

**NISGA'A NATION
OWN SOURCE REVENUE
AGREEMENT**

Canada
British Columbia
Nisga'a Nation

QS-B014-000-BB-A1

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NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

THIS AGREEMENT made the **■** day of **■**, 199**■**,

BETWEEN:

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

("Canada")

OF THE FIRST PART

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA**, as represented by the **Minister of
Aboriginal Affairs**

("British Columbia")

OF THE SECOND PART

AND:

NISGA'A NATION, as represented by **Nisga'a Lisims Government**

(the "Nisga'a Nation")

OF THE THIRD PART

WHEREAS:

- A. The Nisga'a Nation, Canada and British Columbia have entered into the Nisga'a Treaty which provides that every 10 years, or at other intervals if the Parties agree, the Parties will negotiate and attempt to reach agreement on an own source revenue agreement under which Nisga'a Nation own source revenue capacity, and the manner and extent to which that capacity will be taken into account under fiscal financing agreements, will be determined; and
- B. The Parties have negotiated this Agreement as an own source revenue agreement in accordance with the Nisga'a Treaty.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

NOW THEREFORE in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

DEFINITIONS

1. Words and expressions not defined in this Agreement but defined in the Nisga'a Treaty have the meanings ascribed to them in the Nisga'a Treaty.

2. In this Agreement, unless the context requires otherwise:

“Chapter” means the Chapter of the Nisga'a Treaty;

“charge or fee” means a charge or fee, other than a Nisga'a tax, that is:

- a. levied in connection with a specific service or activity;
- b. similar to a charge or fee generally levied in British Columbia in similar circumstances by Canada, British Columbia or a local authority in British Columbia; and
- c. levied in respect of an agreed-upon program or service that is funded under a fiscal financing agreement and that is delivered by the Nisga'a Nation or another person under an arrangement with the Nisga'a Nation;

and, for greater certainty, includes:

- d. charges in respect of government health programs or services including health insurance or co-insurance premiums;
- e. court fees, moorage fees, recreation fees, park utilization fees, building permit fees, business licence fees, marriage licence fees and timber mark registration fees;
- f. fees charged for permission to perform activities such as hunting, fishing and shooting, providing entertainment or gambling facilities, selling alcohol or tobacco and granting permission to own an animal; and
- g. fines and penalties not relating to tax offences;

but does not include:

- h. charges or fees in respect of an education program or service including tuition;

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- i. charges or fees that have been taken into account under a fiscal financing agreement in determining the level of funding for the program or service in respect of which it is levied; or
- j. charges or fees in respect of a program or service where the Nisga'a Nation and the other Party or Parties providing funding to the Nisga'a Nation to enable provision of that program or service agree that the funding is provided on the basis that 100% of any charge or fee levied will be applied to the cost of the program or service;

“commercial and investment activities” means:

- a. an undertaking for the purpose of gaining or producing income from a business or property including a natural resource;
- b. an adventure or concern in the nature of trade; or
- c. a disposition of a capital asset, other than Nisga'a Lands or Nisga'a Fee Simple Lands, held or used primarily for the purpose of gaining or producing income from a business or property;

“effective date” means the date upon which the Nisga'a Treaty takes effect;

“fiscal financing agreement” means a fiscal financing agreement within the meaning of that term in the Fiscal Relations Chapter;

“fiscal year” means the period that commences on April 1st of a year and ends on March 31st of the next year, or another period if the Parties agree by amending this Agreement;

“generally accepted accounting principles” means the accounting principles generally accepted in Canada from time to time and if the handbook published by the Canadian Institute of Chartered Accountants or its successor includes a relevant statement of a principle or an accounting guideline, that statement will be considered conclusively to be an accounting principle or guideline generally accepted in Canada;

“Lisims Fisheries Conservation Trust” means the trust that Canada and the Nisga'a Nation have agreed to establish under paragraph 96 of the Fisheries Chapter;

“Nisga'a Nation OSRC annual report” means the report of the Nisga'a Nation own source revenue capacity for a fiscal year prepared under paragraph 20;

“Nisga'a tax” means:

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- a. a tax imposed under a law made by Nisga'a Government in respect of direct taxation of:
 - i. Nisga'a citizens under paragraph 1 of the Taxation Chapter; or
 - ii. persons other than Nisga'a citizens under authority delegated by Canada or British Columbia under an agreement made under subparagraph 3(a) of the Taxation Chapter or under another agreement with the Nisga'a Nation; and
- b. a fine or penalty, or interest on payments overdue, paid to the Nisga'a Nation or a Nisga'a Village in respect of a tax referred to in subparagraph (a);

"Nisga'a Treaty" means the treaty entered into between Canada, British Columbia and the Nisga'a Nation dated **■**, 199**■**, as amended from time to time, that is a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*;

"other Nisga'a revenues" means the revenues of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a exempt corporation or a corporation without share capital established and operated for the benefit of the Nisga'a Nation or a Nisga'a Village, or any combination of them, other than revenue in respect of:

- a. a charge or fee;
- b. a commercial or investment activity;
- c. a Nisga'a tax; or
- d. a Nisga'a settlement trust;

"Parties" means the parties to this Agreement and "Party" means any of them;

"Taxation Agreement" means a Taxation Agreement within the meaning of that term in the Taxation Chapter;

"Tripartite Finance Committee" means the Tripartite Finance Committee established under this Agreement.

3. The categories charge or fee, commercial and investment activities, Nisga'a tax and other Nisga'a revenues are mutually exclusive categories and, for greater certainty, a revenue allocated to one category cannot be allocated to another.
 4. If a provision of this Agreement applies in respect of a Nisga'a exempt corporation, the own source revenue capacity that results:
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NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- a. will be reduced proportionately to fully account for the direct or indirect ownership interests in the corporation of persons other than the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, and Nisga'a settlement trusts; and
- b. if the Nisga'a Nation or a Nisga'a Village, or any combination of them, cannot cause a distribution by the corporation, will be taken into account only at the time, and to the extent, that a distribution is made to the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation.

NISGA'A NATION OWN SOURCE REVENUE CAPACITY

5. Nisga'a Nation own source revenue capacity for a fiscal year is the specified percentage of the aggregate of the own source revenue capacities for the fiscal year in respect of commercial and investment activities, Nisga'a taxes, Nisga'a settlement trusts, charges and fees, and other Nisga'a revenues, as determined in accordance with this Agreement.
6. In paragraph 5, "specified percentage" is 0% for each of the first two fiscal years commencing on or after the effective date, 5% for each of the third and fourth fiscal years, 10% for the fifth fiscal year, 15% for the sixth fiscal year, 20% for the seventh fiscal year, 30% for the eighth fiscal year, 40% for the ninth fiscal year, 55% for the tenth fiscal year, 70% for the eleventh fiscal year, 85% for the twelfth fiscal year, and 100% for the thirteenth and subsequent fiscal years.

COMMERCIAL AND INVESTMENT ACTIVITIES

7. Subject to paragraphs 4 and 19, the own source revenue capacity for a fiscal year in respect of commercial and investment activities is the aggregate of amounts, each of which is equal to the income tax, corporation capital tax or other tax (other than a tax referred to in paragraphs 24 and 26 of the Taxation Agreement) that would be payable for the fiscal year to a government in Canada in respect of the commercial and investment activities by the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a exempt corporation, or a corporation without share capital established and operated for the benefit of the Nisga'a Nation or a Nisga'a Village, or any combination of them, as the case may be, if each were not exempt from the income tax, corporation capital tax or other tax, under laws of general application, and if the assumptions in paragraphs 8 to 11 applied.
 8. For the purposes of paragraph 7, the Nisga'a Nation and each Nisga'a Village will be assumed to be:
 - a. each a private corporation incorporated in Canada on the effective date, all of the shares of which are owned by one or more individuals resident in Canada; and
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NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

b. unrelated to, and dealing at arm's length with, each other.

9. The taxes referred to in paragraph 7 will be determined on the assumption that each entity referred to in paragraph 7:

a. had a fiscal period coincident with the fiscal year;

b. did not carry on any activity other than its commercial and investment activities;

c. did not own any property, except to the extent that the property was employed by it in a commercial or investment activity; and

d. was not allowed any deduction in determining its income or taxable income for:

i. any amount, to the extent that it reasonably could be considered to be an expenditure in respect of:

A. a program or service for which funding has been provided to the Nisga'a Nation under a fiscal financing agreement; or

B. a management, enhancement or rehabilitation activity in respect of a natural resource, other than a forestry resource, that is reasonably comparable in nature to an activity carried on by another government in Canada in respect of the management, enhancement or rehabilitation of a similar natural resource; or

ii. a gift made to a person that provides goods or services primarily to Nisga'a citizens;

and on the assumption that the Nisga'a Nation and each Nisga'a Village was allowed a deduction in determining the amount subject to corporation capital tax for the carrying value, determined in accordance with generally accepted accounting principles, of any estate or interest it held in Nisga'a Lands on which there were no improvements or on which there was a designated improvement.

10. In determining the own source revenue capacity in respect of a commercial or investment activity that is the exploitation of an interest in a forest resource on Nisga'a Lands or Nisga'a Fee Simple Lands:

a. for purposes of determining any capital cost allowance in respect of that interest that would be allowable under paragraph 20(1)(a) of the *Income Tax Act* and paragraph 1100(1)(c) of the regulations to that Act, and any recaptured depreciation under

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

subsection 13(1) of the *Income Tax Act*, that interest will be deemed to have been acquired at the later of:

- i. the effective date; and
- ii. the date, if any, the interest was last acquired by the entity from a person (other than the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation) with whom the entity was dealing at arm's length;

at a cost equal to:

- iii. the fair market value of that interest on the effective date, where subparagraph (i) applies; or
 - iv. the consideration given for the interest on the date referred to in subparagraph (ii), where subparagraph (ii) applies; and
- b. no deduction will be made by the entity in respect of an outlay or expenditure in relation to the management or development of the forest resource, except to the extent that the outlay or expenditure was made or incurred for the purpose of earning income from the forest resource and is reasonable in the circumstances.

11. In determining the own source revenue capacity in respect of a commercial and investment activity that is the exploitation of an interest in a mineral resource or natural accumulation of petroleum or natural gas, the *Income Tax Act* will be read without reference to paragraphs 12(1)(o), 12(1)(z.5), 18(1)(m) and 20(1)(v.1), and subsections 69(6) and 69(7) thereof.

NISGA'A TAXES

12. Subject to paragraph 19, the own source revenue capacity for a fiscal year in respect of Nisga'a taxes is the sum of all amounts, each of which is the amount determined in respect of each Nisga'a tax in accordance with subparagraph 16(c) of the Fiscal Relations Chapter, except that in applying that subparagraph:
- a. the phrase "the amount by which" in subparagraph 16(c)(ii)(A) will be read as "50% of the amount by which"; and
 - b. the reasonable costs, if any, of developing and administering the tax system in respect of the tax, and of collecting the tax, will be taken into account under subparagraph 16(c)(i) or 16(c)(ii)(B).

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

NISGA'A SETTLEMENT TRUSTS

13. Subject to subparagraph 19(c), own source revenue capacity for a fiscal year in respect of Nisga'a settlement trusts is the sum of the amounts determined by multiplying the taxable income of each Nisga'a settlement trust for its taxation year ended in the fiscal year by the composite tax rate for the fiscal year.
14. In paragraph 13, "composite tax rate" is intended to be approximately equal to the net change in the sum of all income taxes, transaction taxes, and refundable tax credits that would have accrued to a government in Canada from all Nisga'a citizens as beneficiaries of the trust if, under the terms of each Nisga'a settlement trust, an amount equal to the taxable income of the trust for its taxation year ended in the fiscal year had been made payable in that taxation year in equal shares to those Nisga'a citizens, and:
 - a. is 18.0% for the term of the first two fiscal financing agreements, as calculated in Schedule A; and
 - b. will be determined for each subsequent fiscal financing agreement according to the method set out in that Schedule A.
15. In paragraphs 13 and 14, "taxable income" and "taxation year" have the same meanings as in the *Income Tax Act*.

CHARGES AND FEES

16. Subject to paragraph 19, own source revenue capacity for a fiscal year in respect of charges or fees is the amount determined by applying the inclusion rate to the aggregate of amounts, each of which is the amount by which the receipts of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation or a Nisga'a exempt corporation, in the fiscal year in respect of a charge or fee exceed the reasonably deductible costs, including reasonable allowances for depreciation and amortization, that are incurred in the fiscal year for the purposes of levying, and that would not have been incurred but for the imposition of, that charge or fee.
17. In paragraph 16, "inclusion rate" is 46.0%.

OTHER NISGA'A REVENUES

18. Subject to paragraph 19, own source revenue capacity in respect of other Nisga'a revenues is the own source revenue capacity that would be determined in respect of the revenue if it were a charge or fee.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

AMOUNTS NOT INCLUDED

19. Notwithstanding any other provision of this Agreement, Nisga'a Nation own source revenue capacity for a fiscal year does not include any amount in respect of:
- a. proceeds that are received or become receivable in a fiscal year from the sale of Nisga'a Lands or Nisga'a Fee Simple Lands, except to the extent that the proceeds represent revenues received in the course of:
 - i. leasing or licensing the lands; or
 - ii. taking production from the lands or from a resource on the lands, by the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation; or
 - iii. reasonably can be considered to represent a recapture of depletion or depreciation deducted in the computation of own source revenue capacity for the fiscal year or any preceding fiscal year;
 - b. any amount referred to in subparagraphs 18(b) to (f) of the Fiscal Relations Chapter;
 - c. for the first 12 calendar years commencing on or after the effective date, the income or capital gains of a Nisga'a settlement trust;
 - d. a tax payable by a Nisga'a citizen to the Nisga'a Nation or a Nisga'a Village during the period that ends on the first day of the first month that starts on or after the eighth anniversary of the effective date;
 - e. a tax, other than a transaction tax, payable by a Nisga'a citizen to the Nisga'a Nation or a Nisga'a Village during the period that starts at the end of the period described in subparagraph (d) and ends on the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date;
 - f. any amount payable to the Nisga'a Nation under a fiscal financing agreement, fiscal contribution agreement, or any bilateral agreement between the Nisga'a Nation or a Nisga'a Village, and Canada or British Columbia in respect of a program or service of the Nisga'a Nation or Nisga'a Village;
 - g. any amount paid or collected by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, or a Nisga'a government corporation, under a law made under paragraph 21 of the Fiscal Relations Chapter;
 - h. a gift to the Nisga'a Nation, a Nisga'a Village or a Nisga'a Institution; and
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NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- i. the taking of a natural resource on Nisga'a Lands for the personal consumption of a Nisga'a citizen, for any purpose other than profit.

FISCAL FINANCING AGREEMENTS

20. In determining the net transfer by Canada and British Columbia to the Nisga'a Nation under a fiscal financing agreement for each fiscal year commencing on or after the effective date (each a "particular year"), the Parties will deduct:
 - a. the estimated Nisga'a Nation OSRC amount for the particular year;
 - b. the amount, if any, by which the Nisga'a Nation own source revenue capacity for the second fiscal year preceding the particular year exceeds the estimated Nisga'a Nation OSRC amount for that second preceding fiscal year; and
 - c. any amount due by the Nisga'a Nation to Canada or British Columbia, in respect of Nisga'a Nation own source revenue capacity for a preceding fiscal year, that was confirmed in the fiscal year immediately preceding the particular year by the resolution of a disagreement referred to in paragraph 25 or 26;and will add:
 - d. the amount, if any, by which the estimated Nisga'a Nation OSRC amount for the second fiscal year preceding the particular year exceeds the Nisga'a Nation own source revenue capacity for that second preceding fiscal year; and
 - e. any amount due by Canada or British Columbia to the Nisga'a Nation, in respect of Nisga'a Nation own source revenue capacity for a preceding fiscal year, that was confirmed in the fiscal year immediately preceding the particular year by the resolution of a disagreement referred to in paragraph 25 or 26.
 21. In paragraph 20, "estimated Nisga'a Nation OSRC amount" for a particular year is an amount equal to the aggregate referred to in paragraph 5 for the second fiscal year preceding the particular year, as reported in the Nisga'a OSRC annual report for that second preceding fiscal year, multiplied by the specified percentage for the particular year.
 22. In paragraph 21, "specified percentage" is 0% for each of the first two fiscal years commencing on or after the effective date, 5% for each of the third and fourth fiscal years, 10% for the fifth fiscal year, 15% for the sixth fiscal year, 20% for the seventh fiscal year, 30% for the eighth fiscal year, 40% for the ninth fiscal year, 55% for the tenth fiscal year, 70% for the eleventh fiscal year, 85% for the twelfth fiscal year, and 100% for the thirteenth and subsequent fiscal years.
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NISGA'A NATION OSRC ANNUAL REPORT

23. Within nine months after the end of each fiscal year, the Nisga'a Nation will prepare a Nisga'a Nation OSRC annual report substantially in the form of Schedule B for that fiscal year setting out:
- a. the own source revenue capacity for that fiscal year in respect of each category of revenue for which a calculation is required to be made under this Agreement; and
 - b. Nisga'a Nation own source revenue capacity for that fiscal year;
- and provide a copy to Canada and British Columbia.
24. For purposes of providing information for negotiation of the next own source revenue agreement, the Nisga'a Nation OSRC annual report for a fiscal year will include an analysis that compares the own source revenue capacity for that year in respect of commercial and investment activities that is determined under this Agreement with the amount that would be determined if own source revenue capacity in respect of commercial and investment activities for that year were:
- a. calculated at the prevailing combined federal and British Columbia corporate income tax rates; and
 - b. based on the consolidated net accounting incomes from commercial and investment activities of entities referred to in paragraph 7, calculated before deductions for income tax or an amount payable under a law made under paragraph 21 of the Fiscal Relations Chapter but after extraordinary items, in accordance with generally accepted accounting principles applied on a consistent basis from year to year.
25. At any time within four years of the Nisga'a Nation OSRC annual report for a fiscal year being provided to Canada and British Columbia under paragraph 23, a Party may notify the other Parties that it disagrees with the determination of an amount reported in that report.
26. Notwithstanding paragraph 25, at any time a Party may notify the other Parties that it disagrees with the determination of an amount included in a Nisga'a Nation OSRC annual report for a fiscal year:
- a. in any case where a change in that amount is required to reflect, and reasonably can be considered to be consequential upon, an assessment or reassessment by a taxing authority; or

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- b. if the person filing the report has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed fraud in filing the report or in supplying information required in connection with the report.
27. A notice given by a Party under paragraph 25 or 26 will:
- a. identify the relevant Nisga'a Nation OSRC annual report and fiscal year;
 - b. set out each determination that the Party disagrees with;
 - c. set out a calculation of each adjustment that the Party proposes be made to an amount included in the report, with detailed reasons; and
 - d. include a proposal for how the adjustment could be made.
28. Within 45 days of the date of a notice given by a Party under paragraph 25 or 26, each of the other Parties may respond in writing to the notice, setting out:
- a. their acceptance of each proposed adjustment; or
 - b. proposed alternative adjustments, with detailed reasons.
29. If the Parties fail to resolve a matter, in respect of which a notice is given under paragraph 25 or 26, by informal discussion within 60 days after the date of that notice, a Party may within 90 days after the date of that notice give another Party a notice of dispute in respect of the matter.

FINANCIAL RECORDS

30. All accounts and financial statements required to be prepared under this Agreement will be prepared in accordance with generally accepted accounting principles.
31. The financial records of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation or a Nisga'a settlement trust, for a fiscal year will be:
- a. retained by the Nisga'a Nation for 10 years after the date of submission of the Nisga'a Nation OSRC annual report for the fiscal year to Canada and British Columbia under paragraph 23; and
 - b. made available to Canada and British Columbia at the principal administration offices of the Nisga'a Nation for inspection, on a confidential basis, within 30 days of receipt of a request from Canada or British Columbia to inspect the records.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

TRIPARTITE FINANCE COMMITTEE

32. A Tripartite Finance Committee will be:
- a. established by the Parties as soon as practicable after the effective date;
 - b. composed of one member appointed by each Party; and
 - c. kept in place throughout the term of this Agreement.
33. The members of the Tripartite Finance Committee will:
- a. meet at least once a year to carry out an annual review of this Agreement;
 - b. if they all agree, recommend in writing to the Parties any changes to this Agreement;
 - c. do such things as are appropriate to facilitate the resolution of any problems that arise in respect of this Agreement;
 - d. during the eighth and fifteenth years of this Agreement, carry out a comprehensive review of this Agreement; and
 - e. do such other things relating to this Agreement as the Parties may agree from time to time to be appropriate.
34. A Tripartite Finance Committee member may bring resource persons to meetings as they consider appropriate to assist in fulfilling their responsibilities under this Agreement.

DISPUTE RESOLUTION

35. The Parties desire and expect that a dispute arising from this Agreement will be resolved by informal discussion between the disputing Parties.
36. If the dispute is not resolved by informal discussion within 60 days of a Party notifying another Party of the dispute, it will be referred to the Tripartite Finance Committee.
37. If the Tripartite Finance Committee fails to resolve a dispute within 45 days of the dispute being referred to it, or a longer period if the Parties agree, the dispute will be dealt with under the Dispute Resolution Chapter and, for greater certainty, the dispute will be considered to be a dispute for the purposes of that Chapter.
38. The discussions in paragraphs 35 to 37 will be considered to be “collaborative negotiations” for the purposes of the Dispute Resolution Chapter.
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INFORMATION EXCHANGE, GENERAL PROVISION

39. The Parties will share information as required for the purposes of implementing and monitoring this Agreement and to facilitate the negotiation of future own source revenue agreements.

TERM

40. The term of this Agreement:
- a. starts on the effective date; and
 - b. subject to paragraph 41, ends at the end of the fiscal year during which the 12th anniversary of that effective date occurs.
41. Unless a Party provides each of the other Parties, no less than fifteen months before the term of this Agreement, as extended from time to time under this paragraph, ends under subparagraph 40(b), with a notice to end this Agreement, the time at which the term of this Agreement ends under subparagraph 40(b) will be extended by two years.
42. For greater certainty, paragraphs 40 and 41 are intended to result in the term of this Agreement continuing unless a Party provides notice under paragraph 41 to end this Agreement.

SUBSEQUENT OWN SOURCE REVENUE AGREEMENT

43. At least one year before the end of the term of this Agreement, Canada, British Columbia and the Nisga'a Nation will begin negotiating the next own source revenue agreement.
44. If the Parties do not reach a further own source revenue agreement by the end of the term of this Agreement, this Agreement will continue in effect for a period of two years from the end of the term of this Agreement while they attempt to reach the further own source revenue agreement.

SCHEDULE DESCRIPTION

45. The following Schedules are attached to and form part of this Agreement:

Schedule	Description
A	Calculation of Composite Tax Rate

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

B Nisga'a Nation OSRC annual report
(Complete before effective date)

46. The following Schedules are attached to this Agreement for convenience of reference only, and do not form part of it:

Schedule	Description
C	Technical Notes (Complete before effective date)

AMENDMENT

47. Any amendment to this Agreement must be in writing and executed by all Parties.

NO IMPLIED WAIVER

48. No term or condition of this Agreement, or performance by a Party of a covenant under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

49. No written waiver of a term or condition of this Agreement, of performance by a Party of a covenant under this Agreement, or of default by a Party of a covenant under this Agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

FURTHER ASSURANCES

50. The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

INTERPRETATION

51. In this Agreement:

- unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but is not limited to";
- headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- c. a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- d. unless it is otherwise clear from the context, a reference to a Schedule means a Schedule to this Agreement;
- e. unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- f. all accounting terms have the meanings assigned to them under generally accepted accounting principles.

52. This Agreement does not form part of the Nisga'a Treaty.

53. This Agreement is not intended to be a treaty or a land claim agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

TIME OF ESSENCE

54. Time is of the essence in this Agreement .

SEVERABILITY

55. If any part of this Agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

ENUREMENT

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

ASSIGNMENT

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

NOTICES

58. Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

under this Agreement must be in writing and may be given or made in one or more of the following ways:

- a. delivered personally or by courier;
- b. transmitted by facsimile transmission; or
- c. mailed by prepaid registered post in Canada.

59. A communication will be considered to have been given or made, and received:

- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- b. if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day on which it was transmitted; or
- c. if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

60. A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

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

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

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

For: Nisga'a Nation
Attention: President
P.O. Box 231
New Aiyansh, British Columbia
VOJ 1A0
Fax Number: (250) 633-2367

61. A Party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

THIS AGREEMENT HAS BEEN EXECUTED as of the day and year first above written.

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

As to the signature of the Minister of Indian)
Affairs and Northern Development) **Minister of Indian Affairs and Northern**
) **Development**
)

EXECUTED in the presence of:) **HER MAJESTY THE QUEEN IN**
) **RIGHT OF THE PROVINCE OF**
) **BRITISH COLUMBIA** as represented by
) **the Minister of Aboriginal Affairs**
)
)

As to the signature of the Minister of)
Aboriginal Affairs) **Minister of Aboriginal Affairs**
)

EXECUTED in the presence of:) **NISGA'A NATION** as represented by **█**
)
)
)

As to the signature of **█**)
)
)

█,

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

Schedule A

Calculation of Composite Tax Rate

The composite tax rate ("CTR") in paragraph 14 of this Agreement, as calculated in Table 1, is determined as follows:

$$\text{CTR} = \text{is the sum over (i) of } C_i$$

where:

i is an income range as set out in Table 1;

$$C_i = A_i \times B_i$$

A_i is the estimated percentage of Nisga'a Citizens having total annual incomes within income range (i) as set out in Table 1 column A; and

B_i is the estimated combined marginal net tax rate applicable to income range (i) as determined in Table 2.

The composite tax rate will be calculated in accordance with this Schedule as at the start of the third and each subsequent fiscal financing agreement.

Table 1 sets out the calculation of the composite tax rate.

Table 1

	A	B	C
Income Range (i)	Aboriginal Income Distribution	Combined Marginal Rate	Product of A and B
\$0-\$4,999	55.2%	5.0%	2.8%
\$5,000-\$9,999	11.5%	19.4%	2.2%
\$10,000-\$14,999	8.7%	27.7%	2.4%
\$15,000-\$19,999	5.6%	30.9%	1.7%
\$20,000-\$24,999	4.5%	34.7%	1.6%

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

\$25,000-\$29,999	3.5%	44.9%	1.6%
\$30,000-\$34,999	2.5%	57.5%	1.5%
\$35,000-\$39,999	2.4%	56.7%	1.4%
\$40,000-\$44,999	1.7%	50.0%	0.8%
\$45,000-\$49,999	1.5%	48.5%	0.8%
\$50,000+	2.8%	48.2%	1.4%
CTR = sum over (i) of C_i			18.0%

Column A sets out A_i , the estimated percentage of British Columbia resident aboriginal people having total annual incomes, including government transfers, within each income range (i). The estimates are based on *British Columbia On and Off Reserve Aboriginal Income Distribution* data obtained from Statistics Canada (Catalogue No. 94-325) for the most recent year available (1991). Future composite tax rate calculations will use income distribution data for all Nisga'a citizens, if available at the time, and if the Parties agree.

If the composite tax rate is calculated when current income distribution data are not available either for British Columbia resident aboriginal people or Nisga'a citizens, the calculation will be prepared on the assumption that:

- a. each A_i is the same as in the last preceding estimate; and
- b. the upper and lower limits, if any, of each income range (i) have changed since the last calculation in accordance with the changes in the Final Domestic Demand Implicit Price Index for Canada, as most recently published at the time by Statistics Canada.

Column B sets out the combined marginal net tax rate B_i , applicable to each income range (i), as determined from Table 2.

Column C sets out the composite tax rate C_i for each income range (i). C_i is the product of A_i and B_i . The composite tax rate in paragraph 14 of this Agreement is the sum of column C.

Calculation of Combined Marginal Net Tax Rate

Table 2 sets out the rates of tax and the rate of reduction in tax system credits and benefits, that apply in British Columbia to additional income earned by an individual in income range (i), based on tax

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

policies in effect on December 31, 1997. The amount B_i is the sum of the marginal tax rates and benefit reduction rates set out in row (i) for income range (i).

Table 2

Income Range (i)	Marginal Income Taxes Rates			Marginal Transaction Taxes Rates			Tax Credit & Benefit Reduction Rate	Combined Marginal Net Tax Rate (B _i)
	Federal Income Tax	BC Income Tax	Federal Income Surtax	GST	PST	Fuel		
\$0-\$4,999	0.0%	0.0%	0.0%	3.0%	2.0%	0.0%	0.0%	5%
\$5,000-\$9,999	10.2%	5.2%	0.3%	3.0%	2.0%	0.0%	-1.3%	19.4%
\$10,000-\$14,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	-4.5%	27.7%
\$15,000-\$19,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	-1.3%	30.9%
\$20,000-\$24,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	2.6%	34.7%
\$25,000-\$29,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	12.8%	44.9%
\$30,000-\$34,999	24.2%	12.3%	0.7%	3.0%	2.0%	1.0%	14.2%	57.5%
\$35,000-\$39,999	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	10.7%	56.7%
\$40,000-\$44,999	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	3.9%	50.0%
\$45,000-\$49,999	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	2.5%	48.5%
\$50,000+	26.0%	13.3%	0.8%	2.9%	1.8%	1.0%	2.5%	48.2%

The above rates will be adjusted, as required, if income ranges (i) are adjusted in any way to account for the effects of inflation. Future changes in a federal, provincial or Nisga'a rate will be reflected by increasing or decreasing the rate shown in Table 2 for the affected tax, tax credit or benefit in proportion with the proportionate increase or decrease in the federal, provincial or Nisga'a rate. If a tax, tax credit or benefit is introduced, eliminated or restructured, Table 2 will be adjusted to reflect that change in a manner consistent with the method used to estimate the other rates in the table.

British Columbia marginal surtax rates will be added to Table 2 in future calculations if information is available which allows a reasonable estimate of the incomes and number of aboriginal people, or Nisga'a citizens where Nisga'a specific data are used in the calculation, who are subject to the surtax.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

The following paragraphs and tables outline how the rates in Table 2 were determined for each type of tax and benefit.

Marginal Income Tax Rates

Tax	Tax Category	Tax Rate
Federal Income Tax	taxable income of \$7,000 to \$29,590 ¹	17.0%
	taxable income of \$29,591 ¹ to \$59,180	26.0%
	taxable income greater than \$59,181	29.0%
BC Income Tax	all income categories	51.0% of Federal Income Tax Rate
Federal Income Surtax	all income categories	3.0% of Federal Income Tax Rate

¹In Table 2, the 26% federal income tax rate bracket was assumed to start at \$31,000 in order to recognize that each income range (i) reflects total gross income, rather than taxable income, and to recognize that taxpayers can claim deductions to reduce the amount of gross income that is subject to tax.

Marginal Transaction Tax Rates

Transaction Tax	Category	Assumed Marginal Rate
goods and services tax ("GST")	Incomes up to \$50,000	3.0%
	Income above \$50,000	2.9%
social services tax ("PST")	Incomes up to \$50,000	2.0%
	Income above \$50,000	1.8%
fuel tax	Income \$10,000 and below	0.0%
	Income above \$10,000	1.0%

GST

In Table 2, it is assumed that 70% of each additional dollar of income of an individual is spent on goods and services and that 65% of those expenditures are subject to GST.

PST

In Table 2, it is assumed that 2/3 of goods and services that are subject to GST also are subject to PST. Consequently, the marginal PST rate included in Table 2 is 2/3 of the marginal GST rate included in Table 2.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

Fuel Tax

In Table 2, it is assumed that 2.4% of each additional dollar of income is spent on fuel, based on the *Household Expenditure Survey for British Columbia, 1992*, and that federal excise tax and provincial motor fuel tax together represent 42% of the assumed expenditure.

Tax Credits and Benefits

Marginal Benefit Rates

Income Range (i)	Income Supplement	BC Family Bonus	Child Tax Benefit	PST Credit	GST Credit	Combined Rate	Adjusted ¹ Combined Rate
\$0-\$4,999	-1.18%	0.00%	0.00%	0.00%	-0.16%	-1.34%	0%
\$5,000-\$9,999	-3.94%	0.00%	0.00%	0.00%	-0.52%	-4.46%	-1.34%
\$10,000-\$14,999	-0.79%	0.00%	0.00%	0.00%	-0.52%	-1.31%	-4.46%
\$15,000-\$19,999	0.00%	1.58%	0.00%	0.97%	0.00%	2.55%	-1.31%
\$20,000-\$24,999	3.94%	7.88%	0.00%	0.93%	0.00%	12.75%	2.55%
\$25,000-\$29,999	0.98%	7.88%	1.97%	0.00%	3.37%	14.20%	12.75%
\$30,000-\$34,999	0.00%	4.73%	2.46%	0.00%	3.51%	10.70%	14.20%
\$35,000-\$39,999	0.00%	0.00%	2.46%	0.00%	1.48%	3.94%	10.70%
\$40,000-\$44,999	0.00%	0.00%	2.46%	0.00%	0.00%	2.46%	3.94%
\$45,000-\$49,999	0.00%	0.00%	2.46%	0.00%	0.00%	2.46%	2.46%
\$50,000+	0.00%	0.00%	2.46%	0.00%	0.00%	2.46%	2.46%

¹Income ranges (i) include government transfers, and thus, do not adequately represent the thresholds at which the tax credit and benefit reductions occur in practice. The combined rate calculated for each income range (i) has been shifted to the next highest income range (i) to compensate for this factor.

(Nisga'a demographic assumptions for Marginal Benefit Rate Table are to be inserted here.)

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

The following table outlines the assumptions made about benefits.

Benefit	Assumptions
Income Supplement	The supplement is phased in with earned income in excess of \$3,750 and is reduced by 10% of income in excess of \$20,921 and stops at \$25,921. This benefit is available to single or married parents.
BC Family Bonus	The benefit is reduced by 16% of income in excess of \$18,000 for families with two children (8% for families with one child). This benefit is available to single or married parents.
Child Tax Benefit	The benefit is reduced by 5% of incomes in excess of \$25,921 for families with two children (2.5% for families with one child). This benefit is available to single or married parents.
PST Credit	The credit is \$50 per adult and is reduced by 2% of income in excess of \$15,000 for single individuals and \$18,000 for couples. This benefit is available to individuals 19 years or older.
GST Credit	The GST credit increases by 2% of income between \$3,750 and \$25,921. The GST credit is reduced by 5% of income in excess of \$25,921. Married individuals must combine their income with that of their spouse for purposes of the threshold. This benefit is available to individuals 19 years or older.