve Lands or any Additional Reserve Lands.
- 1.1.30 **"Ratification Process"** means the process set out in Schedule "L".
- 1.1.31 **"Reserve Lands"** means the Proposed Reserve Lands and any Additional Reserve Lands that have been set aside as reserves in accordance with article 4.7.
- 1.1.32 **"Schedule"** means the schedules listed in article 1.4 which form an integral part of this Agreement.
- 1.1.33 **"Status Forest Roads"** means the forest roads on the Proposed Reserve Lands or any Additional Reserve Lands, which roads were constructed and maintained and will be deactivated in accordance with the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159 or that are identified in British Columbia's Ministry of Forests' atlas or referred to in sections 115 and 121 of the *Forest Act*, R.S.B.C. 1996, c. 157.
- 1.1.34 **"Treaty No. 8 Area"** means the tract of land defined and described in Treaty No. 8.
- 1.1.35 **"Trust Agreement"** means the agreement entered into by McLeod Lake and the Trustees in the same form as Attachment "C".
- 1.1.36 **"Trust Capital Account"** means an account at a financial institution established by the Trustees under the Trust Agreement.
- 1.1.37 **"Trustees"** means those persons appointed as trustees under the Trust Agreement.
- 1.1.38 **"Westcoast Right of Way Area"** means the lands described or depicted in Westcoast Energy Inc.'s rights of way registered in the British Columbia land title system under No.'s PM045545, 23460K, 9989K.

## Interpretation

### 1.2 In this Agreement:

- 1.2.1 the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the extent or intent of any part of this Agreement;
- 1.2.2 a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in replacement of it;
- 1.2.3 words in the singular form include the plural, and vice versa; and
- 1.2.4 there will not be any presumption that doubtful expressions in this Agreement will be interpreted or resolved in favour of any Party.

### 1.3 This Agreement takes effect on the Effective Date.

### 1.4 The Schedules to this Agreement are:

- "A" Claimed Traditional Territory
- "B" Portions of Treaty No. 8
- "C" Maps of Proposed Reserve Lands
- "D" BC Hydro Flowage Right of Way
- "E" BC Hydro Right of Way
- "F" Westcoast and Federated Access
- "G" Ballot Question
- "H" Provincial Order
- "I" Federal Order
- "J" Map Reserve Sites
- "K" Maps of Fee Simple Sites
- "L" Ratification Process
- "M" Consent Order (*Chingee v. HMQ* No. C821901)
- "N" Consent Order (*Chingee v. HMQ* No. C964263)
- "O" Consent Order (*HMQ v. McLeod Lake* No. A971649)

### 1.5 The Attachments to this Agreement are:

- "A" Excerpts from Environmental Audit
- "B" Process for Election of Lands in Severalty or Reserve Lands
- "C" Trust Agreement
- "D" Additions to Reserves Policy
- "E" Approval in Principle to Creation of Reserves

## ARTICLE 2: TREATY

- 2.1 McLeod Lake joins in the cession made by Treaty No. 8 and agrees to adhere to the terms thereof in consideration of the undertakings made therein and may exercise the rights set out in Treaty No. 8 throughout the Treaty No. 8 Area.

- 2.2 Canada accepts and British Columbia agrees to the adhesion set out in article 2.1.
- 2.3 Without limiting Treaty No. 8, the rights of McLeod Lake under Treaty No. 8, or the geographic extent of those rights, the Parties agree that, within any Claimed Traditional Territory outside the Treaty No. 8 Area, McLeod Lake has and may hold and exercise rights as set out in Treaty No. 8, subject to the conditions and cession set out in that treaty, as if Treaty No. 8 applied to the Claimed Traditional Territory outside the Treaty No. 8 Area.
- 2.4 If article 2.3 is a grant of treaty rights, which grant is not pursuant to Treaty No. 8, then:
- 2.4.1 the grant of treaty rights does not affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than McLeod Lake; and
- 2.4.2 if a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than McLeod Lake, has rights under section 35 of the *Constitution Act, 1982* that are adversely affected by the grant of treaty rights under article 2.3, then:
- a. McLeod Lake may exercise the rights granted under article 2.3 to the extent that such rights do not adversely affect the section 35 rights of the other aboriginal people; and
- b. Canada and British Columbia will negotiate and attempt to reach agreement with McLeod Lake in order to provide McLeod Lake with additional or replacement rights or, if such rights are not agreed to by the Parties, other remedies.
- 2.5 Article 2.4 does not apply to the Reserve Lands.
- 2.6 The rights acquired by McLeod Lake under Treaty No. 8 and articles 2.3 to-2.5, inclusive, are rights acquired under a treaty and land claims agreement, respectively, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

### ARTICLE 3: FULFILMENT OF TREATY OBLIGATIONS

- 3.1 This Agreement will not be construed as a modification or novation of Treaty No. 8.
- 3.2 Upon Canada and British Columbia carrying out their respective obligations under this Agreement, the following will be fulfilled and satisfied:
- 3.2.1 the provision of reserves and land in severalty, including resources on, under and within such reserves; and

3.2.2 the provision of that which is underlined in Schedule "B".

3.3 Notwithstanding the common law and the geographic extent of rights acquired by McLeod Lake under article 2, McLeod Lake agrees that any obligation by British Columbia to consult McLeod Lake is limited to activities that may have an impact upon McLeod Lake's rights under s. 35 of the *Constitution Act*, 1982 within the Claimed Traditional Territory and for greater certainty, British Columbia will have no obligation to consult McLeod Lake with respect to activities that may have an impact upon their s. 35 rights outside of McLeod Lake's Claimed Traditional Territory.

**ARTICLE 4: TRANSFER OF PROPOSED & ADDITIONAL RESERVE LANDS**

**4.1 Transfer of the Proposed Reserve Lands**

4.1.1 British Columbia will transfer the administration, control and benefit of the Proposed Reserve Lands to Canada free and clear of all interests, except those encumbrances listed as follows:

- a. British Columbia Hydro and Power Authority Flowage Agreement, substantially in the form attached as Schedule "D";
- b. British Columbia Hydro and Power Authority Right of Way, substantially in the form attached as Schedule "E".

4.1.2 The Reserve Lands will be subject to:

- a. a right of ingress and egress in favour of Westcoast Energy Inc. ("Westcoast") to and from the Westcoast Right of Way Area; and
- b. a right of ingress and egress in favour of Federated Pipelines (Western) Ltd. ("Federated") to and from the Westcoast Right of Way Area.

4.1.3 For the purposes of article 4.1.2, the right of ingress and egress means the right:

- a. to enter and be upon, use, pass and repass over, and to maintain and repair in such manner as Westcoast or Federated (acting reasonably) may consider necessary, trails, roads and bridges on the Reserve Lands identified in Schedule "F", with or without equipment, machinery and materials to such extent as may reasonably be required by Westcoast or Federated in connection with the installation, operation, maintenance, protection, repair, alteration, upgrading, removal and/or replacement of Westcoast or Federated's pipelines and the Westcoast Right of Way Area;

- b. in the event of an emergency or reasonably apprehended emergency:
- (i) to construct in such manner as Westcoast or Federated (acting reasonably) may consider necessary and to enter and be upon, use, pass and repass over, trails, roads and bridges on the Reserve Lands, and/or
  - (ii) to enter and be upon, use, pass and repass over the Reserve Lands elsewhere than on trails, roads and bridges,

with or without equipment, machinery and materials to such extent as may reasonably be required by Westcoast or Federated in connection with the purposes referred to in article 4.1.3(a). Westcoast or Federated shall report to McLeod Lake the purpose and extent of the access and related activities as soon as practicable thereafter;

- c. to enter and be upon, use and work upon such of the Reserve Lands located within a ten metre strip of land in perpendicular width immediately adjoining each side of the Westcoast Right of Way Area as may reasonably be required by Westcoast or Federated in connection with the installation, operation, maintenance, protection, repair, alteration, upgrading, removal and/or replacement of Westcoast or Federated's pipelines and the Westcoast Right of Way Area; and
- d. to generally do all acts or things necessary in connection with the exercise of the rights referred to in articles 4.1.3 (a) to (c),

until such time as Westcoast and Federated abandon all of the pipelines within the Westcoast Right of Way Area.

4.1.4 For the purposes of article 4.1.2, Westcoast and Federated's right of ingress and egress over the Reserve Lands is subject to the following obligations:

- a. to pay compensation to McLeod Lake or Canada for any damage to buildings, trees (except for merchantable timber left for the use of McLeod Lake under article 4.1.4(b)), crops, livestock, drains, ditches, culverts, fences, trails, bridges, roads and fruit, nut or ornamental trees caused by Westcoast or Federated or their servants, agents or licensees;
- b. to, at the option of McLeod Lake, leave for the use of McLeod Lake any merchantable timber which Westcoast or Federated cuts on the Reserve Lands and which McLeod Lake requests be left for its use, in a location as close as reasonably practicable to the location the timber was cut;
- c. not to disturb or interfere with any survey monuments, bars or iron pins situate upon the Reserve Lands;

- d. to carry out all construction or repair of access under article 4.1.3(b) in a good and workmanlike manner and to standards that are reasonably suitable in the circumstances, provided that Westcoast or Federated has no obligation to construct or maintain any roads as suitable for use by anyone else;
- e. not to bury debris or rubbish of any kind on the Reserve Lands in excavations or backfill, and to remove shoring and like temporary structures as backfilling proceeds;
- f. not to commit or suffer to be done by Westcoast or Federated or their servants, agents or licensees any willful or voluntary waste, spoil or destruction on the Reserve Lands;
- g. to indemnify and save McLeod Lake or Canada harmless against all losses, damages, costs and liabilities, including reasonable fees of solicitors and other professional advisors, arising out of:
  - i. any breach, violation or non-performance of any obligations in articles 4.1.3 and 4.1.4 by Westcoast or Federated or their servants, agents, licensees or assignees, and
  - ii. any personal injury; death or property damage occurring on the Reserve Lands arising from use or occupation of the Reserve Lands under articles 4.1.3 and 4.1.4 by Westcoast or Federated or their servants, agents, licensees or assignees;
- h. to provide prior notice of any proposed exercise of rights under articles 4.1.3 (a) and (c), provided that in the event of an emergency or reasonably apprehended emergency Westcoast or Federated shall not need to provide prior notice but will report to McLeod Lake the purpose and extent of its activities as soon as practicable;
- i. to remain liable for any adverse environmental effects upon the Reserve Lands caused by Westcoast or Federated or their servants, agents, licensees or assignees, including any adverse environmental effects arising from any Westcoast or Federated's pipelines not removed on expiration of the rights of way covering the Westcoast Right of Way Area. To the extent necessary, this obligation shall survive the expiration of such rights of way;
- j. that if any land alteration or other activities on the Reserve Lands by Westcoast or Federated or by their servants, agents or licensees results in discovery or disturbance of any archaeological material, Westcoast or Federated will take all reasonable precautions to avoid direct impact with that material and immediately notify McLeod Lake; and
- k. when any Reserve Lands used by Westcoast or Federated pursuant to articles 4.1.3 (b) and (c) are no longer reasonably required by Westcoast or Federated for the purposes referred to in such articles, to restore the surface of the affected portions of the Reserve Lands, to the extent practicable and changed

by Westcoast or Federated, to the condition they were in prior to Westcoast or Federated's use of them, unless otherwise agreed to in writing by Canada, McLeod Lake and Westcoast or Federated at the time of restoration.

- 4.1.5 Westcoast and Federated will, in all their activities on the Reserve Lands, in the absence of any applicable legislative standards of equal or greater standard or requirement of the Government of Canada, comply with applicable British Columbia legislation or standards for construction and environmental protection as if the provincial legislation and standards applied to the Reserve Lands.
- 4.1.6 The Parties acknowledge and agree that neither Westcoast nor Federated will be liable in any way for the acts of the other under articles 4.1.3 to 4.1.5.
- 4.1.7 Transfer of the administration, control and benefit of the Proposed Reserve Lands to Canada pursuant to article 4.1.1 will be subject to the entering into by McLeod Lake and Canada, with each of Westcoast and Federated, of a section 28(2) permit pursuant to the *Indian Act* on the terms set out in articles 4.1.3 to 4.1.5.
- 4.1.8 McLeod Lake will, unless it chooses to provide its own services, conclude servicing agreements with:
- a. the Fraser-Fort George Regional District, for the 26 hectare site in the community of Bear Lake described in article 1.1.28 (a)(xi); and
  - b. the District of Mackenzie, for the 8.1 hectare site in the District Municipality of Mackenzie described in article 1.1.28(a)(xii).

#### 4.2 Environmental Audit

##### Proposed Reserve Lands

- 4.2.1 The Parties acknowledge that between September, 1996 and August 10, 1998, Canada, at its expense, completed environmental audits of the Proposed Reserve Lands, except for:
- a. the parcels at Finlay Bay, McLeod Lake and Bear Lake referred to in articles 1.1.28(a)(i), 1.1.28(a)(ix) and 1.1.28(a)(xi) respectively;
  - b. Quaw Island, which island is within the area described as McLeod Lake East in article 1.1.28(b)(i); and
  - c. such further portions of the Proposed Reserve Lands which were not audited in the Environmental Audit.

No contamination, as defined in the *Waste Management Act* R.S.B.C. 1996, c. 482 was revealed on, under or migrating onto or under the Proposed Reserve Lands in those environmental audits.

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4.2.2 With respect to lands within the Reserve Lands adjacent to the Abandoned Gas Station Site, Fuel Spill Site or Garbage Site, if:

- a. contamination, as defined in the *Waste Management Act*, R.S.B.C. 1996, c. 482, in excess of acceptable levels established under that Act, is discovered on or under those lands;
- b. it is determined that the contamination migrated onto those lands from the adjacent Abandoned Gas Station Site, Fuel Spill Site or Garbage Site, as the case may be; and
- c. remediation to those lands would have been required to meet the standards contained within the *Waste Management Act*, R.S.B.C. 1996, c. 482,

British Columbia will remediate or cause to be remediated the lands so affected in accordance with the remediation standards established under the *Waste Management Act*, R.S.B.C. 1996, c. 482 for the category of land use applicable to those lands on August 10, 1998.

4.2.3 With respect to the lands audited in Canada's environmental audits, if, subsequent to the completion date of the applicable audit:

- a. contamination, as defined in the *Waste Management Act*, R.S.B.C. 1996, c. 482, in excess of acceptable levels established under that Act, is discovered on or under those lands;
- b. it is determined that the contamination originated after the completion date of that audit but before the Acceptance Date in relation to those lands as the direct result of actions taken by persons other than Canada or McLeod Lake; and
- c. remediation to those lands would have been required to meet the standards contained within the *Waste Management Act*, R.S.B.C. 1996, c. 482,

British Columbia will remediate or cause to be remediated the lands so affected in accordance with the remediation standards established under the *Waste Management Act*, R.S.B.C. 1996, c. 482 for the category of land use applicable to those lands on the completion date of that audit.

#### Environmental Audit of the Other Reserve Lands

4.2.4 Canada will, at its expense, conduct an environmental audit of:

- a. the Additional Reserve Lands, if any;
- b. the parcels at Finlay Bay, McLeod Lake and Bear Lake referred to in articles 1.1.28(a)(i), 1.1.28(a)(ix) and 1.1.28(a)(xi) respectively;

- c. Quaw Island, which island is within the area described as McLeod Lake East in article 1.1.28(b)(i); and
- d. such further portions of the Proposed Reserve Lands which were not audited by Canada prior to August 10, 1998,

and upon completion of the audit, will promptly distribute a copy of the audit report to each Party.

4.2.5 If contamination, as defined in the *Waste Management Act*, R.S.B.C. 1996, c. 482, in excess of acceptable levels established under that Act is revealed in the Environmental Audit of the Other Reserve Lands and if remediation is required to meet the standards contained within that Act, the Parties may, by agreement:

- a. select alternate lands; or
- b. permit British Columbia to remediate or cause to be remediated the lands so affected in accordance with the standards established under that Act for the category of land use applicable to those lands on the completion date of the audit.

4.2.6 If, subsequent to the completion date of the Environmental Audit of the Other Reserve Lands:

- a. contamination, as defined in the *Waste Management Act*, R.S.B.C. 1996, c. 482, in excess of acceptable levels established under that Act, is discovered on or under the lands audited in the Environmental Audit of the Other Reserve Lands;
- b. it is determined that the contamination originated after the completion date of the audit but before the Acceptance Date in relation to those lands as the direct result of actions taken by persons other than Canada or McLeod Lake; and
- c. remediation would have been required to meet the standards contained within the *Waste Management Act*, R.S.B.C. 1996, c. 482;

British Columbia will remediate or cause to be remediated the lands so affected in accordance with the remediation standards established under the *Waste Management Act*, R.S.B.C. 1996, c. 482 for the category of land use applicable to those lands on the completion date of the audit.

4.2.7 McLeod Lake will provide access to the Reserve Lands in order that British Columbia can fulfill any obligations under articles 4.2.2, 4.2.3, 4.2.5 and 4.2.6.

### 4.3 Surveys

4.3.1 As soon as reasonably possible after the Effective Date, Canada will, at its expense, survey or cause to be surveyed the Proposed Reserve Lands in

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accordance with instructions of the Surveyors General of Canada and British Columbia and will prepare plans and descriptions therefrom.

- 4.3.2 Canada will seek the written approval of McLeod Lake and the Surveyors General of Canada and British Columbia to the plans and descriptions referred to in article 4.3.1.
- 4.3.3 Canada will promptly provide British Columbia with copies of written approvals provided by McLeod Lake under article 4.3.2.
- 4.3.4 Once approved pursuant to article 4.3.2, the plans and descriptions will replace the definition of Proposed Reserve Lands in article 1.1.28.

#### **4.4 Reserve Entitlement**

- 4.4.1 The calculation in relation to the area of Proposed Reserve Lands or any Additional Reserve Lands to be transferred to Canada is based on the membership of McLeod Lake of 387 Members as of May 1, 1998, which is deemed to be the population of McLeod Lake for the purposes of this Agreement.
- 4.4.2 Subject to article 8, McLeod Lake's Treaty No. 8 reserve land entitlement is 20,047 hectares (or 49,536 acres).
- 4.4.3 Lands currently set aside as reserves for McLeod Lake of approximately 237.3 hectares (586.37 acres) are deemed to be part of McLeod Lake's Treaty No. 8 reserve land entitlement.

#### **4.5 Adjustments to Proposed Reserve Lands**

- 4.5.1 Subject to article 8, if the survey of the Proposed Reserve Lands in accordance with articles 4.3.1 and 4.3.2 determines that the Proposed Reserve Lands comprise less than 19,809.7 hectares (or 48,949.63 acres), additional lands contiguous to the area described as Carp South in article 1.1.28(b)(iv) will be included to ensure that the Reserve Lands comprise 19,809.7 hectares.
- 4.5.2 Subject to article 8, if the survey of the Proposed Reserve Lands in accordance with articles 4.3.1 and 4.3.2 determines that the Proposed Reserve Lands comprise more than 19,809.7 hectares (or 48,949.63 acres), lands will be excluded from the area described as Carp South in article 1.1.28(b)(iv) to ensure that the Reserve Lands comprise 19,809.7 hectares.
- 4.5.3 British Columbia will transfer the administration, control and benefit of the Additional Reserve Lands, if any, to Canada free and clear of all interests, except for those encumbrances that Canada and the Council agree may remain in place.
- 4.5.4 The Additional Reserve Lands, if any, will be surveyed within a reasonable time after being identified and agreed to by the Parties and such survey will be conducted in accordance with articles 4.3.

#### **4.6 Provincial Order**

- 4.6.1 Within 4 months following the completion of the matters described in articles 4.1 to 4.5 inclusive, except for articles 4.2.2, 4.2.3 and 4.2.6, a Minister or Ministers of the Province of British Columbia will recommend to the Lieutenant-Governor in Council that the administration, control and benefit of that portion of the Proposed Reserve Lands or any Additional Reserve Lands defined in a Provincial Order be transferred to Canada in accordance with that Provincial Order.
- 4.6.2 The Parties are aware that other Indian Bands, First Nations or aboriginal people have brought, and may in the future bring, court actions challenging the validity of provincial Order in Council 1036/1938. Accordingly, if, in a court action brought by or on behalf of another Indian Band, First Nation or aboriginal people, a court holds that provisions, or portions thereof, within Order in Council 1036/1938 are invalid or inapplicable in respect of the lands transferred under that Order in Council, any corresponding provision, or portion thereof, within the Provincial Order will be deemed to be invalid or inapplicable in respect of the lands transferred under the Provincial Order.
- 4.6.3 The benefit of a court ruling under article 4.6.2 will be applied to McLeod Lake once applicable time limits for the filing of appeals have expired, or alternatively, once any appeals, if pursued, have been finally determined in favour of the Indian Band, First Nation or aboriginal people.

#### **4.7 Federal Order**

- 4.7.1 Provided Canada is satisfied that the Proposed Reserve Lands or any Additional Reserve Lands defined in a Provincial Order meet Canada's Additions to Reserve Policy, as attached in Attachment "D" (the "ATR Policy"), Canada's Minister of Indian Affairs and Northern Development will recommend to the Governor in Council that:
- a. the transfer of the administration, control and benefit of those lands be accepted pursuant to the Federal Real Property Act, S.C. 1991, c. 50, and the Minister will make best efforts to do so within 6 months of delivery of the corresponding Provincial Order; and
  - b. those lands be set aside as reserves for the use and benefit of McLeod Lake in accordance with the Federal Order.
- 4.7.2 Canada acknowledges that the Proposed Reserve Lands, with the exception of the two parcels set out in articles 1.1.28.a.xi. and 1.1.28.a.xii., are approved in principle under the ATR Policy for the granting of reserve status subject to the conditions set out in Attachment "E".
- 4.7.3 If the ATR Policy changes, the Council may by resolution request that Canada utilize the criteria set out in the newer policy for approving the granting of reserve status to any lands which have not yet received approval under article 4.7.2.

4.7.4 The transfer to Canada of the Proposed Reserve Lands and any Additional Reserve Lands from British Columbia and the recommendations to the Governor in Council to accept the lands pursuant to a Federal Order and set them apart as reserves for McLeod Lake may occur in more than one transfer and recommendation.

#### **4.8 Replacement Interest**

4.8.1 Canada and McLeod Lake will negotiate a replacement interest and access rights at a nominal rate for a term ending October 22, 2006, for the water quality survey station on the Proposed Reserve Lands currently operated by the Department of Environment Canada and established pursuant to map reserve #867068, Crown Land Registry, Victoria, British Columbia. The replacement interest and access rights will come into effect on or after the Acceptance Date in relation to the lands on which the interest is now located.

### **ARTICLE 5: MINERAL RESOURCES**

5.1 McLeod Lake and Canada acknowledge that in accordance with the Provincial Orders, the administration, control and benefit of the Mineral Resources remains held by British Columbia and all claims and rights thereto will be subject to the laws of British Columbia, save as provided herein.

5.2 On and after the Acceptance Date:

5.2.1 British Columbia acknowledges that, subject to British Columbia's rights under paragraph 2(d) of the Provincial Orders, the administration, control and benefit of the Excluded Resources and all revenues derived therefrom will be held by Canada for the use and benefit of McLeod Lake;

5.2.2 British Columbia acknowledges that, subject to British Columbia's rights under paragraph 2(d) of the Provincial Orders, the administration and control of the surface of the Reserve Lands will be held by Canada for the use and benefit of McLeod Lake and Canada or McLeod Lake as the case may be will have, in addition to any other legal right to control access, absolute control over access to the Reserve Lands for the purpose of the exploration, development, production and disposition of Mineral Resources; and

5.2.3 Before British Columbia makes a disposition of an interest in a Mineral Resource, both British Columbia and McLeod Lake must have agreed to such disposition.

5.3 All revenues from the disposition and production of the Mineral Resources will be shared equally between British Columbia and McLeod Lake.

- 5.4 British Columbia will not dispose of an interest in a Mineral Resource until:
- 5.4.1 British Columbia and McLeod Lake or Canada, British Columbia and McLeod Lake, as the case may be have entered into a comprehensive agreement in accordance with articles 5.5 to 5.7;
  - 5.4.2 McLeod Lake has agreed to the disposition in accordance with article 5.2.3; and
  - 5.4.3 McLeod Lake and Canada have agreed to provide access to the surface of the Reserve Lands in accordance with article 5.2.2.
- 5.5 The Parties will negotiate and attempt to reach a comprehensive agreement in respect of revenues that are subject to equal sharing pursuant to article 5.3 and the claims and rights pertaining to the equal sharing thereof, and other matters as set out in articles 5.6 and 5.7.
- 5.6 An agreement with respect to Minerals under article 5.5 will encompass at least the following:
- 5.6.1 agreement by British Columbia and McLeod Lake with respect to:
    - a. identification of, and the method of calculating, the revenues that British Columbia derives from the disposition and production of Minerals as described in article 5.3 and the manner of payment of McLeod Lake's one half share of such revenues by British Columbia;
    - b. the method of allocating revenues from disposition and production of Minerals from tenures or deposits that are located in part within, upon or under the Reserve Lands and in part within, upon or under lands outside of the Reserve Lands; and
  - 5.6.2 agreement by the Parties with respect to:
    - a. matters relating to access to the surface of the Reserve Lands to allow for exploration, development, production and disposition of Minerals including resolution of disputes with third parties;
    - b. to the extent possible at law, measures required to ensure, at a minimum, compliance with provincial laws relating to exploration, development, production, and processing of Minerals, and mine closure or abandonment, and reclamation, including without limiting the generality of the foregoing, laws in respect of occupational health and safety and labour standards; and
    - c. a method of resolving disputes among the Parties.

5.7 An agreement with respect to Petroleum and Natural Gas under article 5.5 will encompass at least the following:

5.7.1 agreement by British Columbia and McLeod Lake with respect to:

- a. identification of, and the method of calculating, the revenues that British Columbia derives from the disposition and production of Petroleum and Natural Gas as described in article 5.3 and the manner of payment of McLeod Lake's one half share of such revenues by British Columbia;
- b. the method of allocating revenues from disposition and production of Petroleum and Natural Gas from tenures or deposits that are located in part within, upon or under the Reserve Lands and in part within, upon or under lands outside of the Reserve Lands; and

5.7.2 agreement by the Parties with respect to:

- a. matters relating to access to the surface of the Reserve Lands to allow for exploration, development, production and disposition of Petroleum and Natural Gas including resolution of disputes with third parties;
- b. to the extent possible at law, measures required to ensure, at a minimum, compliance with provincial laws relating to exploration, development, treatment, conservation, and equitable production of Petroleum and Natural Gas, and well shut-in or abandonment, and reclamation, including without limiting the generality of the foregoing, laws in respect of occupational health and safety and labour standards; and
- c. a method of resolving disputes among the Parties.

5.8 If British Columbia and McLeod Lake, or Canada, British Columbia and McLeod Lake, as the case may be, fail to reach an agreement in respect of the revenues that are subject to equal sharing pursuant to article 5.3 and the claims and rights pertaining to the equal sharing thereof in accordance with articles 5.6.1 and 5.7.1, the dispute resolution provisions of article 13 will apply, with the exception that after termination of a mediation pursuant to article 13.5.5, any one of the Parties involved in the negotiation of the agreement may refer a matter to arbitration by notice to the other Parties, and the Parties will be deemed to have agreed that the matter in dispute will be determined by arbitration in accordance with article 13.6.

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**ARTICLE 6: FOREST RESOURCES**

Definitions

6.1 In article 6:

- 6.1.1 **“Annual Audit Report”** means the report on the annual audit produced in accordance with article 6.4.1(b)(ii).
- 6.1.2 **“Annual Report”** means the report on McLeod Lake’s Forest Practices produced in accordance with article 6.4.1(a).
- 6.1.3 **“Forest Practices”** means timber harvesting and related activities, including silviculture and road construction, modification, maintenance and deactivation.
- 6.1.4 **“Free Growing”** means a stand of healthy trees of a commercially valuable species, the growth of which is not impeded by competition from plants, shrubs or other trees.
- 6.1.5 **“McLeod Lake Forest Development Plans”** means the forest development plans produced by McLeod Lake in accordance with article 6.2.
- 6.1.6 **“McLeod Lake Indian Band Forest Practices Code”** means the forest practices code developed by McLeod Lake in accordance with article 6.3.2, as amended from time to time.
- 6.1.7 **“Rectification Committee”** means the committee established under article 6.5.1.
- 6.1.8 **“Rectification Trust Fund”** means the fund established under article 6.5.9.
- 6.1.9 **“Smooth Transition”** means a reasonable, gradual movement from existing harvest levels to a Sustainable Long-term Harvest Level.
- 6.1.10 **“Sustainable Forest Use”** means:
- a. managing forests to meet present needs without compromising the needs of future generations;
  - b. providing stewardship of forests based on an ethic of respect for the land;
  - c. balancing productive, spiritual, ecological and recreational values of the forests to meet the economic, social and cultural needs of McLeod Lake and its Members;

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- d. conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources; and
- e. restoring damaged ecologies.

6.1.11 **"Sustainable Long-term Harvest Level"** means a harvest level that can be maintained indefinitely given a particular forest management regime that defines the timber-harvesting land base and includes objectives and guidelines for non-timber values and estimates of timber growth and yield. This method of forest management calls for a long term approximate balance between net growth and the amount harvested.

## **6.2 McLeod Lake Forest Development Plans**

6.2.1 McLeod Lake will produce forest development plans, based on Sustainable Forest Use and Sustainable Long-term Harvest Levels, prior to commencing any timber harvesting on Reserve Lands.

6.2.2 The McLeod Lake Forest Development Plans will be:


- a. approved by the Council;
- b. developed in accordance with Sustainable Forest Use and the principles set out in the McLeod Lake Indian Band Forest Practices Code;
- c. sealed by a Registered Professional Forester of British Columbia;
- d. made available for review by Members; and
- e. made available to British Columbia for public distribution.

6.2.3 Canada and McLeod Lake will consider any concerns that British Columbia may bring to their attention with respect to the McLeod Lake Forest Development Plans.

## **6.3 Forest Practices**

6.3.1 McLeod Lake will conduct Forest Practices on Reserve Lands in accordance with:

- a. the McLeod Lake Indian Band Forest Practices Code;
- b. the McLeod Lake Forest Development Plans;
- c. Sustainable Forest Use; and
- d. any applicable federal legislative requirements.

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- 6.3.2 McLeod Lake will establish and maintain a McLeod Lake Indian Band Forest Practices Code, the standards of which will be no lower than those established under provincial laws for provincial Crown lands in relation to such matters as the following:
  - a. harvesting methods;
  - b. forest health;
  - c. soil conservation;
  - d. environmental protection;
  - e. water quality;
  - f. forest road engineering and construction;
  - g. forest protection; and
  - h. silviculture.
  
- 6.3.3 McLeod Lake will approve the McLeod Lake Indian Band Forest Practices Code.
  
- 6.3.4 Canada and McLeod Lake will consider any concerns that British Columbia may bring to their attention with respect to Forest Practices, Sustainable Forest Use and viewscape on the Reserve Lands.
  
- 6.3.5 Canada and McLeod Lake agree to take all necessary steps to attempt to implement the McLeod Lake Indian Band Forest Practices Code through the use of the *Indian Act*, a new regulation pursuant to the *Indian Act* or some other available means.
  
- 6.3.6 If the implementation referred to in article 6.3.5 has not been completed prior to the Acceptance Date, then McLeod Lake will request of Canada, and Canada agrees, that any permit or license issued by Canada pursuant to sections 5 or 9 of the Indian Timber Regulations, C.R.C. 1978, c.961, as amended or replaced from time to time, will contain a requirement that any permittee or licensee thereunder:
  - a. comply with the standards in the McLeod Lake Indian Band Forest Practices Code; and
  - b. is subject to the enforcement and penalty provisions set out in the McLeod Lake Indian Band Forest Practices Code.
  
- 6.3.7 The Parties may negotiate arrangements from time to time in order to achieve co-ordination and administrative efficiencies in respect of such matters as

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forest health, timber harvesting and planning, road building, and insect and disease control.

- 6.3.8 The Parties acknowledge that McLeod Lake will need to have access through provincial Crown lands in order to carry out Forest Practices on areas within the Reserve Lands. In accordance with applicable legislation, British Columbia will take appropriate steps to process any applications for road use or other permits or authorizations required by McLeod Lake in order to enable McLeod Lake to obtain such access.

#### **6.4 Annual Report and Annual Audit**

- 6.4.1 McLeod Lake will, at its expense, monitor Forest Practices on Reserve Lands. This monitoring system, and any future system that may be developed by McLeod Lake, will include provisions requiring:

- a. McLeod Lake to produce an annual report that will summarize, for the previous fiscal year, forest management operations and the current silviculture and reforestation status of the Reserve Lands; and
- b. an independent professional forester registered in British Columbia to:
  - i. conduct an annual audit of Forest Practices on Reserve Lands; and
  - ii. produce an annual audit report describing Forest Practices conducted over the past year, indicating the degree to which those Forest Practices comply with the McLeod Lake Indian Band Forest Practices Code and making recommendations to bring the Forest Practices into compliance with the McLeod Lake Indian Band Forest Practices Code.

- 6.4.2 If British Columbia is of the view that McLeod Lake's Forest Practices are having an adverse impact upon forest resources on adjacent Crown lands, British Columbia may request that the Parties conduct a joint inspection within the Reserve Lands, at British Columbia's expense.

- 6.4.3 If Canada or McLeod Lake do not agree to a joint inspection under article 6.4.2, the Rectification Committee, at British Columbia's request, will promptly convene and may, by majority vote, order the Parties to conduct a joint inspection.

- 6.4.4 If Canada and McLeod Lake do not wish to participate in the joint inspection ordered by the Rectification Committee under article 6.4.3, British Columbia may enter onto the Reserve Lands to inspect the Forest Practices.

- 6.4.5 Where Canada or McLeod Lake are of the view that British Columbia's Forest Practices are having an adverse impact upon forest resources on adjacent Reserve Lands, Canada or McLeod Lake may, upon providing reasonable

notice to British Columbia, enter onto the adjacent Crown Lands to conduct a joint inspection with British Columbia of Forest Practices on the adjacent Crown lands, at the expense of Canada or McLeod Lake, as the case may be.

**6.5 Rectification Committee and Rectification Fund**

- 6.5.1 On the first Acceptance Date, the Parties will establish a Rectification Committee and will each appoint one member to that Committee.
- 6.5.2 McLeod Lake will, at its expense, promptly provide a copy of the Annual Report and Annual Audit Report to each member of the Rectification Committee.
- 6.5.3 For a period of two years following the first Acceptance Date, the Rectification Committee:
- a. will review the Annual Report and Annual Audit Report and, by majority vote, will decide whether they reveal any significant deficiencies in McLeod Lake's Forest Practices;
  - b. may, by majority vote, order an independent audit of Forest Practices on the Reserve Lands and if so, will decide whether or not the results of the independent audit reveal any deficiencies in McLeod Lake's Forest Practices; and
  - c. may exercise any of the powers set out in articles 6.4.3, 6.5.3, 6.5.4, 6.5.7, 6.5.8, and 6.5.12.
- 6.5.4 Upon the expiration of the two year period referred to in article 6.5.3, the Rectification Committee will only be convened upon request by one or more of its members. Upon such request, the Committee may exercise any of the powers set out in article 6.5.3.
- 6.5.5 The orders and directions of the Rectification Committee are binding upon the Parties.
- 6.5.6 McLeod Lake will, at its expense, rectify deficiencies identified by the Rectification Committee under articles 6.5.3 and 6.5.4.
- 6.5.7 If British Columbia is of the view that McLeod Lake has failed to rectify any deficiencies in accordance with article 6.5.6, the Rectification Committee, at British Columbia's request, will promptly convene and determine, by majority vote, whether McLeod Lake has failed to meet its obligations under article 6.5.6.
- 6.5.8 If the Rectification Committee determines under article 6.5.7 that McLeod Lake has not met its obligations under article 6.5.6, Canada or British Columbia may, at the direction of the Rectification Committee, rectify the deficiency at the expense of McLeod Lake.

- 6.5.9 On the first Acceptance Date, McLeod Lake will establish a one million dollar (\$1,000,000) rectification trust fund, to be governed under the terms of the Trust Agreement, and will continue to maintain that fund, indexed to the rate of inflation.
- 6.5.10 The costs associated with rectifying any deficiency under article 6.5.6 or 6.5.8 will be paid by McLeod Lake out of the Rectification Trust Fund.
- 6.5.11 Any funds withdrawn from the Rectification Trust Fund must be replaced by McLeod Lake and the replacement monies must be deposited into the Rectification Trust Fund within 120 days of a withdrawal.
- 6.5.12 Upon request from the Rectification Committee, McLeod Lake will provide the Rectification Committee with verification that replacement monies have been deposited into the Rectification Trust Fund in accordance with article 6.5.11.

## **6.6 Fire Suppression**

- 6.6.1 The Canada/British Columbia Forest Protection and Fire Suppression Agreement dated April 1, 1964, as amended on June 28, 1995 and as may be further amended or replaced from time to time, will apply on the Reserve Lands.

## **6.7 Silviculture and Reforestation**

- 6.7.1 For those areas within the Reserve Lands that have been harvested after October 1 1987, but before the Acceptance Date in relation to those lands, British Columbia:
- a. will ensure that reforestation and silviculture treatments required to achieve Free Growing status under provincial forestry legislation and the silviculture prescriptions establishing under that legislation, are carried out and fulfilled; or alternatively
  - b. may enter into agreements with McLeod Lake under which McLeod Lake will, upon receiving appropriate consideration, assume responsibility for those reforestation and silviculture treatments that, at the time of the applicable Acceptance Date, remain to be fulfilled according to forest agreements and provincial legislation and the silviculture prescriptions established under that legislation.
- 6.7.2 British Columbia will, in complying with its obligation under article 6.7.1, achieve the stocking standards and Free Growing timelines as defined in the applicable individual silviculture prescriptions. When determining whether an individual opening has achieved Free Growing status, the Prince George Forest District Licensee Operating Procedure for Free Growing (May 20, 1998), as amended from time to time, will be used.

- 6.7.3 For those areas within the Reserve Lands that have been harvested prior to October 1 1987, British Columbia:
- a. will ensure that reforestation and silviculture treatments required to achieve Free Growing status will be fulfilled in accordance with article 6.7.4; or alternatively
  - b. may enter into agreements with McLeod Lake under which McLeod Lake will, upon receiving appropriate consideration, assume responsibility for those reforestation and silviculture treatments that, at the time of the applicable Acceptance Date, remain to be fulfilled.
- 6.7.4 British Columbia will, in complying with its obligations under article 6.7.3, achieve the stocking standards and Free Growing standards and timelines as set forth and contained in the Forest Practices Code of British Columbia - Establishment to Free Growing Guidebook for the Prince George Forest Region dated April, 1995 and the *Prince George Forest District Licensee Operating Procedure for Free Growing dated May 20, 1998*. If British Columbia and McLeod Lake agree that it is not possible to achieve these stocking standards and Free Growing standards and timelines, British Columbia will satisfy its obligation under article 6.7.4 by achieving at least 60% of the minimum stocking standard (MSS) for Free Growing as provided in the Forest Practices Code of British Columbia - Establishment to Free Growing Guidebook for the Prince George Forest Region dated April 1995.
- 6.7.5 British Columbia and McLeod Lake will conduct a survey of the Proposed Reserve Lands to determine the areas requiring reforestation and silviculture treatments and the extent of the work required to meet the standards agreed upon under article 6.7.4. The survey will be completed within 12 months of the Effective Date.
- 6.7.6 British Columbia and McLeod Lake will, within 60 days of completion of the survey under article 6.7.5, prepare a schedule to carry out the reforestation and silviculture treatments following which British Columbia will carry out same pursuant to the schedule.

**6.8**      **Status Forest Roads**

- 6.8.1 Any Status Forest Roads situated wholly within the Proposed Reserve Lands that require permanent deactivation under provincial forestry legislation but that McLeod Lake does not wish to have deactivated will be identified by McLeod Lake and written notice of same will be provided to British Columbia within three months of the Effective Date.
- 6.8.2 Any Status Forest Roads situated wholly within any Additional Reserve Lands that require permanent deactivation under provincial forestry legislation but which Canada and McLeod Lake do not wish to have deactivated will be

identified by Canada and McLeod Lake and written notice of same will be provided to British Columbia within three months of the date on which those land are identified and agreed to by the Parties.

- 6.8.3 Status Forest Roads identified by Canada and McLeod Lake in accordance with articles 6.8.1 or 6.8.2:
- a. will be transferred by British Columbia to Canada and will form part of the Reserve Lands; and
  - b. will not be deactivated.
- 6.8.4 With the exception of those roads identified by McLeod Lake in accordance with articles 6.8.1 or 6.8.2, British Columbia will ensure that it, its licensees or both, permanently deactivate all Status Forest Roads within the Reserve Lands that require permanent deactivation under provincial forestry legislation in accordance with the standards imposed under that legislation and the approved forest development plans developed under that legislation. In the alternative, and subject to obtaining agreements from my licensees, British Columbia and McLeod Lake may enter into agreements under which McLeod Lake will assume any outstanding obligations in respect of the deactivation of these forest roads upon receiving appropriate consideration from British Columbia or its licensees.
- 6.8.5 Deactivation of Status Forest Roads under article 6.8.4 will occur:
- a. as soon as practicable; or
  - b. if the Status Forest Roads are required for carrying out silviculture obligations, as soon as practicable after the completion of those obligations.

**6.9 Disputes under articles 6.7 and 6.8**

- 6.9.1 Notwithstanding article 13, any disputes under articles 6.7 and 6.8 relating to obligations performed by British Columbia prior to the applicable Acceptance Date will be determined in accordance with provincial forestry legislation.
- 6.9.2 The dispute resolution provisions of article 13 will apply to any disputes under articles 6.7 and 6.8 relating to obligations performed by British Columbia after the applicable Acceptance Date, with the exception that after termination of a mediation pursuant to article 13.5.5, any of the Parties may refer a matter to arbitration by notice to the other Parties, and the Parties will be deemed to have agreed that the matter in dispute will be determined by arbitration in accordance with article 13.6.

**6.10**      **Non-Status Forest Roads**

- 6.10.1      British Columbia and McLeod Lake will conduct, at their own expense, a joint inspection of those Non-Status Forest Roads situated within the Proposed Reserve Lands or any Additional Reserve Lands that have been identified by McLeod Lake as having potential for environmental problems. The purpose of the inspection will be to identify areas where work is required to prevent or mitigate environmental damage resulting from past Forest Practices.
- 6.10.2      If, as a result of the inspection conducted under article 6.10.1, the Parties agree that the Non-Status Forest Roads are in an acceptable condition the roads will be transferred to Canada and will form part of the Reserve Lands.
- 6.10.3      A proposal was submitted to Forest Renewal British Columbia for the funding necessary to rectify or take measures to avoid any environmental damage identified as a result of the inspection under article 6.10.1 of Non-Status Forest Roads within the Proposed Reserve Lands.
- 6.10.4      If an inspection under article 6.10.1 of Non-Status Forest Roads within any Additional Reserve Lands identifies areas where work is required to prevent or mitigate environmental damage resulting from past Forest Practices, British Columbia and McLeod Lake will take steps necessary to obtain from Forest Renewal British Columbia the funding necessary to rectify or take measures to avoid the environmental damage.
- 6.10.5      Upon receiving the funding referred to in articles 6.10.3 or 6.10.4, British Columbia will immediately commence or cause to be commenced the rectification work approved by Forest Renewal British Columbia.
- 6.10.6      If British Columbia does not receive funding from Forest Renewal British Columbia for the rectification work, British Columbia will make best efforts to obtain funding for this work from an alternative source.

**6.11**      **Access**

- 6.11.1      McLeod Lake will provide access to the Reserve Lands:
- a.      to any person or Party who is ordered or directed by the Rectification Committee to take action on the Reserve Lands; and
  - b.      to British Columbia, or persons licensed or authorized by British Columbia, so that British Columbia can fulfill any obligations under articles 6.7, 6.8 and 6.10.

**6.12**      **Fibre Supply**

- 6.12.1      In consultation with appropriate representatives from British Columbia's Ministry of Forests, McLeod Lake will establish an allowable annual harvest

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level in accordance with the McLeod Lake Forest Practices Code and Sustainable Forest Use and subject to the following conditions:

- a. the allowable annual harvest level set by McLeod Lake will be based on a timber supply analysis of the Reserve Lands conducted, at McLeod Lake's expense, by a Registered Professional Forester of British Columbia;
  - b. the timber supply analysis referred to in article 6.12.1(a) will take into account:
    - i. the current composition of forest resources, and its expected rate of growth, on the Reserve Lands,
    - ii. expected silviculture treatments including regeneration delays,
    - iii. standards of utilization, and
    - iv. yield estimating procedures in use in British Columbia that best represent the growth rates of forest resources within the Reserve Lands;
  - c. the McLeod Lake allowable annual harvest level will be based on a harvest flow option from the timber supply analysis that takes into account all of McLeod Lake's management practices planned for the Reserve Lands and that demonstrates a Smooth Transition to a Sustainable Long-term Harvest Level; and
  - d. written documentation will be maintained that describes the procedures, models and assumptions used in the timber supply analysis and the rationale for the allowable annual harvest level set by McLeod Lake. A copy of this written documentation will be provided to British Columbia, free of charge, upon request.
- 6.12.2 McLeod Lake will carry out the analysis of the timber supply every 5 to 10 years. If there is a catastrophic event or a serious risk to the timber, the allowable annual cut will be modified without a timber supply analysis in order to prevent loss of merchantable timber.
- 6.12.3 McLeod Lake will harvest over each 5 year period a volume of timber that is not less than 90 percent nor more than 110 percent of the total of the allowable annual harvest levels established under article 6.12.1 during that 5 year period.
- 6.12.4 McLeod Lake will:
- a. offer at fair market value within the Prince George and Mackenzie Timber Supply Areas, as those areas are defined by the Minister of Forests under s. 7 of the *Forest Act*, R.S.B.C. 1996, c.157, all timber harvested from the Reserve Lands so long as this commitment does not interfere with use of this timber in any manufacturing process in which McLeod Lake may wish to become involved, provided,

however, that buyers need not be operating within the Prince George and Mackenzie Timber Supply Areas and may transport the logs for processing elsewhere; and

- b. not engage in any primary breakdown of timber harvested from the Reserve Lands that duplicates primary breakdown methods currently employed in the Prince George Timber Supply Area, as that area is defined by the Minister of Forests under s. 7 of the *Forest Act*, R.S.B.C. 1996, c. 157. For greater clarity, nothing in article 6.12.4(b) will operate so as to preclude McLeod Lake from purchasing or acquiring an interest in an existing timber processing facility.

6.12.5 McLeod Lake will conform to provincial legislation concerning timber exports.

6.12.6 The obligations assumed by and restrictions imposed upon McLeod Lake under article 6.12 will come to an end at the expiration of 20 years from the Effective Date.

### **6.13 Stumpage**

6.13.1 British Columbia will pay to McLeod Lake the gross stumpage revenues, including royalties, collected by British Columbia (less only appropriate silviculture costs and infrastructure costs incurred under the British Columbia Small Business Forest Enterprise Program, where applicable) for timber harvested on lands between the period beginning on October 20, 1995 and ending on the Acceptance Date in relation to those lands that:

- a. are within the Proposed Reserve Lands or any Additional Reserve Lands; and
- b. at the time of harvesting were on lands subject to the injunction granted and varied from time to time in *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others*, (B.C.S.C., Vancouver Registry No. C964263, formerly B.C.S.C., Prince George Registry No. 10232/86).

6.13.2 British Columbia will make the payment required under article 6.13.1:

- a. in relation to areas within the Proposed Reserve Lands harvested prior to October 1, 1998, within 30 days of the Effective Date; and
- b. in relation to areas within the Proposed Reserve Lands or any Additional Reserve Lands harvested after October 1, 1998, within 30 days of the Effective Date if collected by the Effective Date, 30 days of receipt of the stumpage revenues from its licensees, or within 120 days of the date of the stumpage invoice and scale summary, whichever is earlier.

- 6.13.3 The payments referred to in article 6.13.2 will be reconciled annually and may be periodically adjusted by British Columbia. If the above reconciliations and adjustments reveal:
- a. an overpayment, McLeod Lake, upon being satisfied that the reconciliation and adjustments are appropriate, will promptly pay to British Columbia the amount of the overpayment; or
  - b. an underpayment, British Columbia will promptly pay to McLeod Lake the amount of the underpayment.
- 6.13.4 British Columbia will provide supporting documents to allow McLeod Lake to verify the amounts payable by British Columbia under article 6.13.1, subject to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 and s. 136 of the *Forest Act*, R.S.B.C. 1996, c. 157.

## **ARTICLE 7: NON-RESERVE LANDS**

### **7.1 Map Reserves**

- 7.1.1 Within thirty days after the Effective Date, British Columbia will withdraw from disposition under section 16 of the *Land Act*, R.S.B.C. 1996, c. 245 and will establish map reserves for the benefit of McLeod Lake, for hunting, trapping and berry picking purposes on the lands shown and outlined in bold in Schedule "J", being approximately:
- a. 1.0 hectare at Colbourne Creek;
  - b. 1.0 hectare on Reynolds Creek;
  - c. 1.0 hectare on Chuyazega Lake;
  - d. 1.0 hectare on Grayling Lake;
  - e. 1.0 hectare on Firth Lake;
  - f. 1.0 hectare on McLeod Lake;
  - g. 1.0 hectare on the Parsnip River; and
  - h. 1.0 hectare on Isadore Creek.
- 7.1.2 The map reserves established under article 7.1.1 will only be amended or cancelled by British Columbia in consultation with McLeod Lake.

## **7.2 Fee Simple Sites**

- 7.2.1 Within one year after the Effective Date, British Columbia will offer to sell to McLeod Lake at fair market value the lands shown and outlined in bold on the maps in Schedule "K", being approximately:
- a. 56.0 hectares on Summit Lake; and
  - b. 43.0 hectares at Mackenzie Junction.
- 7.2.2 In accordance with the manner in which Crown land is sold to other residents of British Columbia, the purchase price of the Fee Simple Sites will be based on both the fair market value of the bare land and the fair market value of the merchantable timber, if any, on the land, but no double compensation will occur.
- 7.2.3 The offer made by British Columbia under article 7.2.1 will remain open for acceptance by McLeod Lake for six months or for such longer period as may be specified by British Columbia in the offer.
- 7.2.4 If McLeod Lake accepts the offer in relation to one or both of the Fee Simple Sites in accordance with article 7.2.3, British Columbia will, upon payment of the purchase price, transfer the site or sites in fee simple to a corporation or society, either of which is beneficially owned or controlled by McLeod Lake, or to a person in trust for McLeod Lake.
- 7.2.5 The Fee Simple Sites are not intended by the Parties to be lands reserved for Indians within the meaning of s.91(24) of the *Constitution Act, 1867* and are not reserves or special reserves within the meaning of the *Indian Act*.
- 7.2.6 In the absence of consent by British Columbia, McLeod Lake will not transfer, alienate or deal with the Fee Simple Sites in any manner which may bring these sites within the meaning of:
- a. reserves or special reserves as defined in the *Indian Act*; or
  - b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.

## **ARTICLE 8: LAND IN SEVERALTY**

- 8.1 In article 8, "Individual" means a Member as of the Effective Date, except that if such Member is a minor or has been declared incapable of managing his or her affairs by a court of competent jurisdiction or under applicable legislation, it means the legal representative of that Member instead of, and for and on behalf of, that Member.
- 8.2 Pursuant to Treaty No. 8, any Individual of McLeod Lake who prefers to live apart from existing McLeod Lake reserves and the Proposed Reserve Lands or

any Additional Reserve Lands has the option to select land in severalty to the extent of 160 acres.

- 8.3 Canada has established a process for Individuals to elect land in severalty or to be counted towards McLeod Lake's reserve land entitlement. This process is set out in Attachment "B".
- 8.4 Within two months of the Effective Date, Canada and British Columbia will enter into joint negotiations with each Individual who, in accordance with the process set out in Attachment "B", elected land in severalty and is eligible to receive it. During the negotiations, Canada and British Columbia will consult with each such Individual as to the locality of the 160 acres to determine if the lands selected by the Individual are suitable and open for selection.
- 8.5 If the land selected by the Individual is found to be suitable and open for selection pursuant to article 8.4, British Columbia will convey the land to the Member, or to a legal representative in trust for such Member, as the case may be, with a proviso as to non-alienation without the consent of the Governor General in Council.
- 8.6 The total amount of McLeod Lake's reserve entitlement set out in article 4.4.2 will be reduced by 128 acres for each Individual who elects to receive land in severalty pursuant to article 8.4. If prior to any conveyance pursuant to article 8.5, any Individual provides Canada and British Columbia with a statutory declaration that he or she no longer wishes to receive land in severalty, then 128 acres will be returned to McLeod Lake's reserve land entitlement and provided as reserve lands as set out in this Agreement and any obligations of Canada and British Columbia to such Individual or Member, as the case may be, set out in articles 8.4 and 8.5 will end.
- 8.7 Canada and British Columbia require that an Individual who elects land in severalty provide a release and indemnity to Canada and British Columbia with respect to that Individual's election to take land in severalty.
- 8.8 Canada will provide a release to British Columbia for land in severalty provided pursuant to article 8.5.
- 8.9 This Agreement does not prejudice and will not be interpreted in any manner to prejudice the position that each of the Parties may take, or the position that any Individual may take, in relation to the form of conveyance of land in severalty or the status of such lands, including, without limitation, the constitutional or reserve status of such lands.

**ARTICLE 9: McLEOD LAKE COSTS**

- 9.1 Canada and British Columbia will pay McLeod Lake the sums of one million, nine hundred thousand dollars (\$1,900,000) and one million dollars (\$1,000,000) respectively, for a total of two million, nine hundred thousand dollars (\$2,900,000) to cover a portion of McLeod Lake's costs in reaching this Agreement including, without limitation:
- 9.1.1 negotiation costs;
  - 9.1.2 experts' and consultants' fees and disbursements;
  - 9.1.3 legal costs;
  - 9.1.4 costs of the Ratification Process; and
  - 9.1.5 McLeod Lake's implementation costs.
- 9.2 Canada and British Columbia will make the payments in article 9.1 within 30 days of the Effective Date.
- 9.3 McLeod Lake will repay to Canada all outstanding loans, currently amounting to one million, four hundred thousand dollars (\$1,400,000) and any additional loans made with respect to this Agreement, on the same date that Canada pays the sum set out in article 10.1, which repayment by McLeod Lake may be made by set-off by Canada from that sum.

**ARTICLE 10: PAST CLAIMS AND CASH COMPONENT**

- 10.1 Within 30 days of the Effective Date, Canada will pay to McLeod Lake the total sum of nine million, seven hundred and fifty thousand dollars (\$9,750,000) in consideration of the releases set out in article 11.
- 10.2 McLeod Lake hereby irrevocably authorizes and directs Canada to deposit the moneys referred to in article 10.1, less any set off by Canada authorized by article 9.3, into the Trust Capital Account. It is the intent of the Parties that such moneys are not "Indian moneys" within the meaning of the *Indian Act* and, for greater certainty, for the purposes of paragraph 90(1)(b) of the *Indian Act*, the moneys deposited in the Trust Capital Account are personal property situate on reserve.
- 10.3 No portion of the initial capital of the moneys referred to in article 10.1, will be used for per capita distributions to the Members.

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## ARTICLE 11: RELEASES, INDEMNITIES AND LITIGATION

### Definitions

11.1 For the purposes of article 11:

11.1.1 “**Actions**” means all of the claims that formed the subject matter of:

- a. *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others* (B.C.S.C., Vancouver Registry No. C821901);
- b. *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others* (B.C.S.C., Vancouver Registry No. C964263, formerly B.C.S.C., Prince George Registry No. 10232/86); and
- c. *Chingee and others v. Her Majesty the Queen in right of Canada* (Federal Court of Canada, Trial Division, Registry No. T1264/89).

11.1.2 “**British Columbia**” means Her Majesty the Queen in right of British Columbia and includes any of her Ministers officials, servants, employees, agents, heirs, successors, legal representatives and assigns.

11.1.3 “**Canada**” means Her Majesty the Queen in right of Canada and includes any of her Ministers, officials, servants, employees, agents, heirs, successors, legal representatives and assigns.

11.1.4 “**Claims**” means all claims, demands, actions, proceedings, liabilities, losses, damages or costs, whether known or unknown, and whether in law, in equity or otherwise.

11.1.5 “**McLeod Lake**” means the McLeod Lake Indian Band which is a “band” as that term is defined in the *Indian Act*, and its successors, administrators, legal representatives, and assigns.

11.1.6 “**Member**” means “member of the band” as defined in the *Indian Act*, of McLeod Lake, and his or her heirs, successors, administrators, executors, legal representatives and assigns.

### 11.2 Releases to Canada from McLeod Lake

11.2.1 McLeod Lake and its Members release Canada from any Claims that McLeod Lake and its Members ever had, now have, or may in the future have against Canada with respect to:

- a. the Actions, subject to article 11.5;

- b. Canada's obligations under those underlined portions of Treaty No. 8 set out in Schedule "B";
- c. all past claims as set out in Treaty No. 8;
- d. any act or omission by Canada before the Effective Date that may have affected or infringed any of McLeod Lake's rights under Treaty No. 8 to pursue their usual vocations of hunting, trapping and fishing;
- e. lands that should have been allotted or set apart for McLeod Lake as a reserve under Treaty No. 8, or in any other manner, prior to the Effective Date, or past loss of use and benefit of those lands, except any Claims to enforce the provision of Proposed or Additional Reserve Lands in accordance with this Agreement;
- f. upon acceptance of the transfer of the Proposed Reserve Lands and any Additional Reserve Lands in accordance with this Agreement, the provision of reserve lands for McLeod Lake under Treaty No. 8;
- g. any right under Treaty No. 8 to Mineral Resources;
- h. all the matters and issues arising or resulting, directly or indirectly, from or set forth in the specific claim referred to in recital 8;
- i. the deposit of the monies payable under this Agreement into the Trust Capital Account;
- j. the deposit, withdrawal, use, management, actions, inactions, malfeasance or negligence by the Trustee with respect to the Trust Capital Account;
- k. upon full payment of the funds in accordance with article 9, the costs or expenses of McLeod Lake, including, without limitation, legal fees, relating to:
  - i. the Actions;
  - ii. the negotiation and implementation of this Agreement, the Trust Agreement and any of the documents set out in article 22.1; and
  - iii. the specific claim referred to in recital 8;
- l. the inclusion within the Reserve Lands of the lands covered by the British Columbia Hydro and Power Authority Flowage Agreement set out in Schedule "D"; and
- m. any act or omission by Canada, before the Effective Date, that may have affected, infringed or extinguished any of its aboriginal rights,

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titles or privileges in or in relation to lands, including but not limited to any Claims in relation to hunting, fishing or gathering within Canada.

**11.3 Indemnities to Canada from McLeod Lake**

11.3.1 McLeod Lake indemnifies Canada from any Claims brought by McLeod Lake or any present or future Member with respect to:

- a. the Claims listed in article 11.2; and
- b. the representations and warranties of McLeod Lake under article 20.1.

11.3.2 Canada hereby notifies McLeod Lake that Canada may use s.4(2) of the *Indian Act* with respect to s. 89 of that Act to recover any amounts for which Canada is indemnified.

11.3.3 If a Claim is made or brought against Canada, and it is a matter to which an indemnity under article 11.3.1 applies, Canada and McLeod Lake agree that:

- a. Canada will give prompt and reasonable notice to McLeod Lake of any Claims for which Canada claims indemnity under this Agreement, provided that McLeod Lake will not be entitled to avoid liability for indemnification by reason of Canada's failure to give timely notice unless McLeod Lake has been actually prejudiced by the failure to give notice;
- b. Canada and McLeod Lake will agree on the choice of counsel to defend Canada in any Claims or if an agreement cannot be reached, McLeod Lake will choose counsel from a list of counsel approved by the Attorney General of Canada;
- c. Subject to article 11.3.3(d), the Attorney General of Canada will have the regulation and conduct of any claims within the meaning of s. 5(d) of the *Department of Justice Act*, and Canada will be responsible for all legal costs and disbursements associated with defending or settling any such claims;
- d. McLeod Lake will have the regulation and conduct of any Claims to which s. 5(d) of the *Department of Justice Act* does not apply and McLeod Lake will be responsible for all legal costs and disbursements associated with defending or settling any such Claims and McLeod Lake may instruct counsel, investigate and negotiate a settlement of any such claims as it may deem expedient;
- e. Canada and McLeod Lake will cooperate with each other in the conduct of the defence of any Claims and will assist each other in securing and giving evidence and obtaining the attendance of witnesses as required; and

- f. Canada will not admit liability, voluntarily make any payment, assume any obligation or incur any expense for which an indemnity could be claimed without the prior written consent of McLeod Lake, which consent will not be unreasonably withheld.

#### **11.4 Releases to British Columbia from McLeod Lake**

- 11.4.1 McLeod Lake and its Members release British Columbia from any Claims that McLeod Lake and its Members ever had, now have, or may in the future have against British Columbia with respect to:
  - a. the Actions, subject to article 11.5;
  - b. all past claims as set out in Treaty No. 8;
  - c. upon acceptance of the transfer of the Proposed Reserve Lands and any Additional Reserve Lands in accordance with this Agreement, the provision of reserve lands for McLeod Lake under Treaty No. 8;
  - d. lands that should have been allotted or set apart for McLeod Lake as a reserve under Treaty No. 8, or in any other manner, prior to the Effective Date, or past loss of use and benefit of those lands, except any Claims to enforce the provision of Proposed or Additional Reserve Lands in accordance with this Agreement;
  - e. any right under Treaty No. 8 to Mineral Resources;
  - f. any right under Treaty No. 8 to include within the Reserve Lands any lands lying below the "natural boundary", as that term is defined in the *Land Act*, R.S.B.C. 1996, c. 245;
  - g. the 1973 agreement concerning the 13.726 acre road right of way described in Recital 9 of this Agreement;
  - h. subject to British Columbia fulfilling any obligations under articles 4.2.2, 4.2.3, 4.2.5 and 4.2.6, any contamination on, under or migrating onto or under the Reserve Lands;
  - i. upon British Columbia making full payment to McLeod Lake within 30 days of the Effective Date pursuant to article 6.13, any stumpage collected by British Columbia in relation to timber harvested prior to October 1, 1998 on lands that:
    - i. are within the Proposed Reserve Lands; and
    - ii. at the time of harvesting were on lands subject to the injunction granted and varied from time to time in B.C. Supreme Court Action No. C964263, *Chingee et al v. Her Majesty the Queen*

*in right of the Province of British Columbia, Vancouver Registry;*

- j. upon British Columbia making full payment to McLeod Lake, pursuant to article 6.13, any stumpage collected by British Columbia in relation to timber harvested after October 1, 1998, but before the date of the Provincial Order, on lands that:
  - i. are within the Proposed Reserve Lands or any Additional Reserve Lands; and
  - ii. at the time of harvesting were on lands subject to the injunction granted and varied from time to time in B.C. Supreme Court Action No. C964263, *Chingee et al v. Her Majesty the Queen in right of the Province of British Columbia, Vancouver Registry;*
- k. subject to British Columbia fulfilling its obligations under articles 6.8 and 6.10, Status Forest Roads and Non-Status Forest Roads within the Reserve Lands;
- l. upon full payment of the funds in accordance with article 9, the costs or expenses of McLeod Lake, including, without limitation, legal fees, relating to:
  - i. the Actions;
  - ii. the negotiation and implementation of this Agreement, the Trust Agreement and any of the documents set out in article 22.1; and
  - iii. the 1973 agreement concerning the 13.726 acre road right of way described in Recital 9 of this Agreement;
- m. any act or omission by British Columbia, before the Effective Date, that may have affected, infringed or extinguished any of its aboriginal rights, titles or privileges in or in relation to lands, including but not limited to any Claims in relation to hunting, fishing or gathering within Canada; and
- n. any act or omission by British Columbia before the Effective Date that may have affected or infringed any of McLeod Lake's rights under Treaty No. 8 to pursue their usual vocations of hunting, trapping and fishing.

**11.5 Actions or Proceedings by or against McLeod Lake**

- 11.5.1 McLeod Lake and its Members will not directly or indirectly initiate actions or proceedings or cause actions or proceedings to be initiated against British

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Columbia or Canada that include any claim, the determination of which requires a court or tribunal to establish the location of the western boundary of Treaty No. 8.

11.5.2 Subject to article 11.5.1, McLeod Lake and its Members will have the right to plead by way of reply and to defend any action or proceedings, civil or criminal, in which McLeod Lake is named, joined or added as a defendant or respondent (and they have the right to apply to be added as a defendant or respondent), and in which their rights under section 35 of the *Constitution Act, 1982* are placed in question on the basis that the western boundary of Treaty No. 8 is not the height of land separating the waters draining into the Arctic Ocean and the Pacific Ocean.

11.5.3 Without limiting article 11.5.2, McLeod Lake and its Members will not apply to intervene or become an intervenor in any action or proceeding that includes any claim, the determination of which requires a court or tribunal to establish the location of the western boundary of Treaty No. 8.

11.5.4 In any action or proceeding brought by McLeod Lake or its Members, article 11.5.1 will not preclude McLeod Lake or its Members from applying to join Canada as a party if, in any such action or proceeding, a defendant or respondent or the court or tribunal raises any objection or matter of defence that requires such joinder.

## **11.6 Indemnities to British Columbia from McLeod Lake**

11.6.1 McLeod Lake indemnifies British Columbia from any Claims brought by McLeod Lake or any present or future Member with respect to:

- a. the Claims listed in article 11.4.1;
- b. the representations and warranties of McLeod Lake under article 20.1; and
- c. the cession referred to in article 2.

11.6.2 If a Claim is made or brought against British Columbia, and it is a matter to which an indemnity under article 11.6.1 applies, British Columbia and McLeod Lake agree that:

- a. British Columbia will give prompt and reasonable notice to McLeod Lake of any Claims for which British Columbia claims indemnity under this Agreement, provided that McLeod Lake will not be entitled to avoid liability for indemnification by reason of British Columbia's failure to give timely notice unless McLeod Lake has been actually prejudiced by the failure to give notice;
- b. British Columbia and McLeod Lake will agree on the choice of counsel to defend British Columbia in any Claims or if an agreement

cannot be reached, McLeod Lake will choose counsel from a list of counsel approved by the Attorney General of British Columbia;

- c. Subject to article 11.6.2(d), the Attorney General of British Columbia will have the regulation and conduct of any claims within the meaning of s. 2(i) of the *Attorney General Act*, R.S.B.C. 1996, c. 22, and British Columbia will be responsible for all legal costs and disbursements associated with defending or settling any such claims;
- d. McLeod Lake will have the regulation and conduct of any Claims to which s. 2(i) of the *Attorney General Act*, R.S.B.C. 1996, c. 22, does not apply and McLeod Lake will be responsible for all legal costs and disbursements associated with defending or settling any such Claims and McLeod Lake may instruct counsel, investigate and negotiate a settlement of any such claims as it may deem expedient;
- e. British Columbia and McLeod Lake will cooperate with each other in the conduct of the defence of any Claims and will assist each other in securing and giving evidence and obtaining the attendance of witnesses as required; and
- f. British Columbia will not admit liability, voluntarily make any payment, assume any obligation or incur any expense for which an indemnity could be claimed without the prior written consent of McLeod Lake, which consent will not be unreasonably withheld.

## **11.7 Release to McLeod Lake from British Columbia**

- 11.7.1 British Columbia releases McLeod Lake and its Members from any Claims that British Columbia ever had, now has, or may in the future have against McLeod Lake and its Members with respect to the claims that form the subject matter of *Her Majesty the Queen in right of the Province of British Columbia v. McLeod Lake Indian Band* (B.C.S.C., Vancouver Registry No. A971649).

## **11.8 Indemnity to McLeod Lake from British Columbia**

- 11.8.1 British Columbia indemnifies McLeod Lake from any Claim made by a person with respect to an encumbrance, estate, interest, charge, license or permit granted or agreed to by British Columbia:
  - a. on the Proposed Reserve Lands, but this indemnity does not apply to any Claim in relation to the charges in favour of British Columbia Hydro and Power Authority, Westcoast Energy Inc., and Federated Pipelines (Western) Ltd., referred to in article 4.1; or
  - b. on the Additional Reserve Lands, if any, but this indemnity does not apply to any Claim in relation to an encumbrance, estate, interest,

charge, license or permit on the Additional Reserve Lands that McLeod Lake agrees may remain in place.

11.8.2 If a Claim is made or brought against McLeod Lake and it is a matter to which indemnity in article 11.8.1 applies, McLeod Lake and British Columbia agree that:

- a. McLeod Lake will give prompt and reasonable notice to British Columbia of any Claims for which McLeod Lake claims indemnity under this Agreement, provided that British Columbia will not be entitled to avoid liability for indemnification by reason of McLeod Lake's failure to give timely notice unless British Columbia has been actually prejudiced by the failure to give notice;
- b. British Columbia will have the right to defend and will have conduct of any such Claims brought against McLeod Lake;
- c. British Columbia and McLeod Lake will agree on the choice of counsel to defend McLeod Lake in any such Claim, or, in the event that an agreement cannot be reached, British Columbia will choose counsel from a list prepared by McLeod Lake;
- d. McLeod Lake will cooperate with British Columbia in the conduct or any defence of any such Claim and will assist British Columbia in securing and giving evidence and obtaining the attendance of witnesses as required; and
- e. McLeod Lake will not admit liability, voluntarily make any payment, assume any obligation or incur any expense for which an indemnity could be claimed without the prior written consent of British Columbia, which consent shall not be unreasonably withheld.

## 11.9 Releases to Canada from British Columbia

11.9.1 British Columbia releases Canada from British Columbia's amended third party claim filed in *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others* (B.C.S.C., Vancouver Registry No. C964263, formerly B.C.S.C., Prince George Registry / No. 10232/86) for:

- a. a declaration that British Columbia is discharged from any obligation to provide lands to Canada for McLeod Lake pursuant to Treaty No. 8 or in satisfaction of any claim by McLeod Lake for adherence to Treaty No. 8;
- b. in the alternative, judgment for contribution and indemnity in an amount equal to the fair market value of any lands and resources ordered to be conveyed by British Columbia to Canada pursuant to Treaty No. 8 for the benefit of McLeod Lake;

- c. judgment for the costs of defending McLeod Lake's claims in the above action on a solicitor and client basis; and
- d. costs.

**11.10**      **Releases to British Columbia from Canada**

- 11.10.1      Canada releases British Columbia from any Claims that Canada ever had, now have, or may in the future have against British Columbia with respect to:
  - a.      subject to British Columbia fulfilling any obligations under articles 4.2.2, 4.2.3, 4.2.5 and 4.2.6, any contamination on, under or migrating onto or under the Reserve Lands; and
  - b.      reserve lands for McLeod Lake under Treaty No. 8, upon acceptance of the transfer of the Proposed Reserve Lands and any Additional Reserve Lands in accordance with this Agreement.

**11.11**      **Proceedings to Enforce Agreement**

- 11.11.1      The releases and indemnities provided for in article 11 do not apply to proceedings to enforce this Agreement.

**11.12**      **Consent Orders**

- 11.12.1      The Parties will, by consent, seek leave to discontinue:
  - a.      *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others* (B.C.S.C., Vancouver Registry No. C821901) in substantially the form set out in Schedule "M".
  - b.      The Plaintiffs' claims in *Chingee and others. v. Her Majesty the Queen in Right of the Province of British Columbia and others* (B.C.S.C., Vancouver Registry No. C964263, formerly (B.C.S.C., Prince George Registry No. 10232/86,) in substantially the form set out in Schedule "N".
- 11.12.2      The discontinuance sought under article 11.12.1 will be on the following terms, by consent:
  - a.      the discontinuance will be a complete defence to any subsequent proceeding for the same or substantially the same cause of action; and
  - b.      the discontinuance will be without costs to any party.
- 11.12.3      British Columbia will execute and file a Consent Dismissal Order, without costs to any party, in *Her Majesty the Queen in right of the Province of British Columbia v. McLeod Lake Indian Band* (B.C.S.C., Vancouver Registry No. A971649) in substantially the form set out in Schedule "O".

11.12.4 The Parties will, by consent, seek leave to discontinue British Columbia's third party claim in *Chingee and others. v. Her Majesty the Queen in Right of the Province of British Columbia and others* (B.C.S.C., Vancouver Registry No. C964263, formerly (B.C.S.C., Prince George Registry No. 10232/86) in substantially the form set out in Schedule "N".

**ARTICLE 12: OTHER PROGRAMS AND ACTIVITIES**

12.1 Nothing in this Agreement affects the ability of McLeod Lake or its Members to participate in, or benefit from, federal or provincial programs for aboriginal people, Indians or Indian bands, or other citizens of Canada, in accordance with general criteria established for those programs from time to time.

12.2 Nothing in this Agreement affects the ability of McLeod Lake or its Members to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.

**ARTICLE 13: DISPUTE RESOLUTION**

13.1 In article 13, "mediation" means a structured negotiation assisted by a neutral mediator who has skill and experience in mediation and who has no authority to impose a solution on the Parties.

13.2 Article 13 applies to all disputes after the Effective Date between or among the Parties that arise out of this Agreement, except disputes that may arise under article 6.12 (Fibre Supply).

13.3 The Parties participating in a mediation or arbitration in accordance with article 13, may agree to vary a procedural requirement contained in article 13, as it applies to a particular disagreement.

13.4 No Party may commence a court proceeding concerning a dispute without first proceeding to mediation as provided for in article 13.5, except:

13.4.1 to prevent the loss of a right of action due to the expiration of a limitation period;

13.4.2 to obtain interlocutory or interim relief; or

13.4.3 if the matter is considered by the Party to be of an urgent nature.

13.5 If the Parties or any two Parties are unable to resolve a dispute through informal negotiations and a Party directly engaged in a dispute wishes to invoke article 13.5, that Party will deliver a written notice ("Notice to Mediate") to all Parties, requiring commencement of mediation. The following will apply to a mediation pursuant to article 13.5:



- 13.5.1 Upon receiving a Notice to Mediate, a Party directly engaged in a dispute will participate in the mediation.
- 13.5.2 A Party not directly engaged in the dispute may participate in the mediation, whether or not that Party participated in informal negotiations in relation to the dispute, by giving written notice to the other Parties within 15 days of the delivery of the Notice to Mediate.
- 13.5.3 Unless the participating Parties otherwise agree, the mediation will be conducted by one mediator appointed by agreement of the participating Parties. If there is no such agreement within 30 days after delivery of the Notice to Mediate, the mediator will be appointed by the British Columbia International Commercial Arbitration Centre, or if the Centre is unavailable, any other independent and impartial body or individual acceptable to the participating Parties.
- 13.5.4 The mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the participating Parties to resolve the dispute in a fair, efficient and cost-effective manner.
- 13.5.5 The mediation is terminated at the earliest of:
- a. the expiration of 30 days after the appointment of the mediator or any longer period agreed to by the participating Parties,
  - b. the withdrawal from the mediation of a Party directly engaged in the mediation by notice in writing to the mediator, provided that no such Party may withdraw until after the first meeting with the mediator,
  - c. the date on which the participating Parties agree in writing to terminate the mediation, or
  - d. the date on which the Parties directly engaged in the dispute sign a written agreement resolving the dispute.
- 13.5.6 A Party withdrawing from the mediation is not responsible for any costs of the mediation that are incurred after its withdrawal.
- 13.5.7 The Parties participating in the mediation will
- a. on request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements,

- b. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority, and
  - c. negotiate in good faith.
- 13.5.8 The mediation will not be open to the public unless the participating Parties agree otherwise.
- 13.5.9 The mediation will not restrict in any way the positions that each of the Parties may take in any dispute, arbitration or court proceeding.
- 13.5.10 Any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the Parties and delivered to all the Parties. Such agreement is binding only on the Parties who have signed it.
- 13.5.11 The Parties will each bear the costs of their own participation, representation and appointments in the mediation. The participating Parties will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.
- 13.6 If the Parties or any two of the Parties are unable to resolve a dispute through mediation in accordance with article 13.5, and after termination of the mediation under article 13.5.5, with the written agreement (the "Arbitration Agreement") of all the Parties directly engaged in the dispute, the dispute will be referred to and resolved by arbitration. The following will apply to an arbitration pursuant to article 13.6:
- 13.6.1 If two Parties make an Arbitration Agreement to refer a dispute to arbitration, they will deliver a copy of the Arbitration Agreement ("Notice of Arbitration") as soon as practicable to any Party who is not a party to the Arbitration Agreement. Upon receiving the Notice of Arbitration a Party not directly engaged in the dispute may participate in the arbitration, whether or not that Party participated in informal negotiations or mediation in relation to the dispute, by giving written notice to the other Parties within 15 days of the delivery of the Notice of Arbitration.
- 13.6.2 The participating Parties will deliver copies of the pleadings relating to the arbitration and all amendments and supplements to the pleadings to any non-participating Party.
- 13.6.3 Unless the participating Parties otherwise agree, the arbitration will be conducted by one arbitrator appointed by agreement of the participating Parties. If there is no such agreement within 30 days

after the date of the Arbitration Agreement or, if a Notice of Arbitration was sent, 30 days after delivery of the Notice of Arbitration, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre, or if the Centre is unavailable, any other independent and impartial body or individual acceptable to the participating Parties.

13.6.4 The arbitrator may at any time make an order, adding as a participating Party:

- a. a Party who ought to have been joined as a party or whose participation in the arbitration is necessary to ensure that all matters in the arbitration may be effectively adjudicated upon; or
- b. a Party where there may exist between that Party and a participating Party a question or issue relating to or connected with any relief or remedy claimed in the arbitration, or with the subject matter of the arbitration, which in the opinion of the arbitrator it would be just and convenient to determine as between that Party and participating Party.

13.6.5 Subject to the exceptions in applicable arbitration legislation, an arbitral award is final and binding on all participating Parties, including any Party added pursuant to article 13.6.4.

13.6.6 Except as otherwise ordered by the arbitrator,

- a. the Parties will each bear the costs of their own participation, representation and appointments in the arbitration, and
- b. the participating Parties will share equally all common costs of the arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

13.7 Nothing in article 13 creates a cause of action where none otherwise exists.

#### **ARTICLE 14: BRITISH COLUMBIA TREATY COMMISSION PROCESS**

14.1 This Agreement is separate and apart from the British Columbia Treaty Commission process.

**ARTICLE 15: NO PREJUDICE AND NO ADMISSIONS**

- 15.1 This Agreement deals with the unique circumstances surrounding McLeod Lake and Treaty No. 8 and is not a precedent for the negotiation or interpretation of treaties involving any other Indian Band, First Nation or aboriginal people.
- 15.2 Nothing in this Agreement will constitute an admission by British Columbia as to:
  - 15.2.1 the location of the western boundary of the area defined and described in Treaty No. 8; and
  - 15.2.2 any obligation to provide land under Treaty No. 8.
- 15.3 This Agreement is without prejudice to the positions that British Columbia and Canada may take with respect to any person other than McLeod Lake and its Members.
- 15.4 This Agreement does not constitute any admission of facts and will not be construed as an admission of liability on the part of any of the Parties.

**ARTICLE 16: SEVERABILITY**

- 16.1 If a court of competent jurisdiction finally determines any provision of this Agreement to be invalid or unenforceable:
  - 16.1.1 the Parties will make best efforts to amend this Agreement to remedy or replace the provision; and
  - 16.1.2 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.
- 16.2 No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.
- 16.3 A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

**ARTICLE 17: FURTHER ASSURANCES**

- 17.1 The Parties agree to do such things, execute such documents and take such further measures as may be necessary to carry out and implement the terms and conditions of this Agreement.

**ARTICLE 18: ENUREMENT**

- 18.1 This Agreement enures to the benefit of and is binding upon Canada and British Columbia, Her Heirs, successors and permitted assigns, and upon McLeod Lake,

ADS  
cgc

its administrators, successors, legal representatives and permitted assigns and on all present and future Members of McLeod Lake, their heirs, administrators, executors, legal representatives, successors and permitted assigns.

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

**ARTICLE 19: NO IMPLIED WAIVER**

19.1 A provision of this Agreement, or the performance by a Party of an obligation under this Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

**ARTICLE 20: REPRESENTATIONS AND WARRANTIES**

20.1 McLeod Lake represents and warrants that:

20.1.1 by a majority of the Eligible Members voting in favour of the Ballot Question, McLeod Lake has approved the terms and conditions of this Agreement and confirms that the Eligible Members have authorized and directed a majority of Council (Alec Chingee, Elizabeth Solonas, Max Tylee, Sharon Solonas, Tania Solonas, Geraldine Solonas and Sabrina Tylee) to execute this Agreement on their behalf and on behalf of McLeod Lake;

20.1.2 a majority of the Eligible Members have ratified the Trust Agreement in accordance with the ratification procedure set out in the Trust Agreement and the Trust Agreement has been duly executed by the parties to it;

20.1.3 it has retained legal counsel qualified to practice law in the province of British Columbia to advise McLeod Lake with regard to the Actions, as defined in article 11.1.1, and the Agreement up to and including the execution and implementation of the Agreement and the Trust Agreement and that its counsel has explained to the signatories to this Agreement and to the Members present at any information meetings the legal nature and effect and implementation of the Agreement and the Trust Agreement;

20.1.4 it has retained an independent financial advisor to advise McLeod Lake with regard to the financial nature and effect of the Trust Agreement, including the placement of any monies into the Trust Capital Account instead of the Consolidated Revenue Fund; that advisor is qualified to practice as a Chartered Accountant in Canada and is a member in good standing of the appropriate designating body;

20.1.5 its independent financial advisor has explained to the signatories to this Agreement and to any Members present at the information meetings the financial nature and effect of the Trust Agreement,

including the placement of any monies into the Trust Capital Account instead of the Consolidated Revenue Fund; and

- 20.1.6 McLeod Lake has made best efforts to provide Canada with a current list of addresses of its Members.
- 20.2 British Columbia represents and warrants that the Lieutenant Governor in Council has approved this Agreement on behalf of British Columbia and has authorized its signatory to execute this Agreement.
- 20.3 Canada represents and warrants that the Governor in Council has approved this Agreement on behalf of Canada and has authorized the Minister of Indian Affairs and Northern Development to execute this Agreement.

#### **ARTICLE 21: PAYMENT OBLIGATIONS**

- 21.1 Notwithstanding any other provision of this Agreement, any obligation herein on the part of Canada to make any payment to, on behalf of, or for the benefit of McLeod Lake is subject to the appropriation of sufficient funds for this purpose by Parliament.
- 21.2 Notwithstanding any other provision of this Agreement, any obligation herein on the part of British Columbia to make any payment to, on behalf of, or for the benefit of McLeod Lake is subject to an appropriation of funds, as defined by the *Financial Administration Act*, R.S.B.C. 1996, c. 138, for the purpose identified, being made available by the Treasury Board of British Columbia in the fiscal year during which the payment is to be made.
- 21.3 Any obligation on the part of British Columbia to make a payment to McLeod Lake will be discharged upon British Columbia making that payment, in accordance with the terms specified in this Agreement, to McLeod Lake or, at McLeod Lake's option, into a trust account designated by McLeod Lake and governed by a trust agreement.

#### **ARTICLE 22: ENTIRE AGREEMENT**

- 22.1 This Agreement replaces and supersedes all other agreements and recommendations of the Parties, whether oral or in writing relating to the subject matter of the Agreement, including but not limited to:
- 22.1.1 the letter dated August 27, 1993 signed by Assistant Deputy Minister John Sinclair, Department of Indian Affairs and Northern Development, that authorizes Canada to negotiate this Agreement;
- 22.1.2 a document captioned "Protocol Agreement" executed by the negotiators for each of the Parties on October 19, 1993;

- 22.1.3 a document captioned "Memorandum of Settlement Proposal" executed by the negotiators for each of the Parties on October 20, 1995;
- 22.1.4 a document entitled "Agreement in Principle" executed by the negotiators for each of the Parties on May 1, 1998; and
- 22.1.5 all verbal and written correspondence and offers of settlement exchanged among the Parties up to and including the Effective Date.

**ARTICLE 23: NO BENEFIT**

- 23.1 No present member of the House of Commons or Senate will be permitted to any share or part of this Agreement or to any benefit not enjoyed by any other member of the public which may arise out of it.


**ARTICLE 24: NOTICE**

- 24.1 Any notice or other written communication required or permitted to be given under this Agreement will be given as follows:

- 24.1.1 to Canada: Assistant Deputy Minister,  
Claims and Indian Government  
Department of Indian Affairs and  
Northern Development  
Les Terrasses de la Chaudiere  
10 Wellington Street  
HULL, Quebec, K1A 0H4  
FAX: (819) 953-0545
- 24.1.2 to McLeod Lake: Band Manager,  
McLeod Lake Indian Band  
General Delivery,  
McLeod Lake, British Columbia V0J 2G0  
FAX: (250) 750-4420
- 24.1.3 to British Columbia: Deputy Minister,  
Ministry of Aboriginal Affairs  
P.O. Box 9100, Stn. Prov. Gov't  
Victoria, British Columbia, V8W 9B1  
FAX: (250) 387-6073

- 24.2 Any notice may be delivered personally or sent by facsimile or registered mail to any Party at the addresses set out in article 24.1. The notice will be presumed to have been received by the Party:

- 24.2.1 if delivered personally, on the day that it was delivered;

ARJ  


24.2.2 if successfully sent by facsimile, on the next business day after it was transmitted; and

24.2.3 if sent by registered mail, on the earlier of the day it was received and the fifth day after it was mailed.

24.3 During an actual or anticipated postal disruption or stoppage, the mail will not be used by any party.

**IN WITNESS WHEREOF**, the Minister of Indian Affairs and Northern Development on behalf of Her Majesty the Queen in right of Canada executes this Agreement this day of \_\_\_\_\_, 2000, at \_\_\_\_\_, in the Province of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
MINISTER OF INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT

**AND FURTHERMORE, IN WITNESS WHEREOF** the \_\_\_\_\_ on behalf of Her Majesty the Queen in right of British Columbia executes this Agreement this day of \_\_\_\_\_, 2000, at \_\_\_\_\_ in the Province of British Columbia.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

**AND FURTHERMORE, IN WITNESS WHEREOF** the McLeod Lake Indian Band, as represented by its signatories, has executed this Agreement under their respective hands this day of \_\_\_\_\_, 2000, at \_\_\_\_\_, in the Province of British Columbia.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CHIEF ALEC CHINGEE



\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ELIZABETH SOLONAS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
MAX TYLEE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SHARON SOLONAS

\_\_\_\_\_  
WITNESS


\_\_\_\_\_  
TANIA SOLONAS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
GERALDINE SOLONAS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SABRINA TYLEE

ADA   
CJL

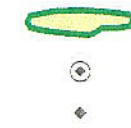


McLeod Lake Indian Band Claimed Traditional Territory  
(for the purpose of Article 2, McLeod Lake Indian Band  
Treaty No. 8 Adhesion and Settlement Agreement)

August 30, 1999



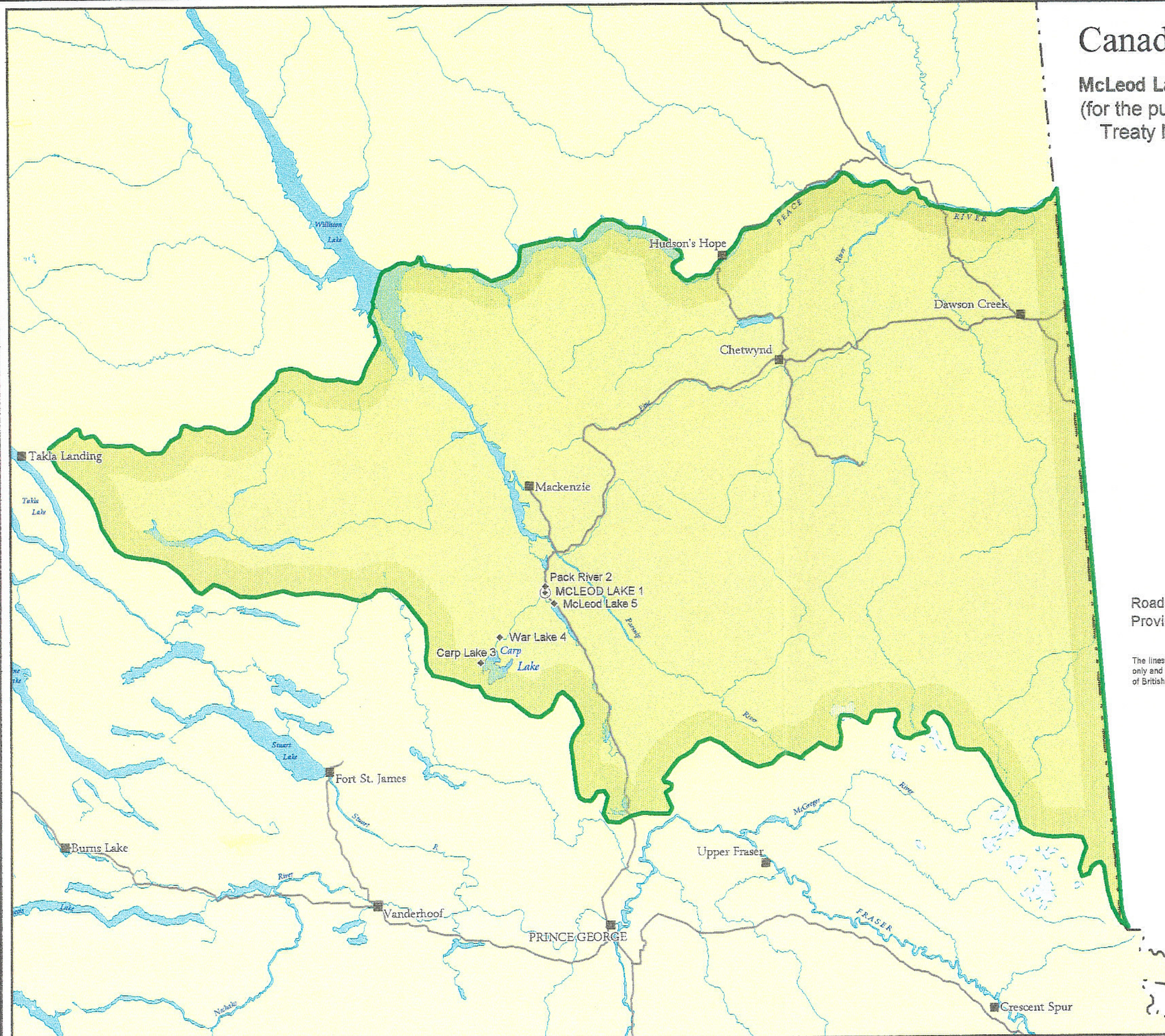
McLeod Lake Indian Band  
Main Community  
Reserves



Roads  
Provincial Boundary



The lines on this map represent the approximate boundaries of claimed traditional territories. They are illustrative only and may be updated in the future. Publication of this map does not imply that the First Nations, the Province of British Columbia, or the Government of Canada have agreed to the boundaries shown.



Handwritten initials/signature in blue ink.



**SCHEDULE "A"**  
**CLAIMED TRADITIONAL TERRITORY**

The lands within British Columbia commencing at the height of land separating the Arctic and Pacific watersheds near Summit Lake, east, following that height of land to the border of British Columbia and Alberta, north, following the border to the Peace River, west, following the southern bank of the Peace River to Williston Lake, south, following the western bank of Williston Lake to the western bank of Manson Arm, south, along the west bank of Manson Arm, southwest and west, along the height of land between Manson River and Eklund Creek and Jackfish Creek, southwest and west, along the height of land between the Nation River watershed and the Omineca River watershed, south and east, along the height of land separating the Arctic and Pacific watersheds to the commencement point.

*GC AREA*  
*RR*

## SCHEDULE "B"

### PORTIONS OF TREATY NO. 8

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.

And with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-two dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.

Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to each Chief twenty-five dollars, each Headman, not to exceed four to a large Band and two to a small Band, fifteen dollars, and to every Indian, of whatever age, five dollars, the same unless there be some exceptional reason, to be paid only to the heads of families for those belonging thereto.

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for

the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

AM

MP  
COT

**SCHEDULE "C"**

**MAPS OF PROPOSED RESERVE LANDS**

*MANA*

*COZ*



# McLeod Lake Claim

MLIB FORESTED LAND SELECTION

## SCHEDULE C: RESERVE LANDS

- 1) 1.0 HECTARE ON FINLAY BAY: MAP 14: REFERENCE 930 082
- 2) 1.0 HECTARE ON WESTON BAY: MAP 39A: REFERENCE 930 082
- 3) 2.0 HECTARES ON HOMINKA RIVER: MAP 6: REFERENCE 93J 070
- 4) 2.0 HECTARES ON TACHEEDA LAKE: MAP 4: REFERENCE 93J 068
- 5) 1.0 HECTARE ON DAVE LAKE: MAP 7: REFERENCE 93J 057
- 6) 2.0 HECTARES ON ARCTIC LAKE: MAP 9: REFERENCE 93J 042
- 7) 1.0 HECTARE ON BLUE LAKE: MAP 25: REFERENCE 93J 095
- 8) 2.0 HECTARE ON MONTYRE LAKE: MAP 26: REFERENCE 930 005
- 9) 12.0 HECTARES ON MCLEOD LAKE: MAP 27A: REFERENCE 93J 085
- 10) 4.0 HECTARES ON WEEDON LAKE: MAP 39: REFERENCE 93J 085
- 11) 0.1 HECTARES IN THE DISTRICT MUNICIPALITY OF MACKENZIE: MAP 31C: REFERENCE 930 035
- 12) 4.0 HECTARES DUAN ISLAND: REFERENCE 93J 098
- 13) 26.0 HECTARES AT BEAR LAKE: REFERENCE 93J 057

## SCHEDULE J: MAP RESERVE SITES

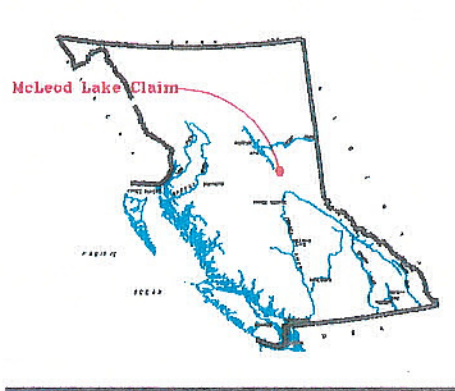
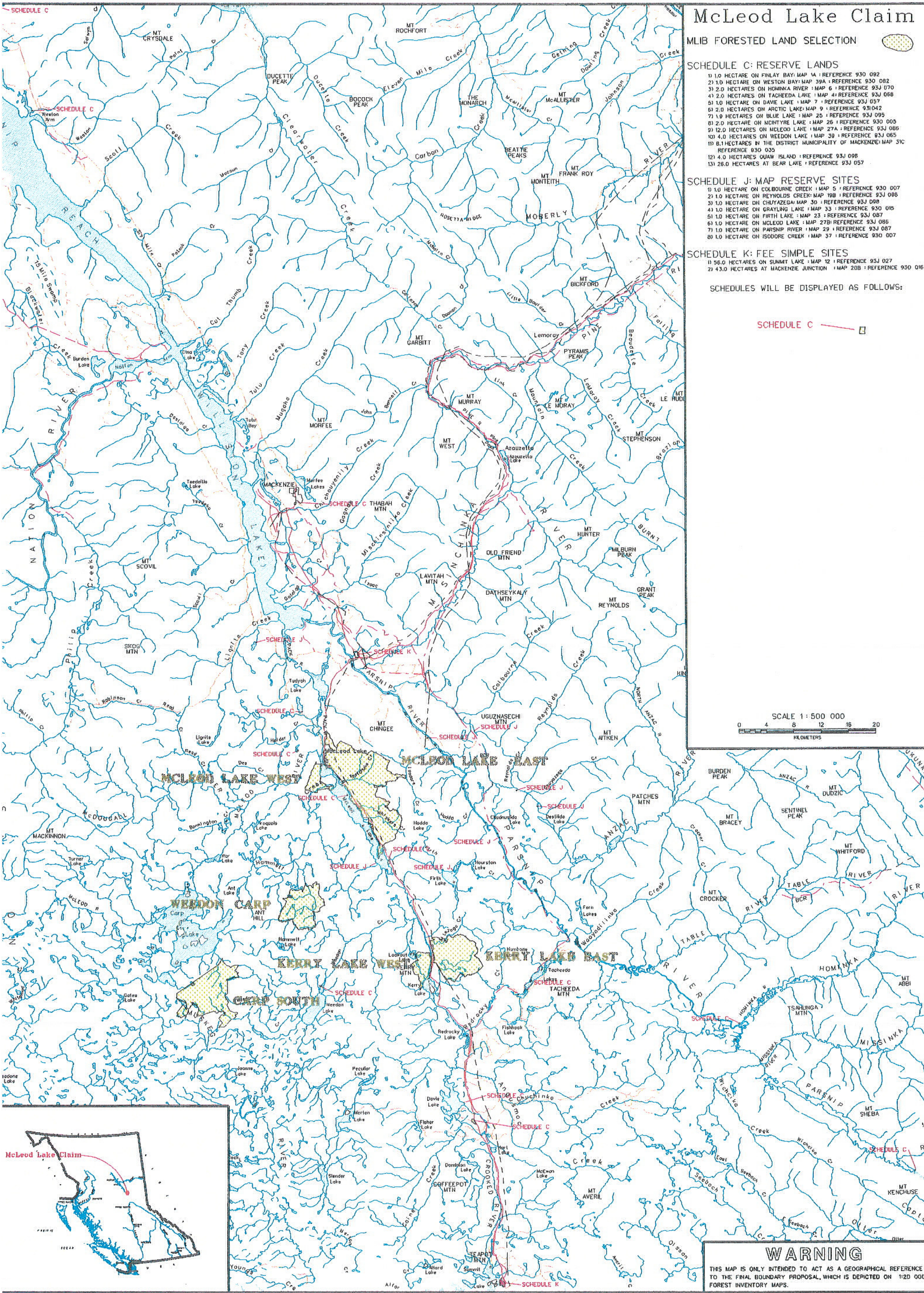
- 1) 1.0 HECTARE ON COLBOURNE CREEK: MAP 5: REFERENCE 930 007
- 2) 1.0 HECTARE ON REYNOLDS CREEK: MAP 10B: REFERENCE 93J 088
- 3) 1.0 HECTARE ON CHUYAZEGA: MAP 30: REFERENCE 93J 088
- 4) 1.0 HECTARE ON GRAYLING LAKE: MAP 33: REFERENCE 930 015
- 5) 1.0 HECTARE ON FIRTH LAKE: MAP 23: REFERENCE 93J 087
- 6) 1.0 HECTARE ON MCLEOD LAKE: MAP 27B: REFERENCE 93J 086
- 7) 1.0 HECTARE ON PARSNIP RIVER: MAP 29: REFERENCE 93J 087
- 8) 1.0 HECTARE ON ISODORE CREEK: MAP 37: REFERENCE 930 007

## SCHEDULE K: FEE SIMPLE SITES

- 1) 56.0 HECTARES ON SUMMIT LAKE: MAP 12: REFERENCE 93J 027
- 2) 43.0 HECTARES AT MACKENZIE JUNCTION: MAP 20B: REFERENCE 930 016

SCHEDULES WILL BE DISPLAYED AS FOLLOWS:

SCHEDULE C



**WARNING**  
THIS MAP IS ONLY INTENDED TO ACT AS A GEOGRAPHICAL REFERENCE TO THE FINAL BOUNDARY PROPOSAL, WHICH IS DEPICTED ON 1:20 000 FOREST INVENTORY MAPS.

Schedule 'C'

*Handwritten signatures and initials:*  
ANM  
[Other illegible marks]



**SCHEDULE "D"**

**BC HYDRO FLOWAGE RIGHT OF WAY**

**FLOWAGE RIGHT OF WAY**

This Agreement is dated \_\_\_\_\_, 19\_\_

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia  
[insert Minister responsible and address]

(the "Grantor")

AND:

British Columbia Hydro and Power Authority, continued  
under the Hydro and Power Authority Act, RSBC 1996, c. 212  
[insert address]

("Hydro")

WHEREAS:

- A. The Grantor will be transferring certain lands to Her Majesty the Queen in Right of Canada for setting aside as Indian Reserves for the benefit of the McLeod Lake Indian Band, generally as described in the attached Schedule "A" ("MLIB Lands").
- B. In order to impound the waters of the Peace River and the Williston Lake for electric power generation purposes, and for the purposes of controlling the flow of water along the Peace River, Hydro has constructed a dam known as the W.A.C. Bennett Dam (the "Dam").
- C. As a result of the operation, repair, or replacement of the Dam the MLIB Lands or portions thereof may from time to time be flooded or injuriously affected.
- D. Hydro requires certain rights, liberties and statutory rights of way over the MLIB Lands.
- E. This Agreement is required for the operation and maintenance of Hydro's undertaking.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants of the parties, the parties agree as follows:



## Article I - Grant of Right of Way

- 1.01 The Grantor hereby grants to Hydro the full and free right, liberty and statutory right of way (the "Right of Way") for Hydro, its servants, agents, licensees and assignees for purposes related to the maintenance, operation, repair or replacement, of the Dam and resulting reservoir, used or to be used for or in connection with the generation, manufacture, distribution or supply of power or for the purposes of controlling the flow of water:
- (a) From time to time and for such period or periods and to such extent as Hydro may in its discretion deem necessary, to saturate, permeate, overflow, flood and cover the MLIB Lands or any part or parts thereof with the flood, slack or backwater created by the maintenance, operation, repair or replacement of the Dam or power generating plant or plants;
  - (b) To cause debris to be deposited on the MLIB Lands in connection with overflowing, flooding or covering the MLIB Lands as aforesaid;
  - (c) To cause erosion, sloughing and slides on and of the MLIB Lands in connection with the overflowing, flooding or covering the MLIB Lands as aforesaid;
  - (d) To enter upon the MLIB Lands and remove, clear or dispose of:
    - (i) any timber or other natural growth, obstructions, accumulations, trash, filth or other things, paying compensation to the Grantor for any damage caused by or incidental to such action, and
    - (ii) anything placed or constructed on the MLIB Lands in contravention of this Agreement;
  - (e) To enter upon the MLIB Lands and erect structures and signs, excavate and do such other work as may in its discretion deem necessary in connection with the needs of flood control or the operation of any such dam, generating plant or reservoir, paying compensation to the Grantor for use of the MLIB Lands and remaining responsible for any damage, including environmental damage, caused by or incidental to such action, except for damages to anything placed or constructed on the MLIB Lands in contravention of this Agreement; and
  - (f) Generally to do all acts necessary or incidental to the business of Hydro in connection with the foregoing.
- 1.02 The Right of Way will run with and bind the MLIB Lands for the duration of this Agreement.

## Article II - Duration

- 2.01 The duration of the Right of Way will be for a term of so long as required commencing on \*, 199\_ (the "Commencement Date").

### **Article III - Covenants and Release of Grantor**

- 3.01 The Grantor may place or construct any building, structure, trailer, tent or shelter on the MLIB Lands wholly situate above a line, designated "the safe line" as shown in heavy black outline or within the heavy black outline (as the case may be) generally as described in the attached Schedule "B". The Grantor covenants not to place or construct, or permit, any building, structure (except docks and other floating structures of a minor nature), trailer, tent or shelter on the MLIB Lands except above the said safe line, without the prior written consent of Hydro first had and obtained, which consent is not to be unreasonably withheld or delayed.
- 3.02 Provided Hydro does not cause the water impounded by the Dam to rise above the pool elevation described in section 4.01 below, the Grantor does further hereby for himself, his executors, administrators and assigns, release and discharge Hydro of and from all claim for loss, costs, damages, charges and expenses of any nature or kind to arise out of the impoundment, overflowing or flooding of water.

### **Article IV - Covenants of Hydro**

- 4.01 Notwithstanding anything hereinbefore contained, Hydro hereby covenants with the Grantor not to cause the water impounded by the Dam to rise above a pool elevation of six hundred and seventy-five and one tenth (675.1) metres above mean sea level according to datum of the Geodetic Survey of Canada. The said water elevation is measured at or about the Dam.
- 4.02 When the MLIB Lands have been set aside as a reserve for the use and benefit of the McLeod Lake Indian Band, Hydro will, in all its activities relating to its works and in the absence of any applicable legislative standards of equal or greater standard or requirement of the Government of Canada, comply with applicable British Columbia legislation or standards for construction and environmental protection as if the Provincial legislation and standards applied to the MLIB Lands.
- 4.03 Hydro shall provide prior notice of any proposed exercise of rights under paragraphs 1.01(d) and (e), provided that in the case of an emergency Hydro does not need to provide prior notice but will report to the Grantor the purpose and extent of its activities as soon as practicable.

### **Article V - Dispute Resolution**

- 5.01 Unless the parties otherwise agree in writing, any dispute that the parties are unable to settle between themselves arising out of or in connection with this Agreement may be referred to mediation by agreement of the parties or shall be settled by arbitration, except a dispute involving the enforcement of the Right of

Way or a question of law, which shall be settled through the courts.

- 5.02 Unless the parties to the dispute otherwise agree, the arbitration shall be conducted by a single arbitrator. The arbitrator shall be chosen by the parties to the dispute; if they fail to agree on this choice within thirty (30) days following the commencement of their discussion, then any party to the dispute may request the British Columbia International Commercial Arbitration Centre or such other organization or person agreed to by the parties in writing, to select an arbitrator. The arbitrator chosen shall be independent, impartial and competent.
- 5.03 The arbitrator so chosen shall thereupon proceed to hear the submissions of the parties to the dispute and shall render his decision in writing within thirty (30) days after his appointment or if thirty (30) days is insufficient, then within such further time as is reasonable.
- 5.04 Unless otherwise agreed in writing, the arbitration shall be in accordance with the *Commercial Arbitration Act* of British Columbia.
- 5.05 The arbitration will take place in Vancouver, British Columbia unless otherwise agreed to in writing by the parties to the dispute.
- 5.06 During the arbitration, the parties will continue to perform their obligations under this Agreement.
- 5.07 It is not incompatible with this Article for a party to request from a court, before or during the arbitration, interim or conservatory measures and for a court to grant such measures.
- 5.08 Costs of arbitration including, without limitation, all legal, appraisal and expert fees, and fees and expenses of the arbitrator and of any clerk, secretary or reporter assisting in the arbitration and the expense of any facilities and services required by the arbitrator for the arbitration shall be in the discretion of the arbitrator.

#### Article VI - Notice

- 6.01 Where service of a notice or a document is required under this Agreement, the notice or document will be in writing and will be deemed to have been served if delivered to, or if sent by prepaid registered mail addressed to the Grantor and Hydro at:

[add addresses]

If service is by registered mail the notice or document will be conclusively deemed to be served on the eighth day after its deposit in a Canada Post office at any place in British Columbia.

- 6.02 The Grantor and Hydro may, by notice in writing to the affected person, specify another address for service of notices under this Agreement. If another address is



specified under this section, notices will be mailed to that address in accordance with this Article.

#### **Article VII - Miscellaneous**

- 7.01 No term, condition, covenant or other provision herein will be considered to have been waived by either party unless such waiver is in writing. Any such waiver of any term, condition, covenant or other provision herein will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant, or other provision.
- 7.02 No remedy conferred upon or reserved to the Grantor or Hydro is exclusive of any other remedy herein or provided by law, but such remedy will be cumulative and will be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
- 7.03 The title to all timber cut on the MLIB Lands and to all things removed, cleared or disposed of by Hydro in the exercise of the Right of Way hereunder shall vest in Hydro. Hydro shall pay compensation for any timber cut on the MLIB Lands under this Agreement.
- 7.04 The terms and provisions of this Agreement will extend to be binding upon and enure to the benefit of the parties hereto and their successors and assigns.
- 7.05 All schedules attached to this Agreement form an integral part of this Agreement.
- 7.06 This Agreement shall not entitle Hydro to exclusive possession of the MLIB Lands.

#### **Article VIII - Interpretation**

- 8.01 In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine include the feminine gender, body politic and a corporation.
- 8.02 The captions and headings contained in this Agreement are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the provisions.
- 8.03 Where there is a reference to an enactment of British Columbia or of Canada, that reference will include a reference to any subsequent enactment of like effect. Unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
- 8.04 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining part or sections as the case may be, will not be affected thereby and will be enforceable to the fullest extent permitted by the law.

IN WITNESS THEREOF the parties have duly executed this Agreement, as of the date first referred to above.

[Grantor's signature block]

Per: \_\_\_\_\_

Per: \_\_\_\_\_

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: \_\_\_\_\_

Per: \_\_\_\_\_

AD1  
